



STATUTORY INSTRUMENTS.

S.I. No. 549 of 2012



EUROPEAN UNION (ADMINISTRATIVE COOPERATION IN THE
FIELD OF TAXATION) REGULATIONS 2012

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FIELD OF TAXATION) REGULATIONS 2012

I, MICHAEL NOONAN, 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 2011/16/EU of 15 February 2011¹, hereby make the following regulations:

1. These Regulations may be cited as the European Union (Administrative Cooperation in the Field of Taxation) Regulations 2012.

2. These Regulations come into operation on 1 January 2013.

3. (1) In these Regulations–

“Act of 1997” means the Taxes Consolidation Act 1997 (No. 39 of 1997);

“authorised officer” means a person appointed as an authorised officer under Regulation 12;

“competent authority”, in relation to the State, shall be construed in accordance with Regulation 4;

“Council Directive” means Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC¹;

“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 13(2) of the Council Directive;

“person” has the meaning assigned to it by Article 3(11) of the Council Directive;

“requested authority” has the meaning assigned to it by Article 3(6) of the Council Directive;

“requesting authority” has the meaning assigned to it by Article 3(5) of the Council Directive.

¹OJ No. L 64, 11.03.2011, p.1

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 1st January, 2013.*

(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 Act of 1997 has, subject to paragraph (2), and unless the contrary intention appears, the same meaning in these Regulations as it has in the Act of 1997.

4. The Revenue Commissioners are the competent authority in the State for the purposes of the Council Directive and shall comply with the requirements imposed by the Council Directive on competent authorities in a Member State.

5. (1) Subject to paragraph (2), these Regulations apply to all taxes of any kind levied by, or on behalf of, a Member State or its territorial or administrative subdivisions, including local authorities.

(2) These Regulations do not apply to—

(a) (i) value-added tax, customs duties, or excise duties covered by other legislation of the European Union on administrative cooperation between Member States, or

(ii) compulsory social security contributions payable to a Member State or a subdivision of a Member State or to social security institutions established under public law,

(b) fees for documents issued by public authorities, and

(c) consideration due under a contract.

6. (1) Subject to paragraphs (2) to (4), the requested authority shall, at the request of the requesting authority, disclose to the requesting authority any information which is permitted to be disclosed by virtue of the Council Directive.

(2) The requested authority shall not be obliged to provide information for the purposes of the Council Directive where the requesting authority is unable to provide similar information.

(3) The requested authority shall not be obliged to disclose any information for the purposes of the Council Directive that would, in the opinion of the requested authority, disclose any commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to public policy.

(4) Nothing in these Regulations permits the requested authority to authorise the use of information disclosed by virtue of the Council Directive to a requesting authority other than for the purposes set out in Article 16 of the Council Directive.

(5) Where the requested authority is unable to supply the requested information to the requesting authority, it shall provide the grounds for the refusal to the requesting authority.

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 in the State.

8. Where, in accordance with these Regulations, the requested authority provides information requested to the requesting authority, it shall do so in accordance with the time limits set out in the Council Directive.

9. (1) By agreement between the requested authority and the requesting authority and in accordance with the arrangements laid down by the requested authority, officials authorised by the requesting authority may, with a view to exchanging information for the purposes of the Council Directive—

- (a) be present in the offices where the requested authority carries out its duties, and
- (b) be present during administrative enquiries carried out by the requested authority.

(2) An official authorised by the requesting authority for the purposes of Article 11(1) of the Council Directive and carrying out his or her functions in accordance with paragraph (1) shall at all times be able to produce written authority stating his or her identity and his or her official capacity.

10. (1) Where the Revenue Commissioners are notifying an addressee of instruments that emanate from the competent authority of the requesting Member State in accordance with Article 13 of the Council Directive, such instruments shall be 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, and
- (b) in any other case—
 - (i) at the addressee's usual or last known place of abode or place of business, or
 - (ii) where 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).

11. (1) 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 Act 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 to in the definition of “control”, in this paragraph, are carried out at or about the same time.

(2) Nothing shall prevent the Revenue Commissioners from authorising any officer to participate in the conduct of simultaneous controls with a view to the exchange of information by the Revenue Commissioners where, in the opinion of the Revenue Commissioners, the tax situation of one or more persons liable to tax is of common or complementary interest to the Revenue Commissioners and to the competent authorities of one or more Member States other than the State.

(3) Where in any case the Revenue Commissioners are of the opinion that paragraph (2) applies, they shall—

- (a) identify the person liable to tax who in the opinion of the Revenue Commissioners 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 during which they propose that such simultaneous controls should be conducted.

(4) 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 the opinion that paragraph (2) applies, advise the competent authorities that they will authorise the conduct of a control, or

- (b) where they are of opinion that paragraph (2) does not apply, advise the competent authorities of their opinion and the reasons for that opinion.

12. (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.

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

14. (1) In this Regulation—

“foreign tax” means a tax chargeable under the laws of a territory other than the State in relation to which the Council Directive applies;

“liability to foreign tax”, in relation to a person, means any liability in relation to foreign tax to which the person is or may be, or may have been, subject, or the amount of any such liability.

(2) For the purposes of complying with provisions with respect to the exchange of information contained in the Council Directive, sections 900, 901, 902, 902A, 905, 906A, 907 and 908 of the Act of 1997 shall, subject to paragraph (3), have effect-

- (a) as if references in those sections to tax included references to foreign tax within the meaning of this Regulation, and
- (b) as if references in those sections to liability, in relation to a person, included references to liability to foreign tax within the meaning of this Regulation, in relation to a person.

(3) Where sections 902A, 905, 907 and 908 of the Act of 1997 have effect by virtue only of this Regulation, they shall have effect as if the references in those sections to-

- (a) tax, were references to foreign tax, and
- (b) any provision of the Acts (within the meaning of section 1078(1) of the Act of 1997), were references to any provision of the law of a

territory, other than the State, in accordance with which foreign tax is charged or collected.

15. The European Communities (Mutual Assistance in the Field of Direct Taxation, Certain Excise Duties and Taxation of Insurance Premiums) Regulations 2005 (S.I. No. 367 of 2005) are revoked.



GIVEN under my Official Seal,
19 December 2012.

MICHAEL NOONAN,
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 EU Council Directive on administrative cooperation in the field of taxation. The Directive establishes new rules and procedures for cooperation between EU countries with a view to exchanging information that is relevant to the administrative and enforcement of national laws in the field of taxation. It applies to all taxes except VAT, Customs Duties, social security contributions and certain fees and dues.

These Regulations come into operation on 1st January 2013.

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