



STATUTORY INSTRUMENTS.

S.I. No. 643 of 2011

EUROPEAN UNION (MUTUAL ASSISTANCE FOR THE RECOVERY
OF CLAIMS RELATING TO TAXES, DUTIES AND OTHER
MEASURES) REGULATIONS 2011

(Prn. A11/2315)

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OF CLAIMS RELATING TO TAXES, DUTIES AND OTHER
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I, MICHAEL NOONAN, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Council Directive No. 2010/24/EU of 16 March 2010¹, hereby make the following regulations:

Citation.

1. These Regulations may be cited as the European Union (Mutual Assistance for Recovery of Claims relating to Taxes, Duties and Other Measures) Regulations 2011.

Commencement.

2. These Regulations come into operation on 1 January 2012.

Interpretation.

3. (1) In these Regulations—

“Act of 1997” means the Taxes Consolidation Act 1997 (No. 39 of 1997);

“applicant authority”, in relation to a Member State, has the meaning assigned to it by Article 3(a) of the Council Directive;

“central liaison office” shall be construed in accordance with Regulation 4(2);

“claim” means a claim referred to in Regulation 5;

“Collector-General” means the Collector-General appointed under section 851 of the Act of 1997;

“competent authority”, except in Regulation 8, shall be construed in accordance with Regulation 4(1);

“Commission” means the European Commission;

“Council Directive” means Council Directive No. 2010/24/EU of 16 March 2010¹;

“Member State” means a Member State of the European Union other than the State;

¹OJ No. L84, 31.03.2010, p.1

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 16th December, 2011.*

“mutual agreement procedure” means a mutual agreement procedure contained in arrangements having the force of law by virtue of section 826 of the Act of 1997 and the procedures for the purpose of resolving difficulties arising out of the application of those arrangements;

“person” has the meaning assigned to it by Article 3(c) of the Council Directive;

“requested authority” has the meaning assigned to it by Regulation 6;

“Union” means the European Union.

(2) A word or expression that is used in these Regulations and that is also used in the Council Directive has, unless the contrary intention appears, the same meaning in these Regulations as it has in the Council Directive.

(3) A word or expression that is used in these Regulations and that is also used in the Act of 1997 has, subject to paragraph (2) and unless the contrary intention appears, the same meaning in these Regulations as it has in the Act of 1997.

Organisation.

4. (1) The Minister for Finance is the competent authority in the State for the purposes of the Council Directive.

(2) The Revenue Commissioners are the central liaison office for the purposes of the Council Directive and shall have principal responsibility for contact with other Member States and with the Commission in the field of mutual assistance covered by the Council Directive.

Claims to which Regulations apply.

5. (1) Subject to paragraphs (2) and (3), these Regulations apply to a claim which arises in a Member State relating to—

(a) taxes or duties of any kind levied by or on behalf of a Member State or its territorial or administrative subdivisions, including local authorities, or on behalf of the Union,

(b) refunds, interventions or other measures forming part of the system of total or partial financing of the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD), including funds to be collected in connection with these actions,

(c) levies or other duties provided for under the common organisation of the market for the sugar sector.

(2) (a) A matter referred to in subparagraph (a), (b) or (c) of paragraph (1) shall be treated, as including any administrative penalties, fines, fees and surcharges relating to that matter.

- (b) Taxes and duties referred to in subparagraph (a) of paragraph (1) shall be treated as including any fees for certificates and similar documents issued in connection with administrative procedures related to those taxes and duties.
 - (c) A matter referred to in subparagraph (a), (b) or (c) of paragraph (1), as extended by subparagraphs (a) and (b) of this paragraph, shall be treated, as including interest and costs relating to that matter.
- (3) These Regulations do not apply to—
- (a) compulsory social security contributions payable to the Member State or a subdivision of the Member State, or to social security institutions established under public law,
 - (b) fees not referred to in subparagraph (a) or (b) of paragraph (2),
 - (c) consideration due under a contract, and
 - (d) criminal penalties imposed on the basis of a public prosecution or other criminal penalties not covered by paragraph (2)(a).

Requested authority.

6. (1) In these Regulations “requested authority”, in relation to a request for information, means—

- (a) in respect of a claim relating to a matter referred to in subparagraph (b) or (c) of Regulation 5 (1), the Minister for Agriculture, Food and the Marine,
- (b) in respect of a claim relating to a matter—
 - (i) referred to in Regulation 5 (1)(a), and
 - (ii) which corresponds to a tax or duty in the State which is under the care and management of the Revenue Commissioners,
 the Revenue Commissioners, and
- (c) in respect of a claim relating to a matter—
 - (i) referred to in Regulation 5 (1)(a), and
 - (ii) which is not a tax or duty referred to in subparagraph (b)(ii),
 the office holder designated by the competent authority for that purpose.

Requests for information.

7. (1) Subject to paragraph (2), a requested authority may, at the request of the applicant authority, disclose to the applicant authority any information in

relation to a claim, which is required to be disclosed by virtue of the Council Directive.

- (2) (a) A requested authority shall not disclose any information for the purposes of the Council Directive which would, in the opinion of the requested authority, be liable to prejudice the security of the State or be contrary to public policy.
- (b) A requested authority shall not be obliged to disclose any information for the purposes of the Council Directive that—
- (i) the requested authority would not be able to obtain for the purposes of recovering a similar claim in the State, or
 - (ii) would, in the opinion of the requested authority, disclose any commercial, industrial or professional secrets.

(3) In obtaining the information referred to in paragraph (2), the requested authority concerned may make use of the provisions of any enactment or an instrument made under any enactment relating to the recovery of a similar claim in the State.

(4) Nothing in this Regulation permits the requested authority concerned to authorise the use of information disclosed by virtue of the Council Directive to an applicant authority other than for the purposes of the recovery of a claim or for the purposes set out in Article 23 of the Council Directive.

Exchange of information without prior request.

8. (1) Where a refund of taxes or duties, which are under the care and management of the Revenue Commissioners, other than value-added tax, is due to a person resident or established in a Member State, the Revenue Commissioners may, without receiving a request to, so inform the competent authority of that Member State.

(2) For the purposes of this Regulation a “competent authority”, in relation to a Member State, has the meaning assigned to it by paragraph 1 of Article 4 of the Council Directive.

Presence in administrative offices and participation in administrative enquiries.

9. (1) By agreement between an applicant authority and a requested authority and in accordance with the arrangements laid down by the requested authority, officials authorised by the applicant authority may, for the purposes of giving effect to the Council Directive in relation to a request for information relating to a claim—

- (a) be present in the offices where the requested authority carries out its duties,
- (b) be present during administrative enquiries carried out by the requested authority, and

(c) assist the competent officials of the requested authority during court proceedings in the State.

(2) An official authorised by an applicant authority for the purposes of Article 7(1) of the Council Directive and carrying out his or her functions in accordance with paragraph (1) shall at all times be able to produce written authority stating his or her identity and his or her official capacity.

Recovery of claims.

10. (1) Subject to paragraph (2) the Collector-General shall, in accordance with these Regulations, collect the amount of a claim specified in any request for recovery made in accordance with the Council Directive.

(2) Paragraph (1) does not apply in respect of any request where the total amount of the claim specified in that request is less than €1,500.

(3) When the Collector-General receives a request for the recovery of a claim, the Collector-General shall make demand in writing of the amount stated in the claim made by the applicant authority from the person against whom the request for recovery is made.

(4) For the purposes of these Regulations, the amount of any claim made by an applicant authority shall be deemed due and payable not later than 7 days from the date on which the Collector-General makes demand of the amount in accordance with paragraph (3).

(5) The provisions of any enactment relating to the collection or recovery of income tax (other than sections 960, 960E, 960G, 960P, 960Q, 1003, 1003A and 1004, and Chapter 4 of Part 42, of the Act of 1997) and the provisions of any rule of court relating to those purposes shall, with any necessary modifications, apply in relation to the recovery of a claim referred to in paragraph (1) as they apply in relation to income tax, and for this purpose the amount of the claim shall be deemed to be an amount of income tax.

(6) For the purposes of these Regulations, the amount of the claim referred to in paragraph (1) shall be regarded as a debt, due to the Minister for Finance by the person against whom the request for recovery is made, in respect of a tax or duty under the care and management of the Revenue Commissioners.

(7) Any reference in this Regulation to the amount of the claim includes any interest payable in respect of that claim under Regulation 11.

(8) The amount of any claim payable to the Collector-General under these Regulations shall be payable without any deduction of income tax.

Interest.

11. (1) The amount of any claim to be collected in accordance with Regulation 10(1) shall carry interest in accordance with paragraph (2) from the date when the amount of the claim becomes due and payable in accordance with Regulation 10(4) until the date of the payment of the claim.

(2) For the purposes of paragraph (1), the amount of interest in relation to a claim payable in accordance with Regulation 10(1) shall be computed by reference to the rate of interest, if any, that would be due on a similar claim in the State, for the period concerned, and all enactments and rules of court relating to the charge, payment or recovery of interest on a claim in the State shall, with any necessary modifications, apply in relation to a claim payable in accordance with Regulation 10(1).

Application of rules.

12. (1) The rules laid down in Articles 4 to 16, and Articles 18 and 19, of the Council Directive (to the extent that they are not otherwise given effect to in these Regulations) apply in relation to any claim of an applicant authority made in accordance with these Regulations.

(2) The rules laid down in Articles 21 to 23 of the Council Directive (to the extent that they are not otherwise given effect to in these Regulations) apply in relation to all types of assistance requests made by an applicant authority in accordance with these Regulations.

Stay on proceedings.

13. (1) Subject to paragraphs (2) and (6), any action taken by the Revenue Commissioners or the Collector-General to recover the amount of any claim, whether by way of legal proceedings or other action, shall be stayed if—

- (a) in the case of legal proceedings, the defendant satisfies the court that legal proceedings relevant to that person's liability on the claim to which the first-mentioned proceedings relate are pending, or about to be instituted, before a court, tribunal or other competent body in a Member State, or
- (b) in the case of any other action, the person against whom the other action is being taken satisfies the Revenue Commissioners or the Collector-General that legal proceedings relevant to that person's liability on the claim to which the action relates are pending before a court, tribunal or other competent body in a Member State.

(2) Paragraph (1) does not apply to any part of an amount of a claim which is not contested as part of the proceedings before a court, tribunal or other competent body in a Member State referred to in paragraph (1) and such amount shall be treated for the purposes of these Regulations as an amount of a claim specified in a request for recovery made in accordance with the Council Directive.

(3) In any legal proceedings instituted by the Revenue Commissioners or the Collector-General to recover the amount of any claim it shall be a defence for the defendant to show that—

- (a) a final decision on the claim to which the proceedings relate has been given in the defendant's favour, or

- (b) a decision in relation to any part of the claim to which such proceedings relate has been given in the defendant's favour,

by a court, tribunal or other competent body in a Member State.

(4) No question shall be raised in any legal proceedings instituted by the Revenue Commissioners or by the Collector-General to recover the amount of any claim as to the liability of the person against whom the claim is made, on the claim to which the proceedings relate, except as provided in paragraph (3).

(5) For the purposes of this Regulation—

- (a) legal proceedings shall be regarded as pending so long as an appeal may be brought against any decision in the proceedings, and
- (b) a decision against which no appeal lies, or against which an appeal lies within a period which has expired without an appeal having been brought, shall be regarded as a final decision.

(6) Paragraph (1) does not apply where an applicant authority in accordance with the Council Directive so requests, and where the applicant authority so requests no action shall lie against the State (including the Revenue Commissioners, the Collector-General, any officer of the Revenue Commissioners and any agent of the Revenue Commissioners) in any court by reason of the Revenue Commissioners, the Collector-General, any such officer or any such agent recovering, or taking any action to recover, the amount of, or part of the amount of, any claim the subject of such a request.

(7) If a mutual agreement procedure, other than under these Regulations, has been duly initiated by the appropriate authorities of the Member State of the applicant authority or of the State and the outcome of the procedure may affect the claim in respect of which assistance has been requested under these Regulations, the recovery proceedings shall be stayed.

Amendment of claims.

14. Where the amount of a claim specified in a request for recovery is amended, the requested authority may—

- (a) instigate proceedings on the basis of the revised claim for recovery, or
- (b) where action under the original claim for recovery had been undertaken, continue that action, in accordance with paragraph 2 of subparagraph (2) of Article 15 on the basis of the amended amount of the revised claim for recovery.

Remittance of claims.

15. Any amount recovered under these Regulations on foot of a claim made by an applicant authority under the Council Directive (including any interest under Regulation 11) shall be remitted to the applicant authority.

Application of Council Directive to certain Irish tax, etc. due.

16. (1) In this Regulation—

“tax” means any tax, duty, levy or charge referred to in Article 2 of the Council Directive which is under the care and management of the Revenue Commissioners;

“agricultural levy” means any levy or other measure referred to in subparagraph (b) or (c) of Article 2 of the Council Directive for which the Minister for Agriculture, Food and the Marine is responsible;

“interest on unpaid tax”, in relation to an amount of unpaid tax, means the amount of interest that has accrued to the date on which a request for recovery is made under the Council Directive in respect of that tax under any provision whatever providing for the charging of interest in respect of that tax.

(2) For the purpose of the Council Directive, a demand by the Revenue Commissioners or the Minister for Agriculture, Food and the Marine, as the case may be, for the payment of an amount of tax (including, where appropriate, interest on unpaid tax) or agricultural levy where the amount demanded remains unpaid after expiration of the period for payment set out in the demand shall be the instrument permitting enforcement of the debt.

Delegation of powers and functions.

17. (1) The Minister for Agriculture, Food and the Marine may nominate, in writing, any of his or her officers to perform any acts and discharge any functions authorised by these Regulations to be performed or discharged by the Minister.

(2) The Revenue Commissioners may nominate, in writing, any of their officers to perform any acts and discharge any functions authorised by these Regulations to be performed or discharged by them or by the Collector-General.

(3) Any office holder, designated by the competent authority in accordance with Article 4 of the Council Directive, may nominate, in writing, any of his or her officers to perform any acts and discharge any functions authorised by these Regulations to be performed or discharged by such office holder.

Revocation.

18. The European Communities (Mutual Assistance for the Recovery of Claims relating to Certain Levies, Duties, Taxes and Other Measures) Regulations 2009 (S.I. No. 353 of 2009) are revoked.



GIVEN under my Official Seal,
12 December 2011.

MICHAEL NOONAN,
Minister for Finance.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations provide for the transposition of a European Council Directive on mutual assistance between Member States of the Union on the provision of information in respect of, and the recovery in the State of, claims made by other Member States in respect of debts due to that State from—

- taxes or duties of any kind levied by or on behalf of a Member State or its territorial or administrative subdivisions, including local authorities, or on behalf of the Union;
- refunds, interventions or other measures forming part of the system of total or partial financing of the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD), including funds to be collected in connection with these actions;
- levies or other duties provided for under the common organisation of the market for the sugar sector;
- interest, administrative penalties and fines, and costs incidental to these claims with the exclusion of criminal penalties.

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