

Changes to legislation: Finance Act 2011, SCHEDULE 25 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULES

SCHEDULE 25

Section 87

MUTUAL ASSISTANCE FOR RECOVERY OF TAXES ETC

MARD

- 1 In this Schedule “MARD” means Council [Directive 2010/24/EU](#).

HMRC functions

- 2 (1) The Commissioners are a competent authority in the United Kingdom for the purposes of all matters under MARD.
- (2) HMRC is designated as the central liaison office in the United Kingdom for the purposes of all matters under MARD.

Exchange of information

- 3 (1) No obligation of secrecy imposed by statute or otherwise precludes a public authority (or anyone acting on behalf of a public authority) from disclosing information if the disclosure is made for the purpose of giving effect, or enabling effect to be given, to MARD or a MARD-related instrument.
- (2) Sub-paragraph (1) applies, in particular, to any disclosure (to persons in the United Kingdom or elsewhere) in connection with a request or proposed request by or on behalf of an applicant authority [^{F1}of the United Kingdom or] of any member State for assistance in accordance with MARD.
- (3) Sub-paragraph (2) is not to be taken to limit sub-paragraph (1).

Textual Amendments

- F1** Words in [Sch. 25 para. 3\(2\)](#) inserted (31.12.2020) by [The MARD \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/996\)](#), regs. 1, **2(2)**

Onward disclosure of information received from HMRC

- 4 (1) A public authority commits an offence if—
- (a) it discloses relevant information, and
- (b) the disclosure is not permitted by sub-paragraph (3).
- (2) “Relevant information” is information that—
- (a) the public authority has received from HMRC by virtue of paragraph 3, and
- (b) relates to a person whose identity is specified in the disclosure or can be deduced from it.

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- (3) A disclosure is permitted by this sub-paragraph if it is made—
- (a) in accordance with paragraph 3,
 - (b) in accordance with another enactment (or an instrument made under an enactment) permitting the disclosure,
 - (c) in pursuance of an order of a court,
 - (d) for the purposes of civil proceedings (whether or not within the United Kingdom),
 - (e) for the purposes of a criminal investigation or criminal proceedings (whether or not within the United Kingdom),
 - (f) with the consent of each person to whom the information relates, or
 - (g) with the consent of the Commissioners.
- (4) Sub-paragraph (1) applies to each of the following as it applies to a public authority—
- (a) an employee or agent of the public authority;
 - (b) anyone providing services or exercising functions on behalf of the public authority;
 - (c) anyone authorised by the public authority to receive information on its behalf.
- 5 (1) It is a defence for a person charged with an offence under paragraph 4 to prove that the person reasonably believed—
- (a) that the disclosure was lawful, or
 - (b) that the information had already and lawfully been made available to the public.
- (2) A person guilty of an offence under paragraph 4 is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both;
 - (b) on summary conviction, to imprisonment for a term not exceeding [^{F2}12 months][^{F2}the general limit in a magistrates' court] or a fine not exceeding the statutory maximum, or both.
- (3) A prosecution for an offence under paragraph 4 may be instituted in England and Wales [^{F3}only by or with the consent of the Director of Public Prosecutions.]
- (4) A prosecution for an offence under paragraph 4 may be instituted in Northern Ireland only—
- (a) by the Commissioners, or
 - (b) with the consent of the Director of Public Prosecutions for Northern Ireland.
- (5) In the application of this paragraph—
- (a) in England and Wales, in relation to an offence committed before [^{F4}2 May 2022], or
 - (b) in Northern Ireland,
- the reference in sub-paragraph (2)(b) to [^{F5}12 months][^{F5}the general limit in a magistrates' court] is to be read as a reference to 6 months.

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Textual Amendments

- F2** Words in Sch. 25 para. 5(2)(b) substituted (E.W.) (7.2.2023 at 12.00 p.m.) by The Judicial Review and Courts Act 2022 (Magistrates' Court Sentencing Powers) Regulations 2023 (S.I. 2023/149), regs. 1(2), 2(1), **Sch. Pt. 1** table
- F3** Words in Sch. 25 para. 5(3) substituted (27.3.2014) by The Public Bodies (Merger of the Director of Public Prosecutions and the Director of Revenue and Customs Prosecutions) Order 2014 (S.I. 2014/834), art. 1(1), **Sch. 2 para. 75**
- F4** Words in Sch. 25 para. 5(5)(a) substituted (28.4.2022) by The Criminal Justice Act 2003 (Commencement No. 33) and Sentencing Act 2020 (Commencement No. 2) Regulations 2022 (S.I. 2022/500), regs. 1(2), 5(1), **Sch. Pt. 1**
- F5** Words in Sch. 25 para. 5(5) substituted (E.W.) (7.2.2023 at 12.00 p.m.) by The Judicial Review and Courts Act 2022 (Magistrates' Court Sentencing Powers) Regulations 2023 (S.I. 2023/149), regs. 1(2), 2(1), **Sch. Pt. 1** table

Enforcement of foreign claims in the UK

- 6 (1) This paragraph applies if an applicant authority of [^{F6}a] member State makes a request in accordance with MARD for the recovery in the United Kingdom of a claim.
- (2) The claim in relation to which such a request is made is referred to as “the foreign claim”.
- (3) Such steps may be taken by or on behalf of the relevant UK authority to enforce the foreign claim as might be taken (whether or not by the relevant UK authority) to enforce a corresponding UK claim.
- (4) “Steps” includes any legal or administrative steps, whether by way of legal proceedings, distress, diligence or otherwise.
- (5) See paragraphs 7 and 8 for the meaning of “the relevant UK authority” and “corresponding UK claim”.
- (6) The steps mentioned in sub-paragraph (3) include exercising any powers of set-off that the relevant UK authority would have been entitled to exercise if the foreign claim had been payable to it under an enactment.
- (7) Any enactment or rule of law relating to a corresponding UK claim is to apply, with any necessary adaptations, in relation to the foreign claim.
- (8) The enactments applied by sub-paragraph (7) include in particular those relating to the recovery of penalties and to the charging and recovery of interest on unpaid amounts.

Textual Amendments

- F6** Word in Sch. 25 para. 6(1) substituted (31.12.2020) by The MARD (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/996), regs. 1, **2(3)**

The relevant UK authority

- 7 (1) “The relevant UK authority” is—

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- (a) if the foreign claim relates to anything other than an agricultural levy, the Commissioners;
 - (b) if the foreign claim relates to an agricultural levy and the steps are ones to be taken in or in relation to England, the Commissioners concurrently with the Secretary of State;
 - (c) if the foreign claim relates to an agricultural levy and the steps are ones to be taken in or in relation to Wales, the Commissioners concurrently with the Welsh Ministers;
 - (d) if the foreign claim relates to an agricultural levy and the steps are ones to be taken in or in relation to Scotland, the Commissioners concurrently with the Scottish Ministers;
 - (e) if the foreign claim relates to an agricultural levy and the steps are ones to be taken in or in relation to Northern Ireland, the Commissioners concurrently with the Department of Agriculture and Rural Development.
- (2) A reference in this paragraph to claims relating to an agricultural levy includes claims for penalties, fees, surcharges, interest or costs arising in connection with an agricultural levy.

Corresponding UK claim

- 8 (1) In relation to a foreign claim, “corresponding UK claim” means a claim in the United Kingdom of a kind that appears to the relevant UK authority to correspond most closely to the kind of foreign claim to which the foreign claim belongs.
- (2) But if the relevant UK authority concludes that there is nothing in the United Kingdom of a kind that is similar to that kind of foreign claim, “corresponding UK claim” is taken to mean a claim for income tax charged in an assessment and due and payable.

Application of relevant enactments

- 9 (1) In relation to any kind of foreign claim, the relevant UK authority may by regulations make provision as to the application, non-application or adaptation of any enactment or rule of law relating to corresponding UK claims.
- (2) Paragraph 6(7) is subject to any provision so made.

Power to make further provision

- 10 The Treasury may by regulations make provision about procedural or other supplementary matters for the purpose of giving effect to MARD and any MARD-related instrument.

Contested claims

- 11 (1) The taking or continuation of steps against a person under paragraph 6(3) must be suspended if the person shows that relevant proceedings are pending, or about to be instituted, before a court, tribunal or other competent body in the member State in question.
- (2) “Relevant proceedings” are proceedings relevant to the person's liability on the foreign claim.

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- (3) Relevant proceedings are “pending” so long as an appeal may be brought against any decision in the proceedings.
- (4) Sub-paragraph (1) does not apply to steps that may be taken or continued against the person by the application (by virtue of paragraphs 6(7) and 9) of an enactment or rule of law that permits such steps to be taken or continued in similar circumstances in the case of a corresponding UK claim.
- (5) Sub-paragraph (1) ceases to apply if the relevant proceedings are not prosecuted or instituted with reasonable speed.

Claims determined in taxpayer's favour

- 12 (1) Steps under paragraph 6(3) must not be taken or continued against a person if a final decision on the foreign claim has been given in the person's favour by a court, tribunal or other competent body in the member State in question.
- (2) For this purpose, a final decision is one against which no appeal lies or against which an appeal lies within a period that has expired without an appeal having been brought.
- (3) If the person shows that such a decision has been given in respect of part of the foreign claim, steps under paragraph 6(3) must not be taken or continued in relation to that part.

Liability to pay

- 13 In relation to any steps against a person under paragraph 6(3), no question may be raised as to the person's liability on the foreign claim except as mentioned in paragraph 12.

Presumption of validity

- 14 For the purposes of any steps under paragraph 6(3), a request made by an applicant authority in [F7a] member State is taken to be duly made in accordance with MARD unless the contrary is proved.

Textual Amendments

- F7** Word in Sch. 25 para. 14 substituted (31.12.2020) by [The MARD \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/996\)](#), regs. 1, **2(4)**

Regulations

- 15 (1) Regulations under this Schedule are to be made by statutory instrument.
- (2) A statutory instrument containing regulations under this Schedule is subject to annulment in pursuance of a resolution of the House of Commons.

Interpretation

- 16 In this Schedule—
“agricultural levy” has the meaning given by section 6 of the European Communities Act 1972;

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- “applicant authority” has the same meaning as in MARD;
- “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;
- “enactment” includes—
- (a) an Act of the Scottish Parliament,
 - (b) a Measure or Act of the National Assembly for Wales, and
 - (c) any Northern Ireland legislation as defined by section 24(5) of the Interpretation Act 1978;
- “HMRC” means Her Majesty’s Revenue and Customs;
- “MARD-related instrument” means any EU instrument (including one made after the passing of this Act) that lays down detailed rules for implementing MARD;
- “public authority” means a person with functions of a public nature;
- “requested authority” has the same meaning as in MARD.

Consequential amendments etc

- 17 (1) Section 134 of and Schedule 39 to FA 2002 (which concern Council Directive [2008/55/EC](#)) are repealed with effect from 1 January 2012.
- (2) Any outstanding request for assistance made in accordance with Council Directive [2008/55/EC](#) before that date is to be treated on and after that date for the purposes of this Schedule as if it had been made in accordance with MARD.
- 18 (1) Section 322 of FA 2004 (mutual assistance: customs union with the Principality of Andorra) is amended as follows.
- (2) In subsection (2), in the definition of “the Mutual Assistance Recovery Directive”, after “as” insert “ MARD has ”.
- (3) In that subsection, for the definition of “the UK mutual assistance provisions” substitute—
- ““the UK mutual assistance provisions” means the provisions of section 87 of the Finance Act 2011 (mutual assistance for recovery of taxes etc) and Schedule 25 to that Act.”
- (4) For subsection (3) substitute—
- “(3) In the UK mutual assistance provisions as they have effect in accordance with subsection (1)—
- (a) references (except for the one in paragraph 1 of Schedule 25) to MARD are to be read as references to the EC-Andorra Mutual Assistance Recovery Decision,
 - (b) references to another member State are to be read as references to the Principality of Andorra,
 - (c) references to an applicant authority of another member State are to be read as references to the competent authority of the Principality of Andorra,
 - (d) references to a MARD-related instrument are to be disregarded, and
 - (e) paragraph 10 of Schedule 25 (power to make further provision) is to be treated as omitted.”

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- (5) In subsection (4), for “section 134(6) of the Finance Act 2002 and paragraph 3 of Schedule 39” substitute “ section 87(2) of the Finance Act 2011 and paragraph 9 of Schedule 25 ”.
- (6) The amendments made by this paragraph have effect from 1 January 2012.
- (7) Any regulations made by virtue of subsection (4) of section 322 of FA 2004 and in force immediately before 1 January 2012 are to have effect on and after that date as if made by virtue of that subsection as amended by sub-paragraph (5).

Application

- 19 This Schedule has effect in relation to the recovery of sums becoming due at any time, whether before or after this Act is passed.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 23 para. 45(1)(ia) inserted by [2017 c. 10 Sch. 11 para. 6\(3\)](#)
- Sch. 23 para. 2(1A) inserted by [S.I. 2019/397 reg. 2\(2\)](#) (This amendment not applied to legislation.gvo.uk. Amending Regulations revoked on IP completion day by S.I. 2020/1544, regs. 1, 8; S.I. 2020/1641, reg. 2, Sch.)
- Sch. 23 para. 15A inserted by [S.I. 2019/397 reg. 2\(3\)](#) (This amendment not applied to legislation.gvo.uk. Amending Regulations revoked on IP completion day by S.I. 2020/1544, regs. 1, 8; S.I. 2020/1641, reg. 2, Sch.)