

**EXPLANATORY MEMORANDUM TO
THE EUROPEAN ADMINISTRATIVE CO-OPERATION (TAXATION)
REGULATIONS 2012**

2012 No. 3062

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs ('HMRC') on behalf of the Treasury and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**
 - 2.1 This Statutory Instrument includes provisions implementing the following European Union legislation: Council Directive 2011/16/EU, on administrative cooperation in the field of taxation (the "ACD").

 - 2.2 The Regulations update references in existing law to the present Directive covering administrative assistance, Council Directive 77/799/EEC, ('the old Directive') which the ACD replaces, and also permits public authorities to disclose information in order to comply with the broader remit of the ACD. They protect confidential information provided by HMRC to other public authorities for the purposes of the ACD by imposing a restriction, supported by a criminal sanction, on further disclosure.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None

4. **Legislative Context**
 - 4.1 On 15th February 2011 the Economic and Financial Affairs Council formally adopted the ACD. Under Article 29 of the ACD Member States are obliged to bring into force with effect from 1st January 2013 the laws, regulations and legal provisions necessary to comply with the ACD. The ACD was cleared by the Commons EU Scrutiny Committee on 19 November 2009 and the Lords EU Scrutiny Committee on 24 November 2009. A Transposition Note setting out how the Government will transpose into UK law the main elements of the ACD is annexed to this Explanatory Note.

- 4.2 The Regulations transpose the ACD into UK law. Since much of the legislation required to enable compliance with the provisions of the ACD in the UK had already been enacted to comply with the previous Directive, the Regulations in many cases simply revise the legislation, replacing references to the old Directive for references to the ACD.
- 4.3 Many of the remaining provisions can already be complied with under UK law without requiring statutory authority and so no further transposition is required.
- 4.4 The ACD extends its scope to taxes levied by, on or behalf of, a Member State's territorial or administrative subdivisions. In order to allow UK public authorities to provide information to HMRC and to protect information received from other Member States in the hands of public authorities, the instrument introduces appropriate prohibitions on further disclosure.
- 4.5 The Regulations also repeal statutory provisions introduced to give effect to the old Directive which are no longer required due to its repeal and replacement by the ACD.

5. Territorial Extent and Application

- 5.1 The Regulations apply to all of the United Kingdom

6. European Convention on Human Rights

The Exchequer Secretary to the Treasury has made the following statement regarding Human Rights:

In my view the provisions of The European Administrative Co-Operation (Taxation) Regulations 2012 are compatible with the Charter of Fundamental Rights of the European Union

7. Policy background

- *What is being done and why*

- 7.1 Administrative co-operation is primarily concerned with the sharing of tax information between Member States. The European Union considered that Member States' need for mutual assistance in the field of taxation was growing rapidly in a globalised era. The tremendous development of the mobility of taxpayers, of the number of cross-border transactions and of the internationalisation of financial instruments, made it increasingly difficult for Member States to assess taxes due properly. The increasing

difficulty affected the functioning of taxation systems and entailed double taxation, which itself incited tax fraud and tax evasion, while powers of control remained at national level. It thus jeopardised the functioning of the internal market.

7.2 The Union concluded that a single Member State could not manage its internal taxation system, especially as regards direct taxation, without receiving information from other Member States. In order to overcome the negative effects of this phenomenon the ACD is intended to create confidence and consistency between Member States, by setting up the same information-sharing rules, obligations and rights for all Member States.

7.3 The ACD builds on the old Directive but provides for clearer and more precise rules governing administrative co-operation between Member States where necessary, in order to establish, especially as regards the exchange of information, a wider scope of administrative co-operation between Member States. Clearer rules should also make it possible in particular to cover all legal and natural persons in the Union, taking into account the ever-increasing range of legal arrangements, including not only traditional vehicles such as trusts, foundations and investment funds, but any new arrangements which may be set up by taxpayers in the Member States. It is not considered that the changes are politically or legally sensitive.

7.4 If the UK fails to transpose the ACD into UK law with effect from 1st January 2013 it will be in breach of Article 291 of the Treaty on the Functioning of the European Union and Article 29 of the ACD.

- **Consolidation**

7.5 The opportunity is being taken to repeal legislation used to give effect to the old Directive by permitting the sharing of data, which is obsolete as a result of the Regulations creating a specific legislative 'gateway'.

8. Consultation outcome

8.1 No consultation was undertaken other than with the devolved administrations (which may hold relevant data for the purposes of the ACD) as the ACD does not have effects upon the public.

9. Guidance

9.1 For the same reason there is no published guidance. There is existing internal HMRC guidance on data sharing using legislative gateways which will apply to disclosures for the purposes of the ACD.

10. Impact

10.1 A Regulatory Impact Assessment has not been prepared for the Regulations as they have no impact on business, charities or voluntary bodies. A Tax Information and Impact Note has not been prepared for the Regulations as they contain no substantive changes to tax policy

10.2 The impact on the public sector is considered to be negligible, since although there will be an administrative burden imposed upon HM Revenue and Customs as the designated central liaison office, in complying with time limits, feedback and automatic exchange, this is not expected to exceed the negligible cost limit.

11. Regulating small business

11.1 The legislation does not apply to business. It is directed only to national administrations.

12. Monitoring & review

12.1 Any amendment to the ACD must be made by way of unanimity. As it is mandatory to give effect to the ACD no further provision for review has been created in the Regulations themselves and HMRC has no current plans to carry out a review of the implementation.

13. Contact

13.1 Jon Swerdlow at HM Revenue and Customs email: jon.swerdlow@hmrc.gsi.gov.uk can answer any queries regarding the Regulations.

Transposition Note: Council Directive 2011/16/EU

Transposition Note setting out the legislation implementing this Directive in the UK. This legislation is contained in the statutory instrument The European Administrative Co-Operation (Taxation) Order 2012 to come into force on 1 January 2013.

The Directive

Council Directive 2011/16/EU of 15 February 2011 lays down the rules and procedures under which Member States shall cooperate with each other in the exchange of tax information. It also lays down provisions for exchange by electronic means, as well as rules and procedures for cooperation on matters concerning coordination and evaluation. The Directive takes effect on 1 January 2013.

Introduction

This Directive replaces Council Directive 77/799/EEC of 19 December 1977 which previously covered mutual assistance between Member States in the field of taxation. The new directive applies to direct taxes and to indirect taxes that are not yet covered by other Union legislation. It aims to provide clearer and more precise rules governing administrative cooperation in order to establish, especially as regards the exchange of information, a wider scope of administrative cooperation. Taxes of territorial and administrative subdivisions are now within its scope. The Directive does not prescribe what should be translated into domestic law and how, but rather sets out the rules that should be applied and then leaves it to each Member State to decide how to transpose these into its national laws in order to comply with its provisions. The significant changes to existing provisions are made in Article 2 of the Directive on scope, Articles 7 and 10 on time limits, Article 8 on automatic exchange of information, Article 9 on spontaneous exchange, Article 14 on feedback, Article 20 on the use of standard and computerised forms, and Article 23 on the evaluation by the Commission of the implementation and application of the Directive. Responsibility for implementing the Directive in the UK lies with HM Revenue & Customs under the direction of HM Treasury.

Articles	Objective	Implementation
Article 2	Extends the scope of the rules to all taxes of any kind levied by or on behalf of, a Member State or the Member State's territorial or administrative subdivisions, including local authorities.	None required. The Article defines the taxes to which the Directive applies.
Article 4	Introduces the concepts of a "competent authority", "central liaison office", "liaison office", and "liaison department" and sets out their roles.	Regulation 3 of the draft statutory instrument defines the Commissioners for Revenue and Customs as the competent authority and HM Revenue and Customs as the central liaison office for the purposes of the Directive

Article 5	Covers the exchange of information on request.	Regulation 4 of the draft statutory instrument creates a legal power to disclose information for the purposes of complying with the Directive
Article 6	Covers the carrying out by Member States of administrative enquiries necessary to obtain information on request.	None required. This can be dealt with administratively by the UK rather than in law
Article 7	Revises time limits within which a Member State should supply requested information and provides that receipt of a request should be confirmed.	None required. This can be dealt with administratively by the UK rather than in law
Article 8	Introduces mandatory automatic exchange of certain categories of available information about residents of another Member State.	This is covered by the provisions mentioned above for Article 5 of the Directive.
Article 9	Covers the spontaneous exchange information under certain qualifying circumstances.	This is covered by the provisions mentioned above for Article 5 of the Directive.
Article 10	Revises time limits within which a Member State should supply spontaneous information and provides that receipt of a spontaneous exchange should be confirmed.	None required. This can be dealt with administratively by the UK rather than in law
Article 11	Covers collaboration by officials of Member States via presence in administrative offices and participation in administrative enquiries	None required. The Article contemplates presence by agreement and subject to existing national legislation.
Article 12	Covers collaboration by officials of Member States via simultaneous controls.	None required. This can be dealt with administratively by the UK rather than in law

Article 13	Provides that a Member State shall upon request carry out administrative notification on behalf of another Member State.	None required. This can be dealt with administratively by the UK rather than in law
Article 14	Provides that a Member State may request feedback about information that has been provided.	This is covered by the provisions mentioned above for Article 5 of the Directive. The provision is subject to existing national law on tax secrecy (as contained in s.18 of the Commissioners for Revenue and Customs Act 2005, and data protection, as provided for by the Data Protection Act 1998).
Article 15	Provides for the sharing of best practices and experience	This is covered by the provisions mentioned above for Article 5 of the Directive.
Article 16	Covers the disclosure of information and documents	Regulation 5 of the draft statutory instrument defines the circumstances in which further use of information disclosed may be made (in particular permitting its use with the consent of the Commissioners), and creates a criminal offence of unlawful disclosure
Article 17	Sets limits upon the obligation to provide information	This is covered by the provisions mentioned above for Articles 5 and 16 of the Directive.
Article 18	Provides that a Member State shall provide requested information whether or not it has a domestic interest in such information	This is covered by the provisions mentioned above for Article 5 of the Directive.
Article 19	Provides that when a Member State enters into wider cooperation than that called for under the Directive with another Member State, it may not refuse to extend similar wider cooperation to any other Member State.	None required. This can be dealt with administratively by the UK rather than in law

Article 20	Introduces standard forms for administrative cooperation	None required. This can be dealt with administratively by the UK rather than in law
Article 21	Sets out practical arrangements applying to administrative cooperation.	None required. This can be dealt with administratively by the UK rather than in law
Article 22	Provides that a Member State shall take all necessary measures to ensure the good communication and smooth operation necessary for successful administrative cooperation.	None required. This can be dealt with administratively by the UK rather than in law
Article 23	Introduces provisions to facilitate the evaluation of the Directive by Member States and the Commission.	This is covered by the provisions mentioned above for Article 5 of the Directive.
Article 24	Sets out the conditions governing the communication of information via the Directive between a third country and Member States subject to the Directive.	This is covered by the provisions mentioned above for Article 5 of the Directive.
Article 25	Provides that information exchanged pursuant to the Directive shall be subject to Data Protection rules.	None required. Processing of data within this is subject to the provisions of the Data Protection Act 1998