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**You don't have to be 'mard' to work here, but it helps**

The general principle in relation to the cross-border recovery of tax has been easy. As set out in *Government of India v Taylor* [1955] AC 491, tax in one state cannot be enforced in another.

The EU started to erode this rule in a 1976 Directive (76/308/EEC), which dealt with the recovery of claims relating to the *Common Agricultural Policy* and excise duties. The 1976 Directive was extended in 1979 to include the recovery of VAT (79/1071/EEC).

I don't know about other UK practitioners, but I am finding it increasingly difficult to keep up with the plethora of legislation implemented in the UK by statutory instrument (SI).

The Council of Europe ETS No 127 *Convention on Mutual Administrative Assistance in Tax Matters* was agreed on 25 January 1988 and came into force in 1995, but was not ratified by the UK until 1 May 2008. It is also in force in Azerbaijan, Belgium, Denmark, Finland, France, Georgia, Iceland, Italy, the Netherlands, Norway, Poland, Slovenia, Spain, Sweden, Ukraine and the US, and further information is online at [bit.ly/ETS127](http://bit.ly/ETS127)

The treaty has very different effects in each state and the detailed declarations and reservations must be considered whenever enforcement and the convention are in issue. All taxes, including inheritance and gift tax, may be enforceable between Convention states. Section 173 of the *Finance Act 2006* permitted ratification by order in council and that ratification was subsequently made by SI 2007 No 2126 *International Convention on Mutual Administrative Assistance in Tax Matters Order 2007*.

In the meantime, s134 of the *Finance Act 2002* enacted the *European Community Council Mutual Assistance Recovery Directive 2001/44*. Under that Directive, member states agreed to enforce tax (but not inheritance or gift tax) claimed by another EU state.

The *Mutual Assistance Recovery Directive 2008/55/EC* codified and repealed Directive (76/308/EEC), which itself had been amended by the *VAT Directive (79/1071/EEC)* and by the 2001/44 Directive.

In the UK, the 2008/55/EC Directive was implemented by the *Recovery of Taxes Etc Due in Other Member States (Amendment of Section 134 of the Finance Act 2002) Regulations 2008* No 2871.

Are you following the plot? This is as far as I had got. Now, however, we have the new *Commission Implementing Regulation (EU) No 1189/2011* of 18 November 2011 and the *Mutual Assistance in Recovery Directive (2010/24/EU)*, brought into effect by the EU Implementing Decision and in the UK by s87 and sch 25 *Finance Act 2011*. At the time of writing this article, the detailed SI the *Recovery of Taxes - The MARD Regulations 2011* was still in draft but with a view to coming into force on 1 January 2012 when the Directive becomes effective.

When the *MARD Regulations 2011 Order* is effective, it revokes:

- the *Recovery of Duties and Taxes Etc Due in Other Member States (Corresponding UK Claims, Procedure and Supplementary) Regulations 2004*

- the Recovery of Agricultural Levies Due in Other Member States Regulations 2004
- the Recovery of Duties and Taxes Etc Due in Other Member States (Corresponding UK Claims, Procedure and Supplementary) (Amendment) Regulations 2005
- the Recovery of Duties and Taxes Etc Due in Other Member States (Corresponding UK Claims, Procedure and Supplementary) (Amendment) Regulations 2007; and
- the Sch 39 to the Finance Act 2002 and Recovery of Taxes Etc Due in Other Member States (Amendment) Regulations 2010.

I have to admit, I was not even aware that all of these regulations existed. In brief, the Directive deals with exchange of information, enforcement of claims, requests for notification and recovery, disputes and limitation, and disclosure. As you may have guessed by now, I am in favour of EU cooperation and harmonisation to make life simpler and easier for the EU citizen.

However, is this an example of how to run a fish and chip shop? If you ask HMRC nicely, will it request enforcement of the payment of inheritance tax by the donee of a failed potentially exempt transfer resident in another member state, or is the Directive solely for the convenience of governments rather than for the citizens of the EU?

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