

**From the Office of the  
Minister for Finance & Personnel**



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Your reference:

Our reference: SUB/1004/2011

Conor Murphy MP MLA  
Chairperson  
Committee for Finance and Personnel  
Room 419  
Parliament Buildings  
Stormont  
Belfast

20 May 2011

Dear Conor

I am writing to seek the views of the Committee for Finance and Personnel on a proposed urgent amendment to the GB Finance (No. 3) Bill, which would extend its application to Northern Ireland and ensure that the provisions would fully cover devolved matters.

The Finance (No. 3) Bill enables the UK to implement the Mutual Assistance Recovery Directive (MARD) agreed by EU Finance Ministers during 2010. This Directive permits EU Member States to recover and enforce tax debts, serve documents and exchange information about debts across the EU, an important tool in combating non-payment of taxes by businesses or individuals moving from one member state to another. It dates back to 1976 and has expanded over the years to cover more and more taxes/duties and the geographical scope has been extended as new countries have joined the European Union. I consider that including Northern Ireland within its scope is a routine matter and that changes are both necessary (indeed, unavoidable) and non controversial.

In a Northern Ireland context the application to local taxation measures and levies is likely to be of interest to DFP and DARD (rates and agricultural levies) and also possibly DOE (in relation to the plastic bags levy). Given responsibility for local taxes more generally my Department is taking the lead on the Legislative Consent Motion.

Consideration has been given to the option of Northern Ireland "self-legislating" in order to implement the Directive locally. This could be done through the Northern Ireland Executive taking forward Regulations, made under section 2(2) of the European Communities Act 2002, either to amend the relevant provisions as they occur in the Finance Bill or to make standalone provision for devolved matters in Northern Ireland. While this would provide some greater control over immediate timescales, etc. it would still require implementation by 31 December 2011. However, I do not think it is a preferred option as any local Regulations could not fully replicate the

provisions that can be made in the Finance Bill. In addition, HMRC, as the UK Central Liaison Office under the Directive, will have central responsibilities in the practical operation of the Directive, which would suggest that Westminster legislation is the most appropriate way to proceed.

I understand that HMRC should recover all incoming claims for assistance from Member States for local taxes (apart from agricultural levies), regardless of where the debtor now resides/has assets. HMRC have advised that they will be recovering any local tax requests received from other Member States where the debtor now resides in Northern Ireland and that there should be no new operational impact for Northern Ireland Departments.

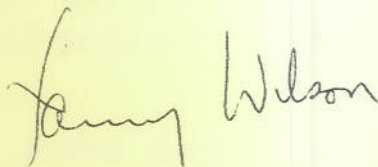
As you know Westminster will not normally legislate with regard to devolved matters, except with the agreement of the devolved legislature (in the form of a Legislative Consent Motion).

The specific amendment that will extend the effect of MARD to Northern Ireland, which HMRC propose to table at Report stage before 4 July, has not yet been drafted. However, it is likely to simply remove the provisions that currently exclude Northern Ireland transferred matters from the remit of the Bill; that is simply remove the exclusions presently set out at clause 87(4)(b), references to excluded matters in paragraph 2 of Schedule 25, and the exclusions set out at paragraph 10(2) of Schedule 25 of the Finance Bill (**see Appendix A**).

I am content, in principle, to seek the agreement of the Executive to a Legislative Consent Motion being tabled in the Assembly, but wish to seek the views of the Committee in advance. It would be my intention to bring a paper to the Executive for either 2 or 16 June. I would therefore be grateful for the Committee's views as soon as possible. You will wish to note that my Assembly Liaison Officer has advised his counterparts in other Departments on this matter.

My officials will, as always, be happy to provide further briefing if required.

Yours sincerely

A handwritten signature in black ink that reads "Sammy Wilson". The signature is written in a cursive style with a large initial 'S'.

**SAMMY WILSON MP MLA**

## APPENDIX A: FINANCE (No. 3) BILL 2011

### 87 Mutual assistance for recovery of taxes etc

- (1) Schedule 25 contains provision for the purpose of giving effect to Council Directive 2010/24/EU (which concerns mutual assistance for the recovery of claims relating to taxes, duties and other measures).
- (2) The Treasury may by regulations make provision for the purpose of giving effect to—
  - (a) any amendments or extensions of Council Directive 2010/24/EU,
  - (b) any EU instrument that—
    - (i) wholly or partly replaces that Directive or a replacement of it, or
    - (ii) otherwise makes provision for or in connection with mutual assistance between member States in the recovery of claims relating to taxes, duties and other measures, and
  - (c) any amendments or extensions of any such EU instrument.
- (3) Regulations under subsection (2) may amend, replace or repeal Schedule 25 and any other enactment (whenever passed).
- (4) But regulations under subsection (2) may not include—
  - (a) provision that would, if it were a provision of an Act of the Scottish Parliament, be within the legislative competence of the Scottish Parliament, or
  - (b) provision that, in its application to Northern Ireland, deals with a transferred matter within the meaning of the Northern Ireland Act 1998.
- (5) Regulations under subsection (2) are to be made by statutory instrument.
- (6) An instrument containing regulations under subsection (2) is subject to annulment in pursuance of a resolution of the House of

The first part of the paper discusses the importance of the commons in the context of the global commons. It highlights the need for a new governance structure to manage these commons effectively. The second part of the paper discusses the challenges of managing the commons, including the free-rider problem and the tragedy of the commons. The third part of the paper discusses the role of the state in managing the commons, and the fourth part discusses the role of civil society.

The paper concludes by arguing that the commons are a key element of a sustainable future, and that we need to find ways to manage them better. It calls for a new governance structure that is based on the principles of transparency, accountability, and participation.

## 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 other than excluded matters.

(2) HMRC is designated as the central liaison office in the United Kingdom for the purposes of all matters under MARD other than excluded matters.

(3) Excluded matters are—

(a) requests for assistance in another member State in connection with a relevant devolved tax, and

(b) requests for assistance in the United Kingdom in connection with an agricultural levy payable in another member State, where the assistance requires steps to be taken in or in relation to Scotland.

(4) “Relevant devolved tax” means—

(a) an agricultural levy recoverable by the Scottish Ministers under section 6(4) of the European Communities Act 1972, and

(b) a tax or duty (other than an agricultural levy) imposed in Scotland or Northern Ireland, if—

(i) in the case of Scotland, provision for the imposition of it in an Act of the Scottish Parliament is within the legislative competence of the Scottish Parliament, or

(ii) in the case of Northern Ireland, it is a transferred matter within the meaning of the Northern Ireland Act 1998.

##### *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 of any member State for assistance in accordance with MARD.

(3) Sub-paragraph (2) is not to be taken to limit sub-paragraph (1).

(4) Sub-paragraph (1) does not apply to a disclosure relating to any excluded matters as defined in paragraph 2(3).

*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.

(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 12 months 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 only—
- (a) by the Director of Revenue and Customs Prosecution, or
  - (b) 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 the commencement of section 154(1) of the Criminal Justice Act 2003, or
  - (b) in Northern Ireland, the reference in sub-paragraph (2)(b) to 12 months is to be read as a reference to 6 months.

*Enforcement of foreign claims in the UK*

- 6 (1) This paragraph applies if an applicant authority of another 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.

#### *The relevant UK authority*

7 (1) “The relevant UK authority” is—

- (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 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 (1) 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.
- (2) But provision may not be made for that purpose so far as it relates to any excluded matters as defined in paragraph 2(3).

#### *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.
- (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 another member State is taken to be duly made in accordance with MARD unless the contrary is proved.

### *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;

“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.

(3) Despite sub-paragraph (1), section 134 of and Schedule 39 to FA 2002 are to continue in force on and after that date so far as they relate to excluded matters as defined in paragraph 2(3) of this Schedule.

- 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.”

(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 subparagraph (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.

