



STATUTORY INSTRUMENTS.

S.I. No. 353 of 2009

EUROPEAN COMMUNITIES (MUTUAL ASSISTANCE FOR THE
RECOVERY OF CLAIMS RELATING TO CERTAIN LEVIES, DUTIES,
TAXES AND OTHER MEASURES) REGULATIONS 2009

(Prn. A9/1262)

EUROPEAN COMMUNITIES (MUTUAL ASSISTANCE FOR THE
RECOVERY OF CLAIMS RELATING TO CERTAIN LEVIES, DUTIES,
TAXES AND OTHER MEASURES) REGULATIONS 2009

I, BRIAN LENIHAN, 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. 2008/55/EC of 26 May 2008¹, hereby make the following regulations:

Citation.

1. These Regulations may be cited as the European Communities (Mutual Assistance for Recovery of Claims relating to Certain Levies, Duties, Taxes and Other Measures) Regulations 2009.

Interpretation.

2. (1) In these Regulations—

“claim” means a claim referred to in Regulation 3;

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

“Council Directive” means Council Directive 2008/55/EC of 26 May 2008¹;

“excise duties” means any excise duty in a Member State on—

- (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—

¹OJ No. L150, 10.06.2008, p.28.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 11th September, 2009.*

- (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 1977² (as last amended by Council Directive 2006/98/EC of 20 November 2006³) 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 Article 3(6) of the Council Directive, read in conjunction with the final paragraph of Article 2 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 2006/112/EC of 28 November 2006⁴.

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

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

Claims to which Regulations apply.

3. These Regulations apply to a claim made by a claimant relating to—

- (a) refunds, interventions and other measures forming part of the system of total or partial financing of the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD), including funds 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;

²OJ No. L 336, 27.12.1977, p.15.

³OJ No. L363, 20.12.2006, p.129.

⁴OJ No. L 347, 11.12.2006, p. 1.

- (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 relating to claims referred to in paragraphs (a) to (h), with the exclusion of any fine or penalty imposed in respect of any matter which would constitute a criminal offence if committed in the State.

Request for information.

4. (1) In this Regulation “relevant authority”, in relation to a request for information, means—

- (a) the Minister for Agriculture, Fisheries and Food, in respect of a claim referred to in paragraphs (a) or (b) of Regulation 3 or, in so far as it relates to a claim referred to in either of those paragraphs, paragraph (i) of that Regulation, and
- (b) the Revenue Commissioners, in respect of a claim referred to in paragraphs (c) to (h) of Regulation 3 or, in so far as it relates to a claim referred to in paragraphs (c) to (h), paragraph (i) of that Regulation.

(2) Subject to paragraph (3), a relevant authority may, at the request of a claimant, disclose to the claimant 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 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, disclose 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 an instrument made under any enactment, 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 a claimant 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 these Regulations, collect the amount of a claim specified in any request for recovery of a claim made in accordance with the Council Directive by a claimant.

(2) When the Collector-General 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, 960E, 960G, 960P, 1003, 1003A, 1004 and 1006B, and Chapter 4 of Part 42 of the Taxes Consolidation Act 1997) and the provisions of any rule of court relating to 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 such deduction 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 give the person concerned a receipt in respect of the payment.

Interest.

6. (1) The amount of any claim to be collected in accordance with Regulation 5(1), shall carry interest in accordance with paragraph (2) from the date when the amount of the claim becomes due and payable in accordance with Regulation 5(3) until the date of the payment of the claim.

(2) For the purposes of paragraph (1), the amount of interest in relation to a claim payable in accordance with Regulation 5(1) shall be the interest that would be due on a similar claim in the State and all enactments and rules of court relating to the charge, payment or recovery of interest on a claim in the State shall, with any necessary modifications, apply in relation to a claim payable in accordance with Regulation 5(1).

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 in these Regulations) 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 legal proceedings, the defendant satisfies the court that legal proceedings relevant to that person's liability on the claim to which the first-mentioned proceedings relate are pending before a court, tribunal or other competent body in a Member State, or
- (b) in the case of any other action, the person against whom the other action is being taken satisfies the Revenue Commissioners or the Collector-General that legal 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 by the Revenue Commissioners or the Collector-General to recover the amount of any claim it shall be a defence for the defendant to show that—

- (a) a final decision on the claim to which the proceedings relate has been given in the defendant's favour, or
- (b) a decision in relation to any part of a claim to which such proceedings relate has been given in the defendant's favour,

by a court, tribunal or other competent body in a Member State.

(3) No question shall be raised in any legal proceedings instituted by the Revenue Commissioners or the Collector-General to recover the amount of any claim as to the liability of the person against whom the claim is made, on the claim to which the proceedings relate, except as provided in paragraph (2).

(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, Fisheries 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.

(2) For the purpose of the Council Directive, a demand by the Revenue Commissioners or the Minister for Agriculture, Fisheries and Food, as the case may be, for the 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.

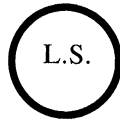
11. (1) The Minister for Agriculture, Fisheries and Food may nominate, in writing, any of his or her officers to perform any acts and discharge any functions authorised by these Regulations to be performed or discharged by the Minister.

(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.

Revocation.

12. The European Communities (Mutual Assistance for the Recovery of Claims relating to Certain Levies, Duties, Taxes and Other Measures) Regulations 2002 (S.I. No. 462 of 2002) are revoked.



GIVEN under my Official Seal,
31 August 2009

BRIAN LENIHAN,
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 the transposition of a codified European Council Directive 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 Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD);
- 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.

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