

2011 No. 2931

RECOVERY OF TAXES

The MARD Regulations 2011

Made - - - - *8th December 2011*

Laid before the House of Commons *9th December 2011*

Coming into force - - *1st January 2012*

The Treasury make regulations 1 to 7 and 9 to 18 of these Regulations exercising their powers in paragraph 10 of Schedule 25 to the Finance Act 2011(a).

The Commissioners for Her Majesty's Revenue and Customs make regulations 1(1) and 8 of these Regulations exercising the powers in paragraph 9 of that Schedule(b).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the MARD Regulations 2011 and come into force on 1 January 2012.

(2) The Articles mentioned in these Regulations are those of MARD(c).

(3) Regulations 2(1), 4(1), 5(1), 6, 7(2), 7(4) and 13(2) each applies to any Article(d) it mentions only where the relevant UK authority(e) is the requested authority(f) in that Article.

(4) Regulations 9, 10(1), 11, 12 and 13(3) each applies to any Article it mentions only where an applicant authority of the United Kingdom is the applicant authority(g) in that Article.

Claims, etc to the United Kingdom (i.e. relevant UK authority is the requested authority in MARD)

Exchange of information

2.—(1) The relevant UK authority must comply with the provision made by Article 5 in relation to the requested authority.

(2) This is subject to Articles 5(2) and 5(3).

(a) 2011 c. 11.

(b) The Finance Act 2011, Schedule 25, paragraph 9 is available to “the relevant UK authority” which is defined by paragraphs 7(1)(a) and 16 of that Schedule – read together — as the Commissioners for Her Majesty's Revenue and Customs.

(c) The Finance Act 2011, Schedule 25, paragraph 1 defines “MARD” as Council Directive 2010/24/EU (OJ No L 84, 31.3.10, p 1).

(d) The explanatory note at the end summarises the subject-matter of those Articles of MARD mentioned in this instrument.

(e) The Finance Act 2011, Schedule 25, paragraph 7 defines “the relevant UK authority”.

(f) The Finance Act 2011, Schedule 25, paragraph 16 defines “requested authority” as having the same meaning as in MARD (and it is defined there in Article 3(b)).

(g) The Finance Act 2011, Schedule 25, paragraph 16 defines “applicant authority” as having the same meaning as in MARD (and it is defined there in Article 3(a)).

3. A United Kingdom public authority(a) that is to make a refund in Article 6 may follow that Article.

4.—(1) The relevant UK authority must make and carry out the agreement and arrangements for which Article 7(1) makes provision in relation to the requested authority, to the extent that this will promote the mutual assistance provided for in MARD.

(2) This is subject to Articles 7(3) and 21(2).

Enforcement of foreign claims in the UK

5.—(1) The relevant UK authority must comply with the provision made by Articles 8, 9(1), 13(2), 13(3), 13(5), 14(1), 16, 18(4) and 19(3) in relation to the requested authority.

(2) For Article 8: this is subject to Article 8(2).

(3) For Article 16: paragraph (1) and regulation 7 apply in a way that gives effect to Article 17.

6.—(1) The relevant UK authority may follow Article 13(4), first sentence.

(2) Where it does so, that authority must follow Article 13(4), second sentence.

7.—(1) Articles 12, 14(1), 14(2), 15(2) second and third sub-paragraphs, and 18 apply to a foreign claim(b).

(2) The relevant UK authority must follow Article 15(2), first sub-paragraph, second sentence.

(3) The provision in paragraph (1) for Articles 12 and 14 also apply where the foreign claim is based on a revised instrument in Article 15(2), third sub-paragraph.

(4) The relevant UK authority may follow Articles 18(1) and 18(2).

(5) The relevant UK authority may follow Article 18(3) where the United Kingdom is the Member State in that Article.

8. In the application of the Finance Act 2009(c), Schedule 49 to any kind of foreign claim(d) for which the relevant UK authority is the Commissioners(e), the sum payable in paragraph 1(1) of that Schedule includes a foreign claim.

Claims, etc from the United Kingdom (i.e. a UK authority is the applicant authority in MARD)

Request for notification of certain documents relating to claims

9. Any applicant authority of the United Kingdom must ensure compliance or comply with the provision made by Articles 8(1) and 8(2) in relation to the applicant authority.

Requests for recovery, and conditions governing them

10.—(1) Any applicant authority of the United Kingdom must comply with the provision made by Articles 10(2) and 11 in relation to the applicant authority.

(2) A request in either Article by an applicant authority of the United Kingdom must comply with Article 12(1) (except for the obligations that Article places on the requested Member State(f)).

The request may be accompanied by the other documents as mentioned in Article 12(2).

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- (a) The Finance Act 2011, Schedule 25, paragraph 16 defines “public authority” as a person with functions of a public nature.
- (b) The Finance Act 2011, Schedule 25, paragraphs 6(2) and 6(1) define “the foreign claim” as a request in accordance with MARD for the recovery in the United Kingdom of a claim.
- (c) 2009 c. 10.
- (d) See footnote (b) on this page.
- (e) The Finance Act 2011, Schedule 25, paragraphs 7(1)(a) and 16 – read together – define the “relevant UK authority” as the Commissioners for Her Majesty’s Revenue and Customs.
- (f) MARD, Article 12(1), second sub-paragraph, from “and constitute” to the end of that sub-paragraph. This is about the sole legal basis for recovery and precautionary measures.

Disputes

11. Any applicant authority of the United Kingdom must comply with the provision made by Articles 14(3) and 14(4), third sub-paragraph, third sentence in relation to the applicant authority.

Amendment or withdrawal of UK request for recovery assistance

12. Any applicant authority of the United Kingdom must comply with the provision made by Article 15 in relation to the applicant authority.

Claims within MARD: general

Questions on limitation

13.—(1) Article 19 applies to a foreign claim(a) and to a claim for which the applicant Member State is the United Kingdom, as appropriate.

(2) The relevant UK authority must comply with the provision made by Article 19(3) in relation to the requested authority.

(3) Any applicant authority of the United Kingdom must comply with the provision made by Article 19(3) in relation to the applicant authority.

Costs

14.—(1) The relevant UK authority and an applicant authority of the United Kingdom may follow respectively Article 20(2), second sub-paragraph in relation to the requested and applicant authorities, as appropriate to the circumstances.

(2) United Kingdom public authorities must seek to ensure compliance with Article 20(2), first sub-paragraph and with Article 20(3).

Standard forms and means of communication

15.—(1) Article 21(1) applies where the United Kingdom is the requested Member State or the applicant Member State in that Article, as appropriate.

(2) This is subject to Article 21(3).

Use of languages

16.—(1) The documents mentioned in Article 22(1) sent from the United Kingdom must comply with that Article.

(2) Where those documents are sent to the United Kingdom, the second sentence of that Article applies provided that the United Kingdom public authority concerned has agreed with the sending Member State as mentioned in that sentence.

(3) This paragraph applies in relation to documents covered by Article 22(3) where the relevant UK authority is the requested authority or an applicant authority of the United Kingdom is the applicant authority in that Article.

The former authority may impose, and the latter authority must obey, the requirement in that Article.

Either authority may enter the bilateral agreement in that Article.

(4) English is the only official language in cases where the United Kingdom is the requested Member State in Articles 22(1) and 22(3), or is the applicant Member State in Article 22(2).

(a) See footnote (b) on page 2.

Disclosure of information and documents

17.—(1) Articles 23(1) and 23(6) apply where the United Kingdom is the Member State receiving the information within those Articles.

(2) Any United Kingdom public authority in question must seek to ensure that the United Kingdom complies with Articles 23(3) and 23(5) where the United Kingdom is the Member State providing the information, or is the Member State from which it originates, within those Articles.

(3) The relevant UK authority may follow Article 23(4), first sentence where it is the requested authority in that Article.

(4) An applicant authority of the United Kingdom may follow Article 23(4), first sentence where it is the applicant authority in that Article.

(5) Paragraphs (3) and (4) are subject to the second and third sentences of Article 23(4), and to Article 23(5), being satisfied.

Statutory instruments revoked

Statutory instruments revoked

18. The Regulations in the table in the Schedule are revoked.

8th December 2011
Brooks Newmark
Angela Watkinson
Two of the Lords Commissioners of Her Majesty's Treasury

7th December 2011
Dave Hartnett
Mike Eland
Two of the Commissioners for Her Majesty's Revenue and Customs

SCHEDULE

Regulation 18

Table of statutory instruments revoked

| (1) | (2) |
|--|-------------------|
| Regulations revoked | References |
| The Recovery of Duties and Taxes Etc. Due in Other Member States (Corresponding UK Claims, Procedure and Supplementary) Regulations 2004 | S.I. 2004/674 |
| The Recovery of Agricultural Levies Due in Other Member States Regulations 2004 | S.I. 2004/800 |
| The Recovery of Duties and Taxes Etc. Due in Other Member States (Corresponding UK Claims, Procedure and Supplementary) (Amendment) Regulations 2005 | S.I. 2005/1709 |
| The Recovery of Duties and Taxes Etc. Due in Other Member States (Corresponding UK Claims, Procedure and Supplementary) (Amendment) Regulations 2007 | S.I. 2007/3508 |
| The Schedule 39 to the Finance Act 2002 and Recovery of Taxes etc Due in Other Member States (Amendment) Regulations 2010 | S.I. 2010/792 |

EXPLANATORY NOTE

(This note is not part of the Regulations)

Council Directive 2010/24/EU(a) (“MARD”) is about mutual assistance between EU member States for the recovery of claims relating to taxes, duties and other specified measures. The Finance Act 2011 (c. 11), Schedule 25 makes provision for giving effect to that directive.

These Regulations make procedural, supplementary and adaptive provision for that Schedule, mainly by adopting without repetition the remaining provisions of MARD needing transposition.

So, starting on 1 January 2012, these Regulations ensure that MARD is fully transposed into United Kingdom law for both claims made to the United Kingdom by another member State, and claims made by the United Kingdom to another member State(b).

The Articles of MARD adopted or mentioned in these Regulations are as follows.

| <i>Articles of MARD</i> | <i>Regulations of this instrument that adopt or mention them</i> | <i>Summary</i> |
|-------------------------|--|--|
| 5 to 7 | 2 to 4 | Exchange of information between the authorities, and participation by officials of the authority requesting assistance in resulting administrative enquiries. |
| 8 and 9 | 5, 9 | Assistance by the authority to which the request for assistance is made for the notification of claim documents to the addressee. |
| 10 to 17 | 5 to 7, 10 to 12 | Procedures for the recovery of claims and for requests for precautionary measures, including use of a uniform instrument permitting enforcement, disputes about the claim, and amendment or withdrawal of requests for assistance. |
| 18 and 19 | 5, 7, 13 | Limits to obligations to grant assistance, and questions on limitation periods. |
| 20 | 14 | Recovery and allocation of costs. |
| 21 and 22 | 4(2), 15, 16 | Standard forms and means of communication, and use of languages, as between the respective authorities. |
| 23 | 17 | Provision about disclosure and use of information communicated under MARD. |

In addition, regulation 8 of this instrument adapts the operation of the rules, for most MARD purposes(c), about HM Revenue & Customs requiring third parties to provide contact details for debtors.

Regulation 18 of and the Schedule to this instrument revoke spent Regulations relating to the mutual assistance rules in force before 2012.

(a) OJ No L 84, 31.3.10, p 1. In addition, Commission Regulation (EU) No 1189/2011 (OJ No L 302, 19.11.11, p 16) lays down detailed implementing rules in relation to certain provisions of MARD.

(b) A Transposition Note is available at <http://www.hmrc.gov.uk>.

(c) This is especially relevant for Article 5 of MARD (which is covered by regulation 2 of this instrument).

A Tax Information and Impact Note covering this instrument was published on 23 March 2011 alongside the Finance Bill 2011 and is available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>. It remains an accurate summary of the impacts that apply to this instrument.

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STATUTORY INSTRUMENTS

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