S. I. No. 462 of 2002.

European Communities (Mutual Assistance for the Recovery of Claims relating to Certain Levies, Duties, Taxes and Other Measures) Regulations 2002.

I, CHARLIE McCREEVY, 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. 76/308/EEC of 15 March 1976[1], as amended by Council Directive No. 79/1071/EEC of 6 December 1979[2], Council Directive No. 92/12/EEC of 25 February 1992[3], and Council Directive No. 2001/44/EC of 15 June 2001[4], hereby make the following regulations:

Citation.

1. These Regulations may be cited as the European Communities (Mutual Assistance for the Recovery of Claims relating to Certain Levies, Duties, Taxes and Other Measures) Regulations 2002.

Interpretation.

2. (1) In these Regulations –

"claim" means any of the claims to which Regulation 3 applies;

"claimant" means the competent authority of a Member State which makes a request for assistance concerning a claim;

"Commission Directive" means Commission Directive No. 77/794/EEC of 4 November 1977[5];

"Council Directive" means Council Directive No. 76/308/EEC of 15 March 1976 as amended by Council Directive No. 79/1071/EEC of 6 December 1979, Council Directive No. 92/12/EEC of 25 February 1992, and Council Directive No. 2001/44/EC of 15 June 2001;

"excise duties" means any excise duty in a Member State on-

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[1] OJ No. L73 of 19 March, 1976, p. 18
[2] OJ No. L331 of 27 December, 1979, p. 10
[3] OJ No. L076 of 23 march, 1992, p. 1
[4] OJ No. L175 of 28 June, 2001, p.17
[5] OJ No. L333 of 24 December, 1977, p11

(a) manufactured tobacco,

(b) alcohol and alcoholic beverages, or

(c) mineral oils;

"export duties" means –

(a) customs duties and charges having equivalent effect on exports, and

(b) export charges laid down within the framework of -

(i) the common agricultural policy, or

(ii) specific arrangements applicable to certain goods resulting from the processing of agricultural products,

which are imposed by, or apply within, a Member State;

"import duties" means –

(a) customs duties and charges having equivalent effect on imports, and

(b) import charges laid down within the framework of –

(i) the common agricultural policy, or

(ii) specific arrangements applicable to certain goods resulting from the processing of agricultural products,

which are imposed by, or apply within, a Member State;

"Member State" means a Member State of the European Communities other than the State;

"taxes on income and capital" means those taxes set out in Article 1(3) of Council Directive 77/799/EEC of 19 December 1977[1] (as amended by the 1994 Act of Accession[2], in so far as it relates to Member States) read in conjunction with article 1(4) of that Directive which are imposed by, or apply within, a Member State;

"taxes on insurance premiums" means those taxes set out in the sixth indent to Article 3 of the Council Directive, read in conjunction with the seventh indent of the Council Directive, which are imposed by, or apply within, a Member State;

"value-added tax", in relation to a Member State, means the tax referred to in Council Directive No. 77/388/EEC of 17 May 1977[3].

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

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

(4) In these Regulations –

(a) a reference to a Regulation is to a Regulation of these Regulations, and

(b) a reference to a paragraph or subparagraph is to the paragraph or subparagraph of the provision in which the reference occurs,

unless it is indicated that reference to some other provision is intended.

Claims covered.

3. This Regulation applies to a claim made by a claimant relating to-

(a) refunds, interventions and other measures forming part of the

[1] OJ No. L336/15 of 27 December 1977, p. 15
[2] OJ No. C241, 29 August 1994, p. 21
[3] OJ No. L145 of 13 June 1977, p. 1

system of total or partial financing of the European Agricultural Guidance and Guarantee Fund (EAGGF), including sums to be collected in connection with these actions;

(b) levies and other duties provided for under the common organisation of the market for the sugar sector;

(c) import duties;

(d) export duties;

(e) value added tax;

(f) excise duties;

(g) taxes on income and capital;

(h) taxes on insurance premiums;

(i) interest, administrative penalties and fines, and costs incidental to a claim referred to in paragraphs (a) to (h), with the exclusion of any fine or penalty in respect of which the act or commission giving rise to the fine or penalty if committed in the State would have been of a criminal nature.

Exchange of information.

4. (1) In this Regulation "relevant authority", in relation to a request for information under this Regulation, means –

(a) the Minister for Agriculture and Food, in the case of claims to which Regulation 3 applies which are referred to in paragraph (a) or (b), or, in so far as relates to any claim referred to in either of those paragraphs, paragraph (i), of that Regulation, and

(b) the Revenue Commissioners, in the case of any other claim to which Regulation 3 applies.

(2) Subject to paragraph (3), a relevant authority may, at the request of a competent authority of a Member State, disclose to the competent authority any information in relation to a claim which is required to be disclosed by virtue of the Council Directive.

(3) (a) A relevant authority shall not disclose any information for the purposes of the Council Directive which would, in the opinion of the relevant authority, be liable to prejudice the security of the State or be contrary to public policy.

(b) A relevant authority shall not be obliged to disclose any information for the purposes of the Council Directive –

(i) that the relevant authority concerned would not be able to obtain for the purposes of recovering a similar claim in the State, or

(ii) that would, in the opinion of the relevant authority, be materially detrimental to any commercial, industrial or professional secrets.

(4) In obtaining the information referred to in paragraph (2), it shall be lawful for the relevant authority concerned to make use of the provisions of any enactment or instrument made under statute relating to the recovery of a similar claim in the State.

(5) Nothing in this Regulation shall permit the relevant authority concerned to authorise the use of information disclosed by virtue of the Council Directive to the competent authorities of a Member State other than for the purposes of the recovery of a claim or to facilitate legal proceedings in relation to the recovery of such a claim.

Recovery of claims.

5. (1) The Collector-General shall, in accordance with the provisions of these Regulations, collect the amount of a claim specified in any request duly made in accordance with the Council Directive by a claimant.

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

(3) For the purposes of these Regulations, the amount of any claim made by a claimant 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 (2).

(4) The provisions of any enactment relating to the collection or recovery of income tax (other than sections 960, 961, 970, 971, 1000, 1003, 1004 and 1006B, and Chapter 4 of Part 42, of the Taxes Consolidation Act 1997) and the provisions of any rule of court so relating for 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.

(5) 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 claim is made by the claimant, in respect of a tax or duty under the care and management of the Revenue Commissioners.

(6) Any reference in this Regulation to the amount of the claim shall include any interest payable in respect of that claim under Regulation 6.

(7) The amount of any claim payable to the Collector-General under these Regulations –

(a) shall be payable without any deduction of income tax, and

(b) shall not be allowed as a deduction in computing any income, profits or losses for any of the purposes of the Tax Acts (except in so far as any relief is due in respect of the amount of the claim under Part 35 of the Taxes Consolidation Act 1997).

(8) On payment of an amount under these Regulations, the Collector-General shall furnish the person concerned with a receipt in respect of that payment.

Interest.

6. (1) The amount of any claim payable in accordance with Regulation 5(1) shall carry interest at the rate of 0.0322 per cent for each day or part of a day from the date when the amount of the claim becomes due and payable in accordance with Regulation 5(3) until payment, and, accordingly, that date is the date on which the instrument permitting enforcement of the recovery of the claim is recognised for the purposes of the second subparagraph of Article 9.2 of the Council Directive.

(2) Subsections (2) to (4) of section 1080 of the Taxes Consolidation Act 1997 shall apply in relation to interest payable in relation to the claim referred to in paragraph (1) as they apply in relation to interest payable under section 1080 of that Act in relation to tax charged by any assessment.

Application of rules.

7. The rules laid down in Articles 4 to 12 and 14 to 17 of the Council Directive (to the extent that they are not otherwise given effect to by these Regulations) and Articles 2 to 21 of the Commission Directive shall apply in relation to claims made by claimants and which are the subject of recovery in accordance with these Regulations.

Stay on proceedings.

8. (1) Subject to paragraph (5), 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 court proceedings, the defendant satisfies the court that court proceedings relevant to that person's liability on the claim to which the proceedings so instituted relate are pending before a court, tribunal or other competent body in a Member State, or

(b) in any other case, the person against whom the other action is being taken satisfies the Revenue Commissioners that court 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) In any legal proceedings instituted under these Regulations it shall be a defence for the defendant to show that a final decision on the claim to which the proceedings relate has been given in the defendant’s favour by a court, tribunal or other body of competent jurisdiction in a Member State, and, in relation to any part of a claim to which such legal proceedings relate, it shall be a defence for the defendant to show that such a decision has been given in relation to that part of the claim.

(3) No question shall be raised in any legal proceedings instituted in pursuance of these Regulations as to the liability on the claim to which the proceedings relate of the person against whom the claim is made, except as provided in paragraph (3).

(4) For the purposes of this Regulation, legal proceedings shall be regarded as pending so long as an appeal may be brought against any decision in the proceedings; and for these purposes 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.

(5) Paragraph (1) shall not apply where a claimant in accordance with the Council Directive so requests, and where the claimant 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 or any such officer or

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.

Remittance of claims.

9. Any amount recovered under these Regulations on foot of a claim made by a claimant under the Council Directive (including any interest under Regulation 6) shall be remitted to that claimant.

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

10.(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 Article 2 of the Council Directive for which the Minister for Agriculture and Food 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 certificate under this Regulation is signed in respect of the unpaid tax under any provision whatever providing for the charging of interest in respect of that tax, including interest on an undercharge of tax which is attributable to fraud or neglect, as specified in the certificate.

(2) For the purpose of the Council Directive and for the avoidance of doubt, a demand by the Revenue Commissioners or the Minister for Agriculture and Food, as the case may be, for 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 an instrument permitting enforcement of the debt.

Delegation of powers and functions.

11. (1) The Minister for Agriculture and Food 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.

(3) 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 the Collector-General.

Repeal and revocations.

12. (1) Section 108 of the Finance Act 2001 is repealed.

(2) The European Communities (Agriculture and Customs) (Mutual Assistance as regards the Recovery of Claims) Regulations 1980 (S. I. No. 73 of 1980) and the European Communities (Value-Added Tax) (Mutual Assistance as regards the Recovery of Claims) Regulations 1980 (S. I. No. 406 of 1980) are revoked.

GIVEN under my Official Seal,
25th September 2002.

CHARLIE McCREEVY,
Minister for Finance.

EXPLANATORY NOTE

The Regulations provide for the implementation of EC Directives on mutual assistance between Member States of the Community 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 –

- refunds, interventions and other measures forming part of the system of financing the European Agricultural Guidance and Guarantee Fund (EAGGF);
- levies and other duties provided for under the common organisation of the market for the sugar sector;
- import duties;
- export duties;
- value-added tax,
- excise duties on manufactured tobacco, alcohol and alcoholic beverages and mineral oils;
- taxes on income and capital;
- taxes on insurance premiums; and
- interest, administrative penalties and fines, and costs incidental to these claims with the exclusion of any sanction in respect of which the act or commission giving rise to the sanction if committed in the State would be criminal in nature.