S.I. No. 367 of 2005

R E G U L A T I O N S

entitled

European Communities (Mutual Assistance in the Field of Direct Taxation, Certain Excise Duties and Taxation of Insurance Premiums) Regulations 2005

Made by the

Minister for Finance

I, BRIAN COWEN, 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 77/799/EEC of 19 December 1977[1], as amended by Council Directive 79/1070/EEC of 6 December 1979[2], Council Directive 92/12/EEC of 25 February 1992[3], Council Directive 2003/93/EC of 7 October 2003[4], Council Directive 2004/56/EC of 21 April 2004[5] and Council Directive 2004/106/EC of 16 November 2004[6], hereby make the following regulations:

1. These Regulations may be cited as the European Communities (Mutual Assistance in the Field of Direct Taxation, Certain Excise Duties and Taxation of Insurance Premiums) Regulations 2005.

2. (1) In these Regulations -

"authorised officer" means a person appointed as an authorised officer under Regulation 9;

[1] OJ No. L336, of 27 December 1977, p. 15
[2] OJ No. L331, of 27 December 1979, p. 8
[3] OJ No. L76, of 23 March 1992, p. 1
[4] OJ No. L264, of 15 October 2003, p. 23
[5] OJ No. L127, of 29 April, 2004, p. 70
[6] OJ No. L359, of 4 December 2004, p. 30

“Council Directive” means Council Directive 77/799/EEC of 19 December 1977[1], as amended by Council Directive 79/1070/EEC of 6 December 1979[2], Council Directive 92/12/EEC of 25 February 1992[3], Council Directive 2003/93/EC of 7 October 2003[4], Council Directive 2004/56/EC of 21 April 2004[5] and Council Directive 2004/106/EC of 16 November 2004[6];

“ instrument” means any instrument or decision which emanates from the competent authorities of the requesting Member State and concerns the application in its territory of legislation referable to taxes that are the subject of the Council Directive and which contains the information referred to in Article 8a (2) of the Council Directive;

“Member State” means a Member State of the European Communities.

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

(3) In these Regulations, unless otherwise indicated -

[1] OJ No. L336, of 27 December 1977, p. 15
[2] OJ No. L331, of 27 December 1979, p. 8
[3] OJ No. L76, of 23 March 1992, p. 1
[4] OJ No. L264, of 15 October 2003, p. 23
[5] OJ No. L127, of 29 April, 2004, p. 70
[6] OJ No. L359, of 4 December 2004, p. 30

(a) a reference to a Regulation is a reference to a Regulation of these Regulations;

(b) a reference to a paragraph is to the paragraph of the Regulation in which the reference occurs.

3. The Revenue Commissioners are the competent authority in the State for the purposes of the Council Directive and shall, save where Regulation 6 applies, comply with the requirements imposed by the Council Directive on competent authorities in a Member State.

4. (1) Where the Revenue Commissioners are notifying an addressee of all instruments and decisions that emanate from the administrative authorities of the requesting Member State in accordance with Article 8a of the Council Directive, such instruments and decisions shall be either delivered to the addressee, sent or left -

(a) in a case where the addressee is a company, at the company's registered office or place of business,

(b) in any other case, at the addressee's usual or last known place of abode or place of business, or

(c) if the addressee is an individual, at his or her place of employment.

(2) An instrument to which paragraph (1) refers may be served by registered post addressed -

(a) in a case where the addressee is a company, to the addressee at either of the places specified in paragraph (1)(a), or

(b) in any other case, to the addressee at any of the places specified in paragraph (1)(b) or (1)(c).

5. (1) Nothing shall prevent the Revenue Commissioners from authorising any authorised officer to participate in the conduct of simultaneous controls with a view to the exchange of information by the Commissioners where, in the opinion of the Commissioners the following conditions are satisfied -

(a) the tax situation of one or more persons liable to tax is of common or complimentary interest to the Revenue Commissioners and to the competent authorities of one or more Member States other than the State, and

(b) the conduct of simultaneous controls would be more effective than a control carried out by the competent authorities of one Member State (including the State).

(2) Where in any case the Revenue Commissioners are of opinion that the conditions in paragraph (1) are satisfied, they shall -

(a) identify the person liable to tax who in their opinion should be subject to the simultaneous control,

(b) notify the competent authorities of the Member States of that person and provide reasons for so identifying that person, and

(c) specify the period of time during which it is proposed that such simultaneous controls should be conducted.

(3) Where the Revenue Commissioners receive a proposal for the conduct of simultaneous controls from the competent authorities of a Member State other than the State, they shall -

(a) where they are of opinion that the conditions in paragraph (1) are satisfied, advise the competent authorities that they will authorise the conduct of a control, or

(b) where they are of opinion that the conditions in paragraph (1) are not satisfied, advise the competent authorities of their opinion and the reasons for forming that opinion.

(4) In this Regulation:

“control” in relation to a person means where the person is chargeable to tax -

(a) in the State, the making of enquiries or the taking of such actions as are within the powers conferred on an officer of the Revenue Commissioners under Chapter 4 of Part 38 of the Taxes Consolidation Act 1997 (No. 37 of 1997) as the officer considers necessary to satisfy himself or herself as to any liability to tax of the person or the amount of the liability, or

(b) in a Member State other than the State, the making of enquiries or the taking of such actions by the competent authorities of that Member State as are within the powers of that competent authority as that competent authority considers necessary to satisfy itself as to any liability to tax of the person or the amount of the liability;

“simultaneous controls” in relation to a person means that the controls referred in the definition of control are carried out at or about the same time.

6. Regulations 4 and 5 do not apply in respect of excise duties.

7. The Revenue Commissioners shall not disclose any information in pursuance of the Council Directive unless satisfied that the competent authorities of the other Member State concerned are bound by, or have undertaken to observe, rules of confidentiality with respect to the information which are not less strict than those applying to it in the State.

8. Nothing in these Regulations permits the Revenue Commissioners to authorise the use of information disclosed by virtue of the Council Directive to the competent authority of another Member State other than for the purposes of taxation or to facilitate legal proceedings for failure to observe the tax laws of that State.

9. (1) The Revenue Commissioners may appoint such and so many of their officers as they shall determine to be authorised officers for the purposes of these Regulations.

(2) An authorised officer may, for the purposes of these Regulations, exercise a power conferred under Chapter 4 of Part 38 of the Taxes Consolidation Act 1997 on an officer of the Revenue Commissioners within the meaning of that Act.

(3) An authorised officer, when exercising any power conferred on him or her by these Regulations, shall, if so requested by any person affected, produce evidence in writing of his or her appointment as an authorised officer.

10. The Revenue Commissioners may delegate to their officers any of the functions to be performed by the Revenue Commissioners under the Council Directive in relation to exchange of information.

11. The European Communities (Mutual Assistance in the Field of Direct Taxation, Certain Excise Duties and Taxation of Insurance Premiums) Regulations 2003 (S.I. No. 711 of 2003) are revoked.

GIVEN under my Official Seal,

____ _______ 2005.

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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 an extension at national level of the EEC Council Directive of 19 December 1977 concerning mutual assistance (exchange of information) by the competent authorities of Member States, as required by an amending Council Directive 2004/56/EC of 21 April 2004. The amending Directive expands the rules for administrative co-operation concerning mutual assistance. In particular, it obliges the competent authorities of a Member State, at the request of the competent authorities of another Member State, to notify to a person in the requested Member State an instrument concerning tax in the requesting Member State. There is also provision that allows Member States to take part in the conduct of simultaneous controls with a view to exchange of information whenever they would appear to be more effective than controls conducted by one Member State alone. The Regulations also take account of the derogation provided for in Article 4 of Council Directive 2004/106/EC which allows for the exclusion of excise duties from the provisions of the amending Directive.

These Regulations also consolidate and give effect, in one set of regulations, to Council Directive 77/799/EEC as amended