

EXPLANATORY MEMORANDUM TO
THE RECOVERY OF TAXES ETC DUE IN OTHER MEMBER STATES
(AMENDMENT OF SECTION 134 OF THE FINANCE ACT 2002) REGULATIONS
2008

2008 No. 2871

1. This explanatory memorandum has been prepared by HM Revenue & Customs and is laid before Parliament. This memorandum contains information for the Joint Committee on Statutory Instruments.
2. **Purpose of the instrument**
 - 2.1 These Regulations amend section 134 of the Finance Act 2002 (2002 Act) to take account of the Mutual Assistance Recovery Directive 2008/55/EC (the new Directive) that codified and repealed the previous Directive (76/308/EEC) which had been amended a number of times.
 - 2.2 The Regulations amend the definition of the Mutual Assistance Recovery Directive in section 134 so that it applies the new Directive.
3. **Matters of special interest to the Select Committee on Statutory Instruments**
 - 3.1 This instrument is made under section 2(2) of the European Communities Act 1972. It relates to the recovery, in the United Kingdom, of tax debts already owed in other Member States of the European Union. It does not relate to the imposition or increase of taxation. It therefore does not contravene the restriction in Schedule 2 to the European Communities Act 1972 which prohibits statutory instruments made under section 2(2) from imposing or increasing taxation.
4. **Legislative Context**
 - 4.1 Directive 2008/55/EC of the European Parliament and of the Council of 26 May 2008 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures (commonly referred to as ‘the MARD’) codifies and repeals previous legislation (most notably Directive 76/308/EEC - ‘the 1976 Directive’).
 - 4.2 The 1976 Directive is currently implemented in the UK by section 134 and Schedule 39 of the Finance Act 2002 (‘the 2002 Act’), together with the Regulations made thereunder - the Recovery of Duties and Taxes Etc Due in Other Member States (Corresponding UK Claims, Procedure and Supplementary) Regulations 2004 (SI 2004/674).
 - 4.3 The MARD establishes a regime whereby one Member State may request that another assist it in the recovery of a relevant claims relating to taxes, duties and levies, as well as payments under the Common Agricultural Policy.

- 4.4 The new Directive came into force on 30 June 2008, and to reflect this, it is therefore necessary to make amendments to section 134(2) of the 2002 Act.
- 4.5 This instrument is made under section 2(2) of the European Communities Act 1972, the Treasury having been designated for this purpose by the European Communities (Designation) (No. 3) Order 2008 (SI 2008/2564).

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Financial Secretary to the Treasury has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of The Recovery of Taxes etc Due in Other Member States (Amendment of Section 134 of the Finance Act 2002) Regulations 2008 are compatible with the Convention rights.

7. Policy background

- 7.1 Certain foreign tax debts can be referred by other EU Member States to the UK to request that recovery action is taken under the Mutual Assistance Recovery Directive. The tax debts are established by the requesting state but the UK will take enforcement action to recover those debts. HMRC is responsible for recovering tax debts whilst the Secretary of State, Scottish Ministers, National Assembly for Wales and the Department of Agriculture and Rural Development are responsible for recovering agricultural levies under their respective jurisdictions. Any sums recovered are transferred to the requesting state.
- 7.2 On the 26 May 2008 the new Directive was introduced which codified and repealed the previous 1976 Directive. It came into force on 30 June 2008. To enable the UK to continue to meet its obligations to recover Member States debts it is necessary to make an amendment to existing legislation. This instrument makes the necessary amendments to section 134 of the 2002 Act so that it refers to the new Directive rather than the 1976 Directive.

8. Consultation outcome

Consultation was not necessary on these Regulations as they do not change but maintain our position in the operation of the MARD in the UK.

9. Guidance

No additional guidance is required as no changes have been made to the existing processes.

10. Impact

An Impact Assessment has not been prepared for this instrument because there is no impact on business, charities, voluntary bodies or the public sector. The instrument does not change existing policy or procedures.

11. Regulating small business

The legislation may apply to small business but a Small Firms Impact Test has not been undertaken because the legislation does not alter the operation of existing procedures.

12. Monitoring & review

Not appropriate.

13. Contact

Robert Horwill at HM Revenue & Customs Tel: 020 7147 2447 or e-mail: robert.horwill@hmrc.gsi.gov.uk can answer any queries regarding the instrument.