EXPLANATORY MEMORANDUM TO

THE MUTUAL ASSISTANCE PROVISIONS ORDER 2006

2006 No. 3283

1. This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Description

This instrument amends the definition of the term "Mutual Assistance Directive" in section 197 of the Finance Act 2003 (c.14) in order to take account of:

- changes made to Council Directive 77/799/EEC (OJ No. L336, 27.12.1977, p.15) and Council Directive 92/12/EEC (OJ No. L76, 23.3.1992, p.1) by Council Directive 2004/106/EC (OJ No. 359, 4.12.2004, p.30).
- changes made to Council Directive 77/799/EEC by Council Directive 2006/98/EC (Adopted by the Council of the European Union on 20 November 2006 and not yet published in the Official Journal)

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

None

4. Legislative Background

4.1 Section 197 of the Finance Act 2003 makes provision concerning the exchange of information between tax authorities of member States. For this purpose it defines "Mutual Assistance Directive" by reference to Directive 77/799/EEC and the Directives that amend it. Directives 2004/106/EC and 2006/98/EC further amend Directive 77/799/EEC. This instrument amends the definition in section 197 by inserting a reference to Directive 2004/106/EC and Directive 2006/98/EC. A Transposition Note is annexed to this Memorandum.

4.2 An Explanatory Memorandum (EM 16361/04) for what became Council Directive 2004/106/EC was signed by the Paymaster General and submitted to European Scrutiny Committees on 22 January 2004. This was cleared by the House of Lords on 27 January 2004 and by the House of Commons on 4 February 2004. In their clearance, the European Scrutiny Committee (House of Commons) requested to be updated on developments and cleared the document on the basis that the Government would continue to oppose the incorrect legal base cited in the draft. By a letter to Jimmy Hood MP dated 10 June 2004, the Paymaster General advised that the legal base of the proposed Directive had been changed to one that is satisfactory to both the Government and the Scrutiny Committee.

4.3 Directive 2006/98/EC make makes necessary consequential amendments to a number of European Directives arising out of the accession of Bulgaria and Romania to the European Union.

4.4 The FCO deposited an Explanatory Memorandum (13244/04) on 25 October 2004 concerning a Commission strategy paper about progress in the enlargement process of Bulgaria and Romania. The Commons European Scrutiny Committee cleared this document from scrutiny on 12 January 2005 as 'politically important'. The Lords EU Select Committee cleared the EM on 23 March 2005.

4.5 A further EM (5551/05) was deposited on 16 March 2005 on the Commission's opinion on the applications for accession of Bulgaria and Romania. This was cleared by the Commons on 23 March 2005 as 'not politically or legally important' and by the Lords on 8 April 2005.

4.6 The FCO deposited a subsequent EM (12824/05) on 10 November 2005 on a Commission monitoring report on the state of preparedness of Bulgaria and Romania for EU accession. The Commons cleared this EM on 23 November 2005 as 'politically important'. The Lords cleared the document on 15 November 2005.

4.7 An EM (9465/06) for the May 2006 Monitoring Report was submitted for Parliamentary scrutiny on 7 June 2006. The Commons European Scrutiny Committee cleared the EM as 'politically important' on 14 June 2006. The Lords European Union Committee sifted the EM to the Select Committee on 13 June 2006.

4.8 A further EM (13085/06) relating to the proposal for Directive 2006/98/EC was cleared by the Commons European Scrutiny Committee in its 39th Report as a document not raising questions of sufficient legal or political importance to warrant a substantive report to the House.

5. Extent

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Paymaster General, Ms Dawn Primarolo MP, has made the following statement regarding Human Rights:

In my view the provisions of the Mutual Assistance Provisions Order 2006 are compatible with the Convention rights.

7. Policy background

7.1 The provisions concerning the exchange of information between tax authorities of member States for excise (“mutual assistance”) were to be found in Directive 77/799/EEC concerning mutual assistance by the competent authorities of the member States in the field of direct taxation, certain excise duties and the taxation of insurance premiums.

7.2 Mutual assistance in the field of excise duties is now governed by Council Regulation (EC) No. 2073/2004 (OJ No. L359, 4.12.2004). Because this Regulation is directly applicable, it does not require any implementing legislation. Directive 2004/106/EC removes excise duties from the sphere of influence of Directive 77/799/EEC.

7.3 Directive 2006/98/EC amends Directive 77/799/EEC to take account of the accession of Bulgaria and Romania to the European Union on 1st January 2007. Directive 2006/98/EC adds certain Bulgarian and Romanian taxes to the list of direct taxes set out in Directive 77/799/EEC and include the relevant Bulgarian and Romanian authorities in the definition of competent authorities entitled to request and supply mutual assistance.

7.3 There is no public interest in the change made by this instrument. It is legally and politically unimportant.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is negligible.

9. Contact

Ed McCormack at Her Majesty's Revenue and Customs Tel: 0161-824-0907 or email: eddie.mccormack@hmrc.gsi.gov.uk. can answer any queries regarding Council Regulation (EC) No. 2073/2004 and Council Directive 2004/106/EC.

Jeff Worrell at Her Majesty's Revenue and Customs Tel: 0207 147 2723 or email: jeff.worrell:hmrc.gsi.gov.uk can answer any queries regarding Council Directive 2006/98/EC.

Annex

Transposition Note setting out how the Mutual Assistance Provisions Order 2006 (MAO) implements the requirement of Council Directive 2004/106/EC and Council Directive 2006/98/EC.

The Directives

Council Directive 2004/106/EC (O.J No L359, 4.12.2004, p.30) amending Directives 77/799/EEC concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation, certain excise duties and taxation of insurance premiums and 92/12/EEC on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products.

Council Directive 2006/98/EC of 20 November 2006 (not yet published in the Official Journal) adapting certain Directives in the field of taxation, by reason of the Accession of Bulgaria and Romania.

Council Directive 2004/106/EC

Council Directive 2004/106/EC deletes references to existing excise mutual assistance provisions from both Directive 77/799/EEC and 92/12/EEC. It replaces them with a reference to a new Council Regulation that is wholly concerned with administrative cooperation in the excise regime, and is designed to consolidate and strengthen existing provisions.

Article	**Objectives**	**Implementation**	**Responsibility**
Article 1(1)	Amends the current title of Council Directive 77/799/EEC.	No action required.	
Article 1(2)	Deletes ‘excise duty’ from the list of taxes to which the provisions of Directive 77/799/EEC apply.	The Mutual Assistance Provisions Order 2006	Her Majesty’s Treasury
Article 2	Deletes Articles relating to mutual assistance provisions from Council Directive 92/12/EEC.	The Mutual Assistance Provisions Order 2006	Her Majesty’s Treasury

Article 3	Converts references to Directive 77/799/EEC in respect of excise duties and references to 92/12/EEC in respect of administrative cooperation in the field of excise duties to references to new regulation (EC) No. 2073/2004	No action required	
Article 4	Specifies the obligations of Member States when implementing the Directive.	Administrative action	Her Majesty's Treasury
Article 5	Provides the date upon which the Directive enters into force.	No action required.	
Article 6	States to whom the Directive is issued.	No action required.	

Council Directive 2006/98/EC adapting certain Directives in the field of taxation, by reason of the accession of Bulgaria and Romania.

Council Directive 2006/98/EC adapts a number of Directives in the field of taxation following the accession of Bulgaria and Romania to the European Union including. This transposition note concerns amendments made to Directive 77/799/EEC. Separate transposition notes have been prepared in relation to amendments made to other Directives[1].

Article	Objectives	Implementation	Responsibility
Article 1 and paragraph 3 of the Annex to the Directive.	Amends the list of direct taxes imposed by member States in article 1(3) of Directive 77/799 to include direct taxes imposed by Bulgaria and Romania. Amends the definition of competent authority in article 1(5) of Directive 77/799 to include references to the competent authorities in Bulgaria and Romania.	The Mutual Assistance Provisions Order 2006	Her Majesty's Treasury

[1] See the transposition notes concerning the Value Added Tax (Amendment) (No. 3) Regulations 2006, the Reporting of Savings Income Information (Amendment) Regulations 2006 and The Exemption from Income Tax for Certain Interest and Royalty Payments (etc) Order 2006.

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