

Subsidiary Legislation made under s.37(9).

Tax Dispute Resolution Regulations 2019

LN.2019/148

Commencement

26.7.2019

Transposing –
Council Directive (EU) 2017/1852

ARRANGEMENT OF REGULATIONS.

Regulation

PART 1

PRELIMINARY

Introductory

1. Title
2. Commencement and transitional provision.
3. Subject matter and scope.

Competent authority and courts

4. Competent authority.
5. Competent courts.

Interpretation

6. Interpretation: “question in dispute”.
7. Interpretation: general.

PART 2

COMPLAINTS

8. Right to submit complaint.
9. Processing of complaint.
10. Required information.
11. Decision.
12. Withdrawal of complaint.
13. Lapsing of question in dispute.

PART 3

PROCESSING OF COMPLAINTS

14. Mutual agreement procedure.
15. Competent authority decision.

PART 4

ADVISORY COMMISSION

Request to establish

16. Request to competent authorities to establish Advisory Commission.

Establishment

17. Establishment: normal case.
18. Appointment by competent court or national appointing body.

Composition

19. Composition of Commission.
20. Independent persons of standing.

Proceedings

21. Proceedings of Commission where complaint initially rejected.
22. Proceedings of Commission where competent authorities failed to reach initial agreement.
23. Alternative Dispute Resolution Commission.

PART 5

RESOLUTION OF QUESTION IN DISPUTE

24. Rules of functioning.
25. Costs of proceedings.
26. Information, evidence and hearings.
27. Timing of opinion.
28. Basis of opinion.
29. Adoption of opinion.
30. Final decision: process.
31. Final decision: implementation.

PART 6

SUPPLEMENTAL

32. Interaction with national proceedings.
33. Individuals and smaller entities.
34. Publicity.

In exercise of the powers conferred by section 37(9) of the Income Tax Act 2010, read with section 23(g)(i) and (ii) of the Interpretation and General Clauses Act, and in order to transpose into the law of Gibraltar Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, the Minister responsible for public finance has made these Regulations—

PART 1**PRELIMINARY***Introductory***Title.**

1. These Regulations may be cited as the Tax Dispute Resolution Regulations 2019.

Commencement and transitional provision.

2. These Regulations—
 - (a) come into operation on the date of their publication in the Gibraltar Gazette,
 - (b) apply to any complaint submitted from 1 July 2019 onwards relating to questions of dispute relating to income or capital earned in a tax year commencing on or after 1 January 2018, and
 - (c) where the Commissioner so decides in agreement with other competent authorities concerned, applies with regard to any complaint that was submitted prior to 1 July 2019 or to earlier tax years.

Subject matter and scope.

- 3.(1) These Regulations give effect to Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union (“the Directive”).
 - (2) The Directive—
 - (a) lays down rules on a mechanism to resolve disputes between Member States when those disputes arise from the interpretation and application of agreements and conventions that provide for the elimination of double taxation of income and, where applicable, capital, and

(b) lays down the rights and obligations of the affected persons when such disputes arise.

(3) These Regulations apply in relation to disputes arising from agreements and conventions that apply to Gibraltar.

Competent authority and courts

Competent authority.

4. The Commissioner of Income Tax is the competent authority of Gibraltar for the purposes of the Directive.

Competent courts.

5. The Supreme Court is the competent court of Gibraltar for the purposes of the Directive.

Interpretation

Interpretation: “question in dispute”.

6. In these Regulations, the matter giving rise to disputes referred to in regulation 3(2) is referred to as the “question in dispute”.

Interpretation: general.

7.(1) In these Regulations—

“Advisory Commission” has the meaning given by regulation 16(1);

“affected person” means any person, including an individual, that is a resident of a Member State for tax purposes, and whose taxation is directly affected by a question in dispute;

“Article” has the meaning given by paragraph (4);

“the Commission” means the EU Commission;

“Commissioner” means the Commissioner of Income Tax;

“competent authority”—

(a) in relation to Gibraltar, is to be construed in accordance with regulation 4, and

- (b) otherwise, means the competent authority of a Member State designated by that Member State for the purposes of the Directive;

“competent court”—

- (a) in relation to Gibraltar, is to be construed in accordance with regulation 5;
- (b) otherwise, means a court, tribunal or other body in a Member State designated by that Member State in relation to the Directive;

“the Directive” has the meaning given by regulation 3(1);

“double taxation” means the imposition by two or more Member States of taxes covered by an agreement or convention referred to in regulation 3 in respect of the same taxable income or capital when it gives rise to either—

- (a) an additional tax charge;
- (b) an increase in tax liabilities; or
- (c) the cancellation or reduction of losses that could be used to offset taxable profits;

“resident”, in relation to Gibraltar, means ordinarily resident in accordance with 74(1) of the Income Tax Act 2010 (interpretation) (and residence is to be construed accordingly); and

“smaller entity” means an entity that is not a large undertaking and does not form part of a large group (both as defined in Directive 2013/34/EU of the European Parliament and of the Council).

(2) Any term not defined in these Regulations or in the Directive, unless the context requires otherwise, has the meaning that it has at that time under the relevant agreement or convention referred to in regulation 3 that applies on the date of receipt of the first notification of the action that resulted in, or that will result in, a question in dispute.

(3) In the absence of a definition under an agreement or convention referred to in regulation 3—

- (a) an undefined term has the meaning that it had at that time under the law of Gibraltar or the Member State concerned for the purposes of the taxes to which the agreement or convention applies, and

(b) any meaning under the applicable tax laws of Gibraltar or that Member State prevails over a meaning given to the term under other laws of Gibraltar or that Member State.

(4) In these Regulations a reference to a numbered Article is a reference to the relevant Article in the Directive.

(5) A function conferred by these Regulations on the competent authorities concerned in a case (or all competent authorities) is to be construed as requiring or permitting the Commissioner to participate in the performance of that function together with the other competent authorities concerned (or all other competent authorities).

(6) A reference in these Regulations to the competent authorities concerned in a case is a reference to all the competent authorities of Member States concerned in the case; and a reference to the other competent authorities concerned is a reference to the competent authorities of Member States concerned outside Gibraltar.

PART 2

COMPLAINTS

Right to submit complaint.

8.(1) An affected person is entitled to submit a complaint on a question in dispute to the Commissioner and each of the other competent authorities concerned, requesting the resolution of the question in dispute.

(2) The complaint must be submitted within the period of 3 years beginning with the receipt of the first notification of the action resulting in, or that will result in, the question in dispute, regardless of whether the affected person has recourse to the remedies available under the national law of Gibraltar or any of the Member States concerned.

(3) The affected person must simultaneously submit the complaint with the same information to each competent authority, and must indicate in the complaint which Member States are concerned.

(4) The affected person must ensure that each Member State concerned receives the complaint in at least one of the following languages—

- (a) one of the Member State's official languages in accordance with national law; or
- (b) any other language that the Member State accepts for this purpose.

(5) This regulation is subject to regulation 33 (individuals and smaller entities).

Processing of complaint.

9. Within the period of 2 months beginning with the date of receipt of a complaint the Commissioner must—

- (a) acknowledge receipt of the complaint;
- (b) inform the competent authorities of the Member States concerned of the receipt of the complaint;
- (c) inform those competent authorities about the language or languages the Commissioner intends to use for communications during the relevant proceedings.

Required information.

10.(1) The Commissioner may accept a complaint only if, as a first step, the affected person making the complaint provides the Commissioner with the following information—

- (a) the name, address, tax identification number and any other information necessary for identification of the affected person who presented the complaint to the Commissioner;
- (b) the name, address, tax identification number and any other information necessary for identification of any other person concerned;
- (c) the tax periods concerned;
- (d) details of the relevant facts and circumstances of the case (including details of the structure of the transaction and of the relationship between the affected person and the other parties to the relevant transactions, as well as any facts determined in good faith in a mutual binding agreement between the affected person and the tax administration, where applicable);
- (e) more specifically, the nature and the date of the actions giving rise to the question in dispute (including, where applicable, details of same income received in the Member State outside Gibraltar and of inclusion of such income in the taxable income in that Member State, and details of the tax charged or that will be charged in relation to such income in that Member State), as well as the related amounts in the currencies of the Member States concerned, with a copy of any supporting documents;

- (f) reference to the applicable national rules and to the agreement or convention referred to in regulation 3;
- (g) where more than one agreement or convention is applicable, specification of which agreement or convention is being interpreted in relation to the relevant question in dispute (which is to be treated as the applicable agreement or convention for the purposes of these Regulations and the Directive);
- (h) the following information, together with copies of any supporting documents—
 - (i) an explanation of why the affected person considers that there is a question in dispute;
 - (ii) the details of any appeals and litigation initiated by the affected person regarding the relevant transactions and of any court decisions concerning the question in dispute;
 - (iii) a commitment by the affected person to respond as completely and quickly as possible to all appropriate requests made by a competent authority and to provide any documentation at the request of the competent authorities;
 - (iv) a copy of the final tax assessment decision in the form of a final tax assessment notice, tax audit report or other equivalent document leading to the question in dispute and a copy of any other documents issued by the tax authorities with regard to the question in dispute where relevant;
 - (v) information on any complaint submitted by the affected person under another mutual agreement procedure or under another dispute resolution procedure as defined in Article 16(5) and an express commitment by the affected person to abide by the provisions of Article 16(5), if applicable; and
- (i) any specific additional information requested by the Commissioner that is considered necessary to undertake the substantive consideration of the particular case.

(2) The Commissioner may request the information referred to in paragraph (1)(i) within the period of 3 months beginning with the date of receipt of the complaint.

(3) Further requests for information may be made during the mutual agreement procedure under regulation 14 if the Commissioner and the other competent authorities concerned consider this to be necessary.

(4) In the application of paragraphs (2) and (3), any enactment or rule of law regarding the protection of information and the protection of trade, business, industrial or professional secret or trade processes applies.

(5) An affected person who receives a request in accordance with paragraph (1)(i) (or an equivalent request from a competent authority other than the Commissioner in accordance with legislation of a Member State outside Gibraltar implementing the Directive) must—

- (a) reply during the period of 3 months beginning with the date of receiving the request; and
- (b) simultaneously send a copy of the reply to each of the other competent authorities concerned.

(6) This regulation is subject to regulation 33 (individuals and smaller entities).

Decision.

11.(1) The competent authorities concerned must take a decision on the acceptance or rejection of a complaint before whichever is the later of—

- (a) the end of the period of 6 months beginning with the date of receipt of the complaint, and
- (b) the end of the period of 6 months beginning with the date of receipt of the information referred to in regulation 10(1)(i).

(2) The Commissioner must inform the affected person and the other competent authorities of the decision without delay.

(3) The Commissioner may decide to resolve the question in dispute on a unilateral basis, without involving the other competent authorities concerned, before whichever is the later of—

- (a) the end of the period of 6 months beginning with the date of receipt of the complaint, or
- (b) the end of the period of 6 months beginning with the date of receipt of the information referred to in regulation 10(1)(i).

- (4) In a case falling within paragraph (3)—
- (a) the Commissioner must notify the affected person and the other competent authorities concerned without delay, and
 - (b) following that notification, proceedings under these Regulations and the Directive are terminated.

Withdrawal of complaint.

12.(1) An affected person who wishes to withdraw a complaint must simultaneously submit a written notification of withdrawal to the Commissioner and each of the other competent authorities concerned.

(2) The notification terminates all proceedings under these Regulations and the Directive with immediate effect.

(3) On receipt of a notification the Commissioner must inform the other competent authorities concerned of the termination of proceedings without delay.

(4) This regulation is subject to regulation 33 (individuals and smaller entities).

Lapsing of question in dispute.

13.(1) This regulation applies if for any reason a question in dispute ceases to exist.

(2) Proceedings under these Regulations and the Directive terminate with immediate effect.

(3) The Commissioner must inform the affected person of this state of affairs and of the general reasons for it without delay.

PART 3**PROCESSING OF COMPLAINTS****Mutual agreement procedure.**

14.(1) Where a complaint is accepted, the competent authorities concerned must endeavour to resolve the question in dispute by mutual agreement within the period of 2 years, beginning with the date of the last notification of a decision of one of the Member States on the acceptance of the complaint.

(2) That period of 2 years may be extended by up to 1 year at the request of the Commissioner or another competent authority, sent to all the other competent authorities concerned, if the Commissioner or other requesting competent authority provides written justification.

(3) Once the competent authorities have reached an agreement as to how to resolve the question in dispute within the period provided for, the Commissioner must, without delay, notify this agreement to the affected person, as a decision that is binding on the Commissioner and enforceable by the affected person, subject to the affected person accepting the decision and renouncing the right to any other remedy, where applicable.

(4) Where proceedings regarding other remedies have already commenced, the decision only becomes binding and enforceable once the affected person has provided evidence to the Commissioner and other competent authorities concerned that action has been taken to terminate those proceedings; and—

- (a) that evidence must be provided during the period of 60 days beginning with the date on which the decision was notified to the affected person; and
- (b) the decision must then be implemented without delay, irrespective of any time limits prescribed by any other enactment.

(5) Where the competent authorities concerned have not reached an agreement on how to resolve the question in dispute within the period provided for, the Commissioner must inform the affected person indicating the general reasons for the failure to reach agreement.

Competent authority decision.

15.(1) The Commissioner may decide to reject a complaint within the period provided for in regulation 11 if—

- (a) the complaint lacks information required under regulation 10(1) (including any information requested under regulation 10(1)(i)) that was not submitted within the deadline specified in regulation 10(5);
- (b) there is no question in dispute; or
- (c) the complaint was not submitted within the 3-year period set out in regulation 8.

(2) When informing the affected person in accordance with the provisions of regulation 11, the Commissioner must provide the general reasons for the rejection.

(3) Where the Commissioner has not taken a decision on the complaint within the time provided for in regulation 11, the complaint is deemed to be accepted by the Commissioner (and in accordance with the Directive, the same applies where another competent authority concerned has not taken a decision on the complaint within the time provided for).

(4) The affected person is entitled to appeal to the Supreme Court against the decision of the Commissioner, in accordance with any relevant rules of court, where all competent authorities concerned have rejected the complaint.

(5) An affected person who exercises this appeal right is barred from making a request under regulation 16—

- (a) while the decision is still under appeal according to the laws of the Member State concerned;
- (b) where the rejection decision can still be further appealed in accordance with section 22 of the Court of Appeal Act 1969 (and the Court of Appeal Rules 2004) or under the appeal procedure of any of the Member States concerned; or
- (c) when a rejection decision has been confirmed under the appeal procedure in paragraph (a) but it is not possible to derogate from the decision of the relevant court or other judicial bodies in any of the Member States concerned.

(6) Where the appeal right has been exercised, the decision of the relevant court or other judicial body is to be considered for the purposes of regulation 16(3)(a).

PART 4

ADVISORY COMMISSION

Request to establish

Request to competent authorities to establish Advisory Commission.

16.(1) Upon a request made by the affected person to the Commissioner and the other competent authorities concerned, the competent authorities must establish an Advisory Commission (an “Advisory Commission”) in accordance with Article 8.

(2) An affected person may make a request only if Conditions 1 to 4 are satisfied.

(3) Condition 1 is that—

- (a) the complaint submitted by the affected person was rejected under regulation 15, or its equivalent in relation to another competent authority, by at least one, but not all of the competent authorities concerned; or
- (b) the competent authorities concerned had accepted the complaint that was submitted by the affected person but failed to reach an agreement on how to resolve the question in dispute by mutual agreement within the time limit provided for in regulation 14 and Article 4(1).

(4) Condition 2 is that—

- (a) no appeal can be made or is pending; or
- (b) the affected person has formally renounced the right of appeal;

and a request must include a declaration to the effect that this condition is satisfied.

(5) Condition 3 is that the request is made in writing.

(6) Condition 4 is that the request is made before the end of the period of 50 days beginning with—

- (a) the date of receipt of the notification under regulation 11 or 14(5) and Article 3(5) or 4(3), or
- (b) the date of delivery of the decision by the relevant court or judicial body under regulation 15(4) to (6) or Article 5(3).

(7) This regulation is subject to regulation 33 (individuals and smaller entities).

Establishment

Establishment: normal case.

17.(1) The Advisory Commission must be established during the period of 120 days beginning with the date of receipt of the request under regulation 16(1).

(2) Once established, the chair of the Advisory Commission must inform the affected person without delay that the Commission has been established.

Appointment by competent court or national appointing body.

18.(1) This regulation applies where an Advisory Commission is not set up within the period provided for in regulation 17.

(2) The affected person may apply to the Supreme Court to set up the Advisory Commission.

(3) If the Commissioner has failed to appoint at least one independent person of standing and a substitute, the affected person may request the Supreme Court to appoint an independent person of standing and a substitute from the list referred to in Article 9.

(4) If each of the competent authorities concerned has failed to appoint at least one independent person of standing and a substitute, the affected person may request the Supreme Court (and each of the other relevant competent courts or national appointing bodies) to appoint the two independent persons of standing from the list referred to in Article 9.

(5) Those independent persons of standing must appoint the chair by drawing lots from the list of independent persons according to Article 8(3).

(6) An affected person must submit the person's referral to appoint the independent persons of standing and their substitutes to the Supreme Court if—

- (a) more than one affected person is involved in the proceedings, and Gibraltar is the state of residence of the relevant affected person, or
- (b) only one affected person is involved, and the Commissioner has failed to appoint at least one independent person of standing and a substitute.

(7) An application or request under this regulation must be made—

- (a) after the end of the 120-day period referred to in regulation 17(1), and
- (b) within the period of 30 days beginning with the end of that 120-day period.

(8) The Supreme Court must adopt a decision under paragraphs (2) to (6) and notify it to the applicant.

(9) The applicable procedure for the Supreme Court to appoint the independent persons is to be the same as the procedure that would apply if the court were appointing arbitrators because parties have failed to agree in this respect in matters of civil and commercial arbitration.

(10) The Supreme Court must inform the Commissioner.

(11) The Commissioner must in turn inform the other competent authorities concerned without delay.

(12) Where the Commissioner initially failed to appoint the independent person of standing and the substitute, the Commissioner may appeal the decision of the Supreme Court to the Court of Appeal, in accordance with any applicable rules of court.

(13) In case of rejection, the applicant is entitled to appeal to the Court of Appeal against the decision of the Supreme Court, in accordance with any applicable rules of court.

Composition

Composition of Commission.

19.(1) The Advisory Commission is to have the composition set out in Article 8 (The Advisory Commission); and the provisions of that Article have the force of law in Gibraltar.

(2) The Commissioner must participate in the taking of decisions and other processes provided for in Article 8.

(3) The Commissioner may agree with the other competent authorities on an increase of the number of persons to be appointed under Article 8.

(4) Any rules agreed for the appointment of independent persons of standing, and substitutes, in accordance with Article 8 have the force of law in Gibraltar.

(5) The Commissioner may, in accordance with Article 8(4), object to the appointment of any particular independent person of standing.

(6) The Commissioner may make a request, in accordance with Article 8(5), for disclosure of interests to be made by a person of standing.

(7) An independent person of standing who is part of the Advisory Commission must comply with the second paragraph of Article 8(5) (avoidance of actual or perceived conflict or bias).

(8) The Commissioner, and independent persons of standing, must participate in the election of a chair in accordance with Article 8(6).

Independent persons of standing.

20.(1) The provisions of Article 9 (The List of Independent Persons of Standing) have the force of law in Gibraltar.

(2) The Commissioner must make the nominations required by Article 9(1).

(3) The Commissioner must give the notifications, and provide the information, required by Article 9(2) and (3).

(4) The Commissioner may remove a person whom the Commissioner has appointed, if that person ceases to be independent, in accordance with the second paragraph of Article 9(3).

(5) The Commissioner—

- (a) may make an objection in accordance with the third paragraph of Article 9(3); and
- (b) must undertake any investigation, and make and notify any decision, in accordance with that paragraph.

Proceedings

Proceedings of Commission where complaint initially rejected.

21.(1) This regulation applies where an Advisory Commission is established in the case described in regulation 16(3)(a).

(2) The Advisory Commission must adopt a decision on the acceptance of the complaint during the period of 6 months beginning with the date of its establishment.

(3) The Advisory Commission must notify the competent authorities of its decision during the period of 30 days beginning with the date on which the decision is adopted.

(4) Where the Advisory Commission has confirmed that all of the requirements under Article 3 have been satisfied, the mutual agreement procedure provided for in Article 4 must be initiated at the request of the Commissioner or one of the other competent authorities concerned.

(5) If the Commissioner initiates the request, the Commissioner must notify—

- (a) the Advisory Commission,
- (b) the other competent authorities concerned, and

(c) the affected person.

(6) The period provided for in regulation 14(1) and (2) begins from the date of the notification of the decision taken by the Advisory Commission of the acceptance of the complaint.

(7) Where none of the competent authorities has requested initiation of the mutual agreement procedure during the period of 60 days beginning with the date of the notification of the decision of the Advisory Commission—

- (a) the Advisory Commission must provide an opinion on how to resolve the question in dispute as provided for in regulation 27; and
- (b) for the purposes of regulation 27, the Advisory Commission is deemed to have been set up on the date on which that 60-day period expired.

Proceedings of Commission where competent authorities failed to reach initial agreement.

22.(1) This regulation applies where an Advisory Commission is established in the case described in regulation 16(3)(b).

(2) The Advisory Commission must deliver an opinion on how to resolve the question in dispute in accordance with regulation 27.

Alternative Dispute Resolution Commission.

23.(1) The competent authorities concerned may agree to establish an Alternative Dispute Resolution Commission instead of an Advisory Commission to deliver an opinion on how to resolve the question in dispute in accordance with Article 14.

(2) All competent authorities may agree to establish an Alternative Dispute Resolution Commission in the form of a committee that is of a permanent nature (a “Standing Committee”).

(3) Article 10 (The Alternative Dispute Resolution Commission) has the force of law in Gibraltar in relation to the composition and proceedings of an Alternative Dispute Resolution Commission.

(4) The competent authorities may agree as to the proceedings of the Alternative Dispute Resolution Commission.

(5) The competent authorities concerned must agree on the Rules of Functioning in accordance with Article 11.

PART 5

RESOLUTION OF QUESTION IN DISPUTE

Rules of functioning.

24.(1) During the 120-day period provided for in regulation 17, the Commissioner must notify the affected person of—

- (a) the Rules of Functioning for the Advisory Commission or Alternative Dispute Resolution Commission;
- (b) the date by which the opinion on the resolution of the question in dispute is to be adopted;
- (c) references to any applicable legal provisions in national law of the Member States and to any applicable agreements or conventions.

(2) The provisions of Article 11(2) to (4) about the Rules of Functioning have the force of law in Gibraltar.

(3) The Supreme Court has jurisdiction, in accordance with any applicable rules of court, in respect of applications to obtain an order for the implementation of the Rules of Functioning in accordance with Article 11(4).

Costs of proceedings.

25.(1) The Commissioner must defray any share of costs falling to be paid by Gibraltar in accordance with Article 12(1) (costs of proceedings) (and subject to Article 12(2)).

(2) The Commissioner may give evidence about the sums to be applied in relation to Gibraltar for the purposes of Article 12(1)(a) (expenses of independent persons of standing).

(3) The Commissioner may participate in an agreement with other competent authorities, in accordance with Article 12, as to the variation of the effect of the provisions of that Article.

(4) The Commissioner may participate in an agreement with other competent authorities, in accordance with Article 12(2), for costs to be borne by the affected person.

Information, evidence and hearings.

26.(1) For the purposes of the procedure referred to in regulations 16, 17, 21 and 22, where the competent authorities concerned agree, the affected person may provide the Advisory Commission or Alternative Dispute Resolution Commission with any information, evidence or documents that may be relevant for the decision.

(2) The affected person and the Commissioner must provide any information, evidence or documents upon request by the Advisory Commission or Alternative Dispute Resolution Commission.

(3) But the Commissioner may refuse to provide information to the Advisory Commission in any of the cases provided for by Article 13(1)(a) to (d).

(4) Affected persons—

(a) may, at their request and with the consent of the competent authorities concerned, appear or be represented before an Advisory Commission or Alternative Dispute Resolution Commission, and

(b) must appear or be represented before it upon request by the Advisory Commission or Alternative Dispute Resolution Commission.

(5) The independent persons of standing and any other member of the Advisory Commission or Alternative Dispute Resolution Commission must treat information they receive in their capacity as members an Advisory Commission or Alternative Dispute Resolution Commission as secret, and comply with any relevant obligations of professional confidentiality under any enactment relating to any profession to which they belong.

(6) Affected persons, and where applicable, their representatives, must undertake to treat any information (including knowledge of documents) that they receive during proceedings of the Advisory Commission or Alternative Dispute Resolution Commission as secret; and the affected person and his representatives must make a declaration to this effect to the competent authorities concerned when so requested during the proceedings.

(7) A person who breaches a secrecy obligation under paragraph (5) or (6) commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale (in addition to any relevant professional disciplinary consequences).

Timing of opinion.

27.(1) An Advisory Commission or Alternative Dispute Resolution Commission must deliver its opinion to the competent authorities concerned during the period of 6 months beginning with the date on which it was established.

(2) Where the Advisory Commission or Alternative Dispute Resolution Commission considers that the question in dispute is such that it would need more than 6 months to deliver an opinion, this period may be extended by 3 months.

(3) The Advisory Commission or Alternative Dispute Resolution Commission must inform the competent authorities concerned and the affected person of any such extension.

Basis of opinion.

28. The Advisory Commission or Alternative Dispute Resolution Commission must base its opinion on—

- (a) the provisions of the applicable agreement or convention referred to in regulation 3, and
- (b) any applicable law of Gibraltar or other national rules.

Adoption of opinion.

29.(1) The Advisory Commission or Alternative Dispute Resolution Commission must adopt its opinion by a simple majority of its members.

(2) Where a majority cannot be reached, the vote of the chair determines the final opinion.

(3) The chair must communicate the opinion of the Advisory Commission or Alternative Dispute Resolution Commission to the competent authorities.

Final decision: process.

30.(1) The Commissioner must participate with the other competent authorities to agree on how to resolve the question in dispute during the period of 6 months beginning with the date of notification of the opinion of the Advisory Commission or Alternative Dispute Resolution Commission.

(2) The competent authorities may take a decision which deviates from the opinion of the Advisory Commission or Alternative Dispute Resolution Commission; but if they fail to reach an agreement as to how to resolve the question in dispute, they are bound by that opinion.

(3) The Commissioner must notify the final decision on the resolution of the question in dispute to the affected person without delay.

(4) In the absence of such notification during the period of 30 days beginning with the date on which the decision is taken, an affected person resident in Gibraltar may appeal to the Supreme Court, in accordance with any applicable rules of court, in order to obtain the final decision.

Final decision: implementation.

31.(1) The final decision—

- (a) is binding on Gibraltar (as well as on the Member States of the other competent authorities concerned); and
- (b) does not constitute a precedent.

(2) The final decision must be implemented subject to each affected person accepting the final decision and renouncing the right to any domestic remedy during the period of 60 days beginning with the date on which the final decision was notified, where applicable.

(3) The final decision must be implemented by the Commissioner who must, in particular, as a result of the final decision, take any necessary steps, including the amendment of taxation, irrespective of any time limits prescribed by any other enactment or rule of law (subject to paragraph (4)).

(4) Paragraph (3) does not apply if—

- (a) the Supreme Court decides, according to the law of Gibraltar on remedies and applying the criteria under Article 8, that there was lack of independence, or
- (b) any other relevant competent court decides, according to its national law on remedies and applying the criteria under Article 8, that there was lack of independence.

(5) Where the final decision has not been implemented by the Commissioner, the affected person may apply to the Supreme Court in order to enforce implementation thereof.

PART 6

SUPPLEMENTAL

Interaction with national proceedings.

32.(1) The fact that an action in Gibraltar that gave rise to a question in dispute has become final under the law of Gibraltar does not prevent an affected person from having recourse to

the procedures provided for in these Regulations; (and the same applies in relation to actions outside Gibraltar, in accordance with Article 16(1)).

(2) The submission of a question in dispute to the mutual agreement procedure or to the dispute resolution procedure under Part 3 or 4 or Articles 4 and 6 does not prevent the Commissioner or another public authority from initiating or continuing—

- (a) judicial proceedings in relation to the same matters, or
- (b) proceedings for administrative and criminal penalties in relation to the same matters.

(3) An affected person may have recourse to remedies available under any other enactment or rule of law (whether of Gibraltar or elsewhere).

(4) Where an affected person has commenced proceedings to seek such a remedy, the terms of periods referred to in regulations 11 and 14(1) and (2) begin with the date on which—

- (a) a judgement delivered in those proceedings has become final,
- (b) those proceedings have otherwise been definitively concluded, or
- (c) those proceedings have been suspended.

(5) Where a decision on a question in dispute has been rendered by the Supreme Court before an agreement has been reached by the competent authorities concerned under the mutual agreement procedure under regulation 14 on that question in dispute, the Commissioner must notify the other competent authorities concerned—

- (a) of the decision of the Supreme Court, and
- (b) that that procedure is to be terminated as from the date of such notification.

(6) Where a decision on a question in dispute has been rendered by the Supreme Court before the affected person has made a request under regulation 16—

- (a) the provisions of regulations 16 and 17 do not apply if the question in dispute had remained unresolved during the whole of the mutual agreement procedure under regulation 14, and
- (b) in that case, the Commissioner must inform the other competent authorities concerned of the effect of the decision of the Supreme Court.

(7) Where a decision on a question in dispute has been rendered by the Supreme Court, the dispute resolution process under Part 4 is to be terminated if the decision of the Supreme Court was rendered at any time after an affected person has made a request under Article 6(1) but before the Advisory Commission or the Alternative Dispute Resolution Commission has delivered its opinion to the competent authorities concerned in accordance with Article 14; and in that case the Commissioner must inform the following of the effect of the decision of the Supreme Court—

- (a) other competent authorities concerned, and
- (b) the Advisory Commission or the Alternative Dispute Resolution Commission.

(8) The provisions of paragraphs (5) to (7) apply (with necessary modifications) in relation to decisions of competent courts, and in relation to competent authorities, outside Gibraltar, if and in so far as the relevant national law has made provision in accordance with Article 16(4).

(9) The submission of a complaint as provided under regulation 8 puts an end to any other ongoing proceedings under the mutual agreement procedure or dispute resolution procedure under an agreement or convention that is being interpreted or applied in relation to the relevant question in dispute; and such other ongoing proceedings concerning the relevant question in dispute come to an end with effect from the date of the first receipt of the complaint by any of the competent authorities concerned.

(10) Access to the dispute resolution procedure under Part 4 is not available in cases where penalties were imposed in Gibraltar in relation to the adjusted income or capital for tax fraud, wilful default and gross negligence.

(11) Where judicial or administrative proceedings were commenced that could potentially lead to such penalties, and these proceedings are being conducted simultaneously with any of the proceedings referred to in these Regulations, the Commissioner may stay the proceedings under these Regulations as from the date of acceptance of the complaint until the date of the final outcome of those proceedings.

(12) The Commissioner may deny access to the dispute resolution procedure under Part 4 on a case-by-case basis where a question in dispute does not involve double taxation; and in such a case, the Commissioner must without delay inform—

- (a) the affected person, and
- (b) the other competent authorities concerned, without delay.

(13) Any action of a competent authority or court outside Gibraltar taken in accordance with Article 16 (interaction with national proceedings and derogations) has force of law in Gibraltar so far as required for the purposes of that Article.

Individuals and smaller entities.

33.(1) This regulation applies where the affected person is either—

- (a) an individual resident in Gibraltar, or
- (b) a smaller entity resident in Gibraltar.

(2) The affected person may submit the complaints, replies to a request for additional information, withdrawals and requests specified in regulations 8, 10, 12 and 16 (“communications”), by way of derogation from those provisions, only to the Commissioner (and the equivalent provision applies to individuals and smaller entities not resident in Gibraltar).

(3) The Commissioner must notify the other competent authorities concerned—

- (a) at the same time, and
- (b) during the period of 2 months beginning with the date of receipt of such communications.

(4) Once such a notification has been made, the affected person is deemed to have submitted the communication to all the Member States concerned as of the date of the notification.

(5) Where the Commissioner receives additional information under regulation 10, the Commissioner must transmit a copy to the other competent authorities concerned at the same time.

(6) Once that submission has been made, the additional information is deemed to have been received by all Member States concerned as at the date of such receipt of information.

Publicity.

34.(1) Advisory Commissions and Alternative Dispute Resolution Commissions must issue their opinions in writing.

(2) The Commissioner may participate with the other competent authorities concerned in agreeing to publish the final decisions referred to in regulations 30 and 31 in their entirety, subject to consent of each of the affected persons concerned.

(3) Where the competent authorities or affected persons concerned do not consent to publishing the final decision in its entirety, the Commissioner must participate with the other competent authorities concerned in publishing an abstract of the final decision; and the abstract must contain—

- (a) a description of the issue and the subject matter,
- (b) the date,
- (c) the tax periods involved,
- (d) the legal basis,
- (e) the industry sector,
- (f) a short description of the final outcome, and
- (g) a description of the method of arbitration used.

(4) The Commissioner must participate with the other competent authorities concerned in sending the information to be published in accordance with paragraph (3) to the affected person before its publication.

(5) During the period of 60 days beginning with the date of the receipt of the information, the affected person may request the Commissioner and other competent authorities not to publish information that concerns any trade, business, industrial or professional secret or trade process, or that is contrary to public policy.

(6) The standard forms for the communication of the information established in accordance with Article 18(4) are to be used.

(7) The Commissioner must participate with the other competent authorities concerned in notifying the information to be published in accordance with paragraph 3 to the Commission without delay.