

EXPLANATORY MEMORANDUM TO
THE SCHEDULE 39 TO THE FINANCE ACT 2002 AND RECOVERY OF
TAXES Etc. DUE IN OTHER MEMBER STATES (AMENDMENT)
REGULATIONS 2010

2010 No. 792

1. This explanatory memorandum has been prepared by HM Revenue & Customs and is laid before Parliament. This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These Regulations make amendments to Schedule 39 to the Finance Act 2002 and repeal and amend provisions in the Recovery of Duties and Taxes Etc Due in Other Member States (Corresponding UK Claims, Procedure and Supplementary) Regulations 2004 (SI 674/2004) – “the 2004 Regulations” - which concern mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument, like the previous Recovery of Taxes etc Due in Other Member States (Amendment of Section 134 of the Finance Act 2002) Regulations 2008 (SI 2008/2871), is made under section 2(2) of the European Communities Act 1972. It relates to the recovery, in the United Kingdom, of tax debts already owed in other Member States of the European Union. It does not relate to the imposition or increase of taxation. It therefore does not contravene the restriction in Schedule 2 to the European Communities Act 1972 which prohibits statutory instruments made under section 2(2) from imposing or increasing taxation.

4. Legislative Context

4.1 Commission Directive 2002/94/EC, which laid down detailed rules for implementing certain provisions of Council Directive 2008/55/EC on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures (“the Mutual Assistance Recovery Directive”), was replaced by Regulation (EC) No 1179/2008 (“the Implementing Regulation”). As Regulation (EC) No 1179/2008 is directly applicable certain provisions in the 2004 Regulations are no longer necessary.

4.2 As a result of these changes to the European legislation it is necessary to amend the UK’s legislation. Such amendments are necessary to

Schedule 39 of the Finance Act 2002 and the 2004 Regulations and are made by this instrument.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Financial Secretary to the Treasury has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of The Schedule 39 to the Finance Act 2002 and Recovery of Taxes etc Due in Other Member States (Amendment) Regulations 2009 are compatible with the Convention rights.

7. Policy background

7.1 Certain foreign tax debts can be referred between EU Member States for recovery action to be taken under the Mutual Assistance Recovery Directive. The tax debts are established by the requesting state and enforcement action to recover those debts will be taken by the receiving state, for example, because the taxpayer is now residing there.

7.2 A new Council Directive came into force on 30 June 2008 which codified and repealed the previous 1976 Directive. Further, the Commission Directive which laid down detailed rules for implementing certain provisions of this Directive has been replaced by a new Implementing Regulation which took effect from 1 January 2009. This Regulation is directly applicable and ensures that identical or similar procedures are implemented across the European Union.

7.3 In the light of the new Regulation the UK has reviewed its mutual assistance legislation and has made a number of repeals and amendments, encapsulated in this instrument, to ensure the continued smooth running of the Mutual Assistance Recovery process. This instrument therefore makes an amendment to Schedule 39 Finance Act 2002 and the 2004 Regulations.

8. Consultation outcome

8.1 Consultation was not necessary on these amending Regulations as they do not change, but rather maintain, our ability to operate the Mutual Assistance Recovery Directive in the UK.

9. Guidance

9.1 No additional guidance is required as no changes have been made to the existing procedures.

10. Impact

10.1 A Regulatory Impact Assessment has not been prepared for this instrument because there is no impact on business, charities, voluntary bodies or the public sector. The instrument does not change existing policy or procedures.

11. Regulating small business

11.1 The legislation may apply to small business but a Small Firms Impact Test has not been undertaken because the legislation does not alter the operation of existing procedures.

12. Monitoring & Review

12.1 Not appropriate.

13. Contact

13.1 Robert Horwill at HM Revenue & Customs Tel: 020 7147 2447 or e-mail: Robert.horwill@hmrc.gsi.gov.uk can answer any queries regarding the instrument.