EXPLANATORY MEMORANDUM TO

THE MARD REGULATIONS 2011

2011 No. 2931

1. This explanatory memorandum has been prepared by HM Revenue & Customs, mainly on behalf of HM Treasury, and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument supplements Schedule 25 to the Finance Act 2011. That Schedule is about mutual assistance between EU Member States for the recovery of claims relating to taxes, duties and other specified measures.

2.2 Together, they give effect to Council Directive 2010/24/EU ("MARD"), which must be complied with as of 1 January 2012 (OJ No L 84, 31.3.10, p 1).

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

3.1 None.

4. Legislative Context

4.1 This instrument is made using, for the first time, the powers in paragraphs 9 and 10 of Schedule 25 to the Finance Act 2011 (c. 11).

4.2 It completes the implementation of MARD by supplementing that Schedule. A Transposition Note is attached as an Annex.

4.3 It does this by adopting without repetition those remaining provisions of MARD needing transposition.

4.4 The approach to transposition is that Schedule 25 provides the main principles for enforcement of foreign claims in the UK in accordance with MARD.

4.5 The latter covers claims for all taxes and duties, including measures for financing the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development, and levies/duties under the common organisation of the market for the sugar sector. It also covers various administrative penalties, fines, fees, surcharges, interest and costs.

4.6 The UK authorities may enforce the foreign claim taking such steps as could be taken to enforce a corresponding claim within the UK, but subject to rules against taking any steps if the claim is contested in the other Member State.

4.7 This instrument adopts without repetition the remainder of MARD, which is about what the respective national authorities may or must do as between themselves regarding: information exchanges; administrative enquiries; notification of claim documents to debtors using a uniform notification form; the recovery of claims using a uniform instrument permitting enforcement; precautionary measures; the limits to the assistance that must be granted; limitation periods; costs; the use of standard forms and means of communication; and the use of languages.

4.8 Commission Regulation (EU) No 1189/2011 (OJ No L 302, 19.11.11, p 16) lays down additional and detailed implementing rules in relation to certain provisions of MARD, and is directly applicable in all Member States.

4.9 MARD's scrutiny history is as follows:

- House of Commons: Cleared on 25 November 2009 by the European Scrutiny Committee as mentioned in its Second Report of Session 2009-10 of 4 December 2009.
- House of Lords: Cleared on 4 December 2009 by the European Union Committee as mentioned in its Progress of Scrutiny – Second Report of Session 2008-09 of 18 December 2009.

4.10 Regulation 8 of this instrument only applies to claims for which the relevant UK authority is the Commissioners for Revenue and Customs. It adapts, for these purposes, the rules under which HM Revenue & Customs ("HMRC") may require third parties to provide contact details for debtors in Schedule 49 to the Finance Act 2009 (c. 10).

4.11 Regulation 18 of and the Schedule to this instrument revoke Regulations relating to the former mutual assistance rules.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Mutual assistance provisions have existed between Member States since 1976. Under these provisions Member States provide each other with assistance in the recovery of national tax debts and duties, which includes service of documents and exchanging information in connection with tax and taxpayers.

7.2 These provisions have been updated over the years, and the latest directive (MARD) is designed to modernise and expand the scope of mutual assistance. In particular, MARD:

- encourages electronic communication of claims, so ensuring claims can be dealt with more quickly and efficiently, and
- covers all taxes, including local and motor taxes, so ensuring more tax debts can be collected across the EU.

7.3 This instrument, along with the primary legislation at section 87 of and Schedule 25 to the Finance Act 2011, transposes MARD, and so fulfils the obligation on the UK to do so by 31 December 2011.

7.4 Discussion on a new directive took place between Member States throughout 2009. MARD was formally adopted by the EU Economic and Financial Affairs Council on 16 March 2010, and was published in the Official Journal of the European Union on 31 March 2010.

7.5 The reciprocal arrangements for recovering and enforcing tax debts, notifying documents, and for exchange of information across the EU embodied by MARD are designed to improve tax compliance, making the tax system fairer both in each Member State and across the EU as a whole.

8. Consultation outcome

8.1 No public consultation on the content of MARD was undertaken.

8.2 Similarly, there was no formal consultation about Schedule 25 to the Finance Act 2011, but most of these provisions were published as part of the Finance Bill on 31 March 2011 and considered in Parliament ahead of its gaining Royal Assent on 19 July 2011.

8.3 A draft of this instrument was published for public consultation on the HMRC website for 8 weeks from 19 September 2011. This timescale was considered appropriate given there were no policy questions to consult on and the instrument is largely technical in nature. No changes had to be made to the draft instrument as a result of the consultation.

9. Guidance

9.1 Guidance on the current MARD provisions is already published on the HMRC website, and will be updated to cover the new MARD provisions.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is that there are no significant costs for HMRC in implementing MARD for national taxes. There should be revenue benefits from improved recovery of tax debts. There will be additional costs associated with setting up and maintaining mutual assistance arrangements for

taxes other than national taxes, which are brought within the scope of recovery assistance for the first time. These cannot be quantified until the new arrangements are established and claims begin to flow between Member States.

10.3 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/budget2011/tiin5540.pdf . It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is simply to adopt MARD.

11.3 The basis for the final decision on what action to take to assist small businesses is the provision made by MARD.

12. Monitoring and review

12.1 This instrument will be subject to review only in relation to any future developments of the EU mutual assistance rules.

13. Contact

Stephanie Allistone at HM Revenue & Customs Tel: 020 7147 2394 or email: stephanie.allistone@hmrc.gsi.gov.uk can answer any queries regarding the instrument, including on behalf of HM Treasury.

Transposition Note: Council Directive 2010/24/EU

Transposition Note setting out the legislation implementing this Directive in the UK. This legislation is contained in Finance Act 2011 (section 87 and Schedule 25), the directly applicable EU Implementing Regulation[1], and the UK statutory instrument (SI 2011/2931) which comes into effect after 31 December 2011.

The Directive

Council Directive 2010/24/EU of 16 March 2010 is concerned with mutual assistance across member States in the recovery of claims. The Directive covers national and local taxes, duties and levies, and under its provisions member States may provide each other with assistance in the recovery of tax debts, with notification of documents, and exchange information in connection with the recovery of claims. The Directive takes effect on 1 January 2012.

Introduction

This Directive replaces Council Directive 2008/55/EC which itself updated Directive 76/308/EC (as amended by Directive 2001/44/EC). The 2008 Directive sets out the current provisions concerning mutual assistance. These were transposed at section 134 of and Schedule 39 to Finance Act 2002 and by the Recovery of Duties and Taxes Etc. Due in Other Member States (Corresponding UK Claims, Procedure and Supplementary) Regulations 2004 (SI 2004/674). These provisions will no longer apply from 01 January 2012. The new Directive aims to set out the rules more clearly to promote wider information exchange quickly and efficiently between member States. The Directive no longer prescribes what should be translated into domestic law and how, but rather sets out the rules that should be applied and then leaves it to each member State to decide how to transpose these into its national laws in order to comply with its provisions. The significant changes to existing provisions are made in Article 2 of the Directive on scope, Article 4 on organisation, Article 6 on exchange of information without request, Article 7 on the presence of foreign officials during administrative enquiries, Article 21 on the use of standard forms, and Article 23 on the wider use of information across member States. There is no requirement under the new Directive to correspond taxes or duties, although member States are expected to use national recovery powers for a similar tax or duty. If no such tax or duty exists then the powers in relation to the recovery of income tax should be used. The remaining Articles provide the supporting framework for operating mutual assistance across member States, but make no substantial changes, particularly in the areas of enforcing foreign claims and dealing with contested claims. Responsibility for implementing the Directive in the UK lies with HM Revenue & Customs under the direction of HM Treasury.

Articles	Objective	Implementation
Article 2	Extends the scope of the rules to all taxes and duties levied by or on behalf of the member State's territorial or administrative subdivisions, including local authorities.	Section 87(1) and paragraph 7 of Schedule 25 Finance Act 2011 (FA11) set out that effect is given to the Directive by the Schedule and that HMRC, Defra, the Welsh Ministers, the Scottish Ministers and the Northern Ireland Department of Agriculture and Rural Development will deal with the relevant claims under the Directive. A new information-sharing gateway to permit HMRC to deal with all national and local taxes under the Directive is provided by paragraph 3 of Schedule 25 FA11, and the accompanying onward disclosure provisions and penalties are covered by

[1] Commission Regulation (EU) No 1189/2011 (OJ No L 302, 19.11.11 p 16)

		paragraphs 4 and 5 of Schedule 25 FA11.
Article 4	Introduces the concepts of a "competent authority", "central liaison office", "liaison office", and "liaison department" and sets out their roles.	Paragraph 2 of Schedule 25 FA11 states that the Commissioners are a competent authority for the purposes of this Directive, and that HMRC is the central liaison office. The remaining detail of this Article will be dealt with administratively by UK rather than in law.
Article 5	Covers information requests, the obligations on the requested authority, and the exceptions to the general rules.	This is covered by paragraphs 3 – 5 of Schedule 25 FA11, by Articles 2, 4 and 8 of the EU Implementing Regulation and by regulation 2 of the UK regulations (SI 2011/2931) made under the power provided by paragraph 10 of Schedule 25 FA11.
Article 6	Provides that member States may spontaneously provide information on refunds to other member States.	This is covered at regulation 3 of the UK regulations.
Article 7	Provides that by mutual agreement certain officials from the applicant authority may be present during administrative enquiries in the requested authority.	This is covered at regulation 4 of the UK regulations.
Article 8	Covers requests for notification of documents.	This is covered by Articles 2, 4 and10 – 14 of the EU Implementing Regulation and regulations 5 and 8 of the UK regulations.
Article 9	Covers the means of notification.	This is covered by the provisions mentioned above for Article 8 of the Directive.
Article 10	Covers requests for recovery of a foreign claim.	This is covered by paragraph 6 of Schedule 25 FA11, Articles 2, 4 – 6 and 15 of the EU Implementing Regulation and regulation 10 of the UK regulations.
Article 11	Sets out the conditions governing a request for recovery. It states that the applicant authority must apply appropriate recovery procedures before sending a request for recovery to another member State, except where • there are no assets or little prospect of securing payment in the applicant State, • the applicant State has specific information indicating the debtor has assets in the requested State, or • taking recovery action in the applicant State would lead to disproportionate difficulty.	This is covered at paragraph 6 of Schedule 25 FA11 and by regulation 10 of the UK regulations.
Article 12	Covers the requirements regarding the instruments permitting	This Article is covered by Article 16 of the EU Implementing Regulation and

	enforcement.	regulations 7 and 10 of the UK regulations.
Article 13	Provides, among other matters, that the requested member State should use its powers and procedures to recover the claim for a similar tax or duty, and where this is not possible that it uses the provisions for tax levied on personal income. It also covers applying domestic interest to a foreign claim and remitting recovered sums to the applicant authority.	This Article is covered by paragraphs 6 and 8 of Schedule 25 FA11, by Articles 21 to 24 of EU Implementing Regulation and by regulations 5 and 6 of the UK regulations.
Article 14	Provides that disputes must be dealt with by the applicant State, who must keep the requested State informed. Disputes regarding the enforcement action taken by the requested State should be dealt with by that State in accordance with its laws and regulations. Recovery action should be suspended on any disputed element of the debt, although the applicant authority can ask the requested authority to recover a contested claim where the requested State's laws permit it. If it later transpires that the underlying debt was not due then the applicant State is liable for reimbursing any sums recovered plus any compensation due in accordance with the laws of the requested member State.	This Article is covered by paragraphs 11 and 12 of Schedule 25 FA11, Articles 21 and 22 of the EU Implementing Regulation, and regulations 5, 7 and 11 of the UK regulations.
Article 15	Requires the applicant State to inform the requested State if the recovery request is amended or withdrawn, and the reasons. If the amendment is as a result of a decision following a dispute, then a new enforcement instrument must be issued. Recovery or precautionary measures, if already initiated, can then be continued on the basis of the revised instrument, unless the amendment of the request is due to the invalidity of the original instrument.	This Article is covered by paragraphs 11 and 12 of Schedule 25 FA11, by Article 22 of the EU Implementing Regulation and by regulations 7 and 12 of the UK regulations.
Article 16	Covers requests for precautionary measures, the requisite form and accompanying documents.	This Article is covered by Articles 2, 4, 15 and 16 of the EU Implementing Regulation, and by regulation 5 of the UK regulations.
Article 17	Concerns the rules to apply to claims for precautionary measures under the Directive.	These are covered by Articles 17 – 24 of the EU Implementing Regulation and by regulation 5 of the UK regulations.

Article 18	Sets out the limits to the requested authority's obligations under the Directive.	These are covered by regulations 5 and 7 of the UK regulations.
Article 19	Sets out the rules governing limitation periods, their interruption and prolongation.	These rules are covered by regulation 13 of the UK regulations.
Article 20	Sets out the rules governing costs, including when the requested member State can seek reimbursement of their costs from the applicant member State.	These rules are covered by regulation 14 of the UK regulations.
Article 21	Provides that all requests and information exchanged under the Directive should be sent by electronic means, using a standard form, unless this is impractical for technical reasons.	This Article is covered by Article 2 of the EU Implementing Regulation and by regulation 15 of the UK regulations.
Article 22	Provides that all claims must be sent in one of the official languages of the applicant member State, and that agreements can be made by States regarding language on a case by case basis.	This Article is covered by regulation 16 of the UK regulations.
Article 23	Introduces provision concerning disclosure and details how information communicated between member States should be protected and used by other member States, the Commission, or other agencies within a member State. Information provided under the Directive may be used for applying enforcement and precautionary measures for claims covered by the Directive and for the assessment and enforcement of social security contributions.	This Article has been legislated by paragraphs 2 to 5 of Schedule 25 FA11 (HMRC functions, exchange of information and onward disclosure). The penalty provisions for unlawful disclosure can only apply within UK. Information can only be passed more widely around EU if agreed by the providing member State. Regulation 17 of the UK regulations also covers these matters.