Commission Implementing Regulation (EU) 2019/652 of 24 April 2019 laying down standard Rules of Functioning for the Advisory Commission or Alternative Dispute Resolution Commission and a standard form for the communication of information concerning publicity of the final decision in accordance with Council Directive (EU) 2017/1852

COMMISSION IMPLEMENTING REGULATION (EU) 2019/652

of 24 April 2019

laying down standard Rules of Functioning for the Advisory Commission or Alternative Dispute Resolution Commission and a standard form for the communication of information concerning publicity of the final decision in accordance with Council Directive (EU) 2017/1852

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union[(1)], and in particular Articles 11(3) and 18(4) thereof,

Whereas:

(1) Directive (EU) 2017/1852 introduces a mechanism for the effective resolution of tax disputes between Member States concerning the interpretation and application of agreements and conventions that provide for the elimination of double taxation of income and, where applicable, capital.

(2) Directive (EU) 2017/1852 provides that if the mutual agreement procedure which is foreseen as a first step for the resolution of disputes does not lead to an agreement between the competent authorities of the Member States concerned within a certain timeframe, the dispute may be submitted for resolution by an Advisory Commission or an Alternative Dispute Resolution Commission.

(3) Directive (EU) 2017/1852 provides that the competent authorities of each Member State involved in the dispute shall sign the Rules of Functioning for the Advisory Commission or Alternative Dispute Resolution Commission (‘Rules of Functioning’) and notify them to the affected persons.

(4) Directive (EU) 2017/1852 provides that the Commission shall establish standard Rules of Functioning to apply where the Rules of Functioning have not been notified to the affected person(s) within the prescribed timeframe or they are incomplete. Standard Rules of Functioning should therefore be established, in order to achieve the continuity and effectiveness of the dispute resolution procedure. For this reason, the standard Rules of Functioning should create a comprehensive procedural framework for the dispute resolution procedure to run without obstacles and to guarantee the rights of the affected person(s) under Directive (EU) 2017/1852. It would be particularly

important to delineate the legal base of the dispute, the terms of reference, as well as deal with the details of the organisation and functioning of the Advisory Commission or Alternative Dispute Resolution Commission and also provide for the sharing of costs. In order to ensure the independence of the Advisory Commission or Alternative Dispute Resolution Commission, it would also be necessary to include a comprehensive disclosure of any conflicts of interest.

(5) Directive (EU) 2017/1852 provides that the competent authorities may agree to publish their final decision in its entirety, subject to consent of the affected person(s) concerned. Directive (EU) 2017/1852 also provides that where the competent authorities or affected person(s) concerned do not consent to publishing the final decision in its entirety, the competent authorities shall publish an abstract of such final decision.

(6) In order to guarantee the coherent communication of the information concerning the publicity of the final decision, a standard form should be established. In order to ensure transparency regarding the final decision whilst also protect business secrecy of the affected person(s), the standard form should condition the publication of the final decision on an agreement of the competent authorities and the consent of the affected person(s). In the case that one of these parties disagrees with the publication, the rules should provide for releasing an abstract of the final decision and setting out the elements that should feature thereon. It should also be accepted that the affected person be entitled to request the competent authorities not to publish information that pertains to business secrecy.

(7) In order to ensure legal certainty and a proper functioning of the system, this Regulation should start to apply after the time limit for transposition laid down in the first subparagraph of Article 22(1) of Directive (EU) 2017/1852.

(8) The measures provided for in this Regulation are in accordance with the opinion of the Committee on Dispute Resolution,

HAS ADOPTED THIS REGULATION:

Article 1

Standard Rules of Functioning

Where the competent authorities of the Member States involved in a dispute resolution procedure under Directive (EU) 2017/1852 have not notified the Rules of Functioning for the Advisory Commission or Alternative Dispute Resolution Commission (‘Rules of Functioning’) or have notified incomplete Rules of Functioning to the affected person(s), the independent persons of standing and the chair shall complete the Rules of Functioning on the basis of the standard form laid down in Annex I to this Regulation.

***Changes to legislation:** There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2019/652. (See end of Document for details)*

Article 2

Standard form for the communication of information concerning publicity of the final decision

Where the competent authorities of the Member States involved in a dispute resolution procedure under Directive (EU) 2017/1852 communicate information referred to in paragraphs 2 and 3 of Article 18 of that Directive, they shall use the standard form laid down in Annex II to this Regulation.

Article 3

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 July 2019.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 24 April 2019.

For the Commission

The President

Jean-Claude JUNCKER

***Changes to legislation:** There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2019/652. (See end of Document for details)*

ANNEX I

PART 1

STANDARD RULES OF FUNCTIONING OF THE ADVISORY COMMISSION OR ALTERNATIVE DISPUTE RESOLUTION COMMISSION

(ARTICLE 11(3) OF DIRECTIVE (EU) 2017/1852)

[To be filled in by the independent persons of standing and the chair and signed by the competent authorities of the Member States concerned]

*[Where the advisory commission is set up for the purposes of Article 6(1)(a) of Directive (EU) 2017/1852, fill in items marked with a * only]*

1. GENERAL INFORMATION *

Name(s) of the affected person(s), address(es), tax identification number(s) (TIN)(s): …

Member State of residence for tax purposes of the affected person(s): …

Member States concerned: …

Full address and details of a contact person for the affected person(s), including phone number and email address: …

Names and details of the affected person's counsel (*if applicable*): …

2. COMPOSITION OF THE ADVISORY COMMISSION OR ALTERNATIVE DISPUTE RESOLUTION COMMISSION

2.1. **Form:**

Advisory Commission

Alternative Dispute Resolution Commission

2.2. **Type of resolution process:**

‘**Independent opinion**’ process

‘**Final offer**’ process

Other, *please specify*: …

2.3. **Number of Members and general information *:**

— # Chair

— # … Independent persons of standing and … Substitutes

— # …Competent authorities' representatives

Chair:

…

…

Citizenship: ... Address and contact details (incl. email address and phone number - optional): ...

Independent person of standing (appointed by …):

***Changes to legislation:** There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2019/652. (See end of Document for details)*

…

…

Citizenship: ... Address and contact details (incl. email address and phone number - optional): ...

Substitute (appointed by …):

…

…

Citizenship: ... Address and contact details (incl. email address and phone number - optional): ...

Independent person of standing (appointed by …):

…

…

Citizenship: ... Address and contact details (incl. email address and phone number - optional): ...

Substitute (appointed by …):

…

…

Citizenship: ... Address and contact details (incl. email address and phone number - optional): ...

Competent authorities (Representative appointed for …)

Address and contact details (incl. email address and phone number):

…

…

Competent authorities (Representative appointed for …)

Address and contact details (incl. email address and phone number):

…

…

Where applicable, add lines for additional members involved

In addition, as regards the independent persons of standing, their CVs and references with details of their competence and qualifications shall optionally be attached to these Standard Rules of Functioning. The Disclosure of any Conflicts of Interest set out in Part 2 shall be lawfully signed and included.

3. DESCRIPTION AND CHARACTERISTICS OF THE QUESTION IN DISPUTE *

Subject matter description:

…

…

…

…

Tax period(s):