

2012 No. 3062

RECOVERY OF TAXES

**The European Administrative Co-Operation (Taxation)
Regulations 2012**

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|-------------------------------|---------|---------------------------|
| <i>Made</i> | - - - - | <i>10th December 2012</i> |
| <i>Laid before Parliament</i> | | <i>11th December 2012</i> |
| <i>Coming into force</i> | - - | <i>1st January 2013</i> |

The Treasury are designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to administrative cooperation in the field of taxation.

The Treasury, in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2(c) to, the European Communities Act 1972, make the following Regulations:

Citation, commencement, and interpretation

1.—(1) These Regulations may be cited as the European Administrative Co-Operation (Taxation) Regulations 2012 and shall come into force on 1st January 2013.

(2) In these Regulations “the Directive” means Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation (as amended from time to time)(d).

HMRC functions

2.—(1) The Commissioners for Her Majesty’s Revenue and Customs (“the Commissioners”) are designated as the competent authority in the United Kingdom for the purposes of all matters under the Directive.

(2) HM Revenue and Customs (“HMRC”) is designated as the central liaison office in the United Kingdom for the purposes of all matters under the Directive.

Exchange of information

3.—(1) No obligation of secrecy imposed by statute or otherwise precludes a public authority (or anyone acting on its behalf) from disclosing information if the disclosure is made for the purpose of giving effect, or enabling effect to be given, to the Directive.

(a) The European Communities (Designation) Order 2012, S.I. 2012/1759.

(b) 1972 c.68.

(c) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.52). The paragraph has been amended by the European Union (Amendment) Act 2008 and S.I. 2007/1388

(d) OJ No L 64, 11.3.2011, p1.

(2) Paragraph (1) applies, in particular, to any disclosure (to persons in the United Kingdom or elsewhere) in connection with a request or proposed request by or on behalf of an applicant authority of any member State for assistance in accordance with the Directive.

(3) Paragraph (2) is not to be taken to limit paragraph (1).

Onward disclosure of information received from HMRC

4.—(1) A public authority commits an offence if—

- (a) it discloses relevant information, and
- (b) the disclosure is not permitted by paragraph (3) below.

(2) “Relevant information” is information that—

- (a) the public authority has received from HMRC by virtue of regulation 3, and
- (b) relates to a person whose identity is specified in the disclosure or can be deduced from it.

(3) A disclosure is permitted by this paragraph if it is made—

- (a) in accordance with regulation 3,
- (b) in accordance with another enactment permitting the disclosure,
- (c) to comply with an order of a court,
- (d) for the purposes of civil proceedings (whether or not within the United Kingdom),
- (e) for the purposes of a criminal investigation or criminal proceedings (whether or not within the United Kingdom),
- (f) with the consent of each person to whom the information relates, or
- (g) with the consent of the Commissioners.

(4) Paragraph (1) applies to each of the following as it applies to a public authority—

- (a) an employee or agent of the public authority,
- (b) anyone providing services or exercising functions on behalf of the public authority,
- (c) anyone authorised by the public authority to receive information on its behalf.

5.—(1) It is a defence for a person charged with an offence under regulation 4 to prove that the person reasonably believed—

- (a) that the disclosure was lawful, or
- (b) that the information had already and lawfully been made available to the public.

(2) A person guilty of an offence under regulation 4 is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both;
- (b) on summary conviction, to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale, or both.

(3) A prosecution for an offence under regulation 4 may be instituted in England and Wales only with the consent of the Director of Public Prosecutions.

(4) A prosecution for an offence under regulation 4 may be instituted in Northern Ireland only—

- (a) by the Commissioners, or
- (b) with the consent of the Director of Public Prosecutions for Northern Ireland.

Consequential provisions

6.—(1) In paragraph 63(4) of Schedule 36 to the Finance Act 2008(a), for “the Directive of the Council of the European Communities dated 19 December 1977 No. 77/799/EEC(b)” substitute “Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation”.

(2) In paragraph 45(4) of Schedule 23 to the Finance Act 2011(c), for “Directive of the Council of the European Communities No 77/799/EEC” substitute “Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation”.

Repeals

7. The enactments mentioned in the Schedule to these Regulations (being enactments that are superseded or to be superseded by reason of EU obligations and of the provision made by these Regulations in relation thereto or are not compatible with EU obligations) are repealed, to the extent specified in the third column of the Schedule.

Robert Goodwill
Desmond Swayne

10th December 2012

Two of the Lords Commissioners of Her Majesty’s Treasury

SCHEDULE 1

Regulation 7

REPEALS

| <i>Short title</i> | <i>Chapter</i> | <i>Extent of repeal</i> |
|--------------------------|----------------|-------------------------|
| Finance Act 2003 | 2003 c.14 | Section 197 |
| Finance (No. 2) Act 2005 | 2005 c.22 | Section 68 |

(a) 2008 c.9.

(b) OJ No. L 336, 27.12.1977, p.15.

(c) 2011 c.11.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Since 1977 mutual assistance between Member States of the European Community in the field of direct taxation has been undertaken via Council Directive 77/799/EC. This directive has been replaced by Council Directive 2011/16/EU, adopted by the Council of the European Union in February 2011, which has effect from 1 January 2013. Most of the new provisions are administrative in effect and do not require legislative provision.

However, regulation 2 meets a new requirement to designate a competent authority and a central liaison office for work concerning the directive.

Regulation 3 permits public authorities to respond to requests under the new directive without breaching prohibitions on disclosure of information.

Under section 18 of the Commissioners for Revenue and Customs Act 2005 ('CRCA') information held by HMRC in connection with its functions is subject to an obligation of non-disclosure, supported in section 19 by a criminal offence of unlawful disclosure. As public authorities may now receive such information from HMRC in order to be able to comply with obligations under the new directive, and the information would not otherwise be restricted in their possession, regulation 4 creates a criminal offence of unlawful disclosure similar to that in section 19 (subject to the lower maximum penalty for summary offences permitted when implementing European Union law by virtue of the European Communities Act 1972).

Regulation 5 provides defences, provides for penalties, and imposes a requirement for consent to prosecute, in England and Wales of the Director of Public Prosecutions, and in Northern Ireland the Director of Public Prosecutions for Northern Ireland or the Commissioners. Under Scottish law the consent of the Lord Advocate (or judicial permission for a private prosecution) would be required.

Regulation 6 changes references in existing legislation to the old directive, to references to the new.

Regulation 7 repeals enactments that with the repeal of the old directive are no longer required (being permission to exchange information now permitted by section 18(3) CRCA, permission to notify instruments for other Member States, for which statutory power is not required, and the deeming of tax to include relevant foreign tax, which is now provided by section 173 Finance Act 2006).

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