EXPLANATORY MEMORANDUM TO THE

RECOVERY OF TAXES ETC DUE IN OTHER MEMBER STATES (AMENDMENT TO SECTION 134 OF THE FINANCE ACT 2002) REGULATIONS 2005

2005 No.1479

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

This memorandum contains information for the Select Committee on Statutory Instruments.

2. Description

2.1 The instrument updates the definition of the "Mutual Assistance Recovery Directive" (MARD) in section 134 of the Finance Act 2002.

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

3.1 None

4. Legislative Background

4.1 The power to make this instrument are in section 134(6) of the Finance Act 2002. Section 134 of and Schedule 39 improve the existing arrangements for cross-border assistance between EU Member States in recovering indirect taxes, duties and penalties, and extend recovery procedures to cover direct taxes (income tax, corporation tax, capital gains tax and petroleum revenue tax) and insurance premium tax.

4.2 The Regulations are needed because the MARD was amended by the Act of Accession which brought ten new countries into the EU.

4.3 The Recovery of Duties and Taxes Etc. Due in Other Member States (Corresponding UK Claims, Procedure and Supplementary) (Amendment) Regulations 2005 is a related instrument.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Paymaster General has made the following statement regarding Human Rights:

that in her view the provisions of the Recovery Of Taxes Etc Due In Other Member States (Amendment to section 134 of the Finance Act 2002) Regulations 2005 are compatible with Convention rights.

7. Policy background

7.1 The MARD dates from 1976. It originally extended only to agricultural levies and payments under an agricultural guarantee scheme, VAT and custom duties. Its scope has been extended, most recently in 2001, to include direct taxes on income and capital and taxes on insurance premiums. A further Directive, adopted in 2002, provides detailed rules for implementing the MARD.

7.2. The MARD provides for Member States to assist each other in recovering tax debts. This assistance can take several forms:

- a request to another Member State for information
- a request to another State for it to notify a debtor of the debt owed to the first State
- a request for the other State to take formal action to recover a debt.

7.3 The extended provisions will reduce the opportunities for businesses and individuals to escape paying tax which is legally due in one Member State, by moving to another Member State. Recovery of direct taxes, customs duties, and indirect taxes is the responsibility of HM Revenue & Customs, while agricultural levies are the responsibility of the relevant agricultural agencies.

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 not significant.

9. Contact

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