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CUSTOMS AND EXCISE ETC. (AMENDMENT) ACT 2001

Chapter 31

Arrangement of sections

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AN ACT

to extend the definition of “assigned matter” in the Customs and Excise Management Act 1986; to make new provision for the release and exchange of information; and to enable the application to the Isle of Man of United Kingdom and European Community legislation relating to the provision of certain services and the transfer of technology, etc.; and for connected purposes

WE, your Majesty’s most dutiful and loyal subjects, the Council and Keys of the said Isle, do humbly beseech your Majesty that it may be enacted, and be it enacted, by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows (that is to say):—

1. Disclosure of information

After section 174A of the Customs and Excise Management Act 1986¹
insert —

"174B. Disclosure of information by customs service.

(1) This section applies to information or documents which are held by or on behalf of the Treasury, the Collector or an officer for the purposes of, or in relation to, any assigned matter.

(2) No obligation of secrecy imposed by statute or otherwise prevents the disclosure, in accordance with this section, of information or documents to which this section applies if the disclosure is made for the purposes of —

- (a) any criminal investigation whatever which is being or may be carried out, whether in the Island or elsewhere;

¹ 1986 c.34

- (b) any criminal proceedings whatever which have been or may be initiated, whether in the Island or elsewhere;
- (c) initiating or bringing to an end any such investigation or proceedings, or of facilitating a determination of whether it or they should be initiated or brought to an end; or
- (d) enabling or assisting an enforcing authority to discharge its functions.

(3) Information and documents to which this section applies shall not be disclosed by virtue of this section except by or with the authority of the Collector.

(4) Information or documents obtained by means of a disclosure authorised by subsection (2) shall not be disclosed except —

- (a) for a purpose mentioned in that subsection; and
- (b) with the consent of the Collector.

(5) A consent for the purposes of subsection (4) may be given either in relation to a particular disclosure or in relation to disclosures made in such circumstances as may be specified or described in the consent.

(6) Nothing in this section authorises the making of any disclosure which is prohibited by any provision of the Data Protection Act 1986 [c.31].

(7) References in this section to information or documents which are held on behalf of the Treasury or of the Collector include references to information or documents which —

- (a) are held by a person who provides services to the Treasury or, as the case may be, to the Collector; and
- (b) are held by that person in connection with the provision of those services.

(8) Nothing in this section shall be taken to prejudice any power to disclose information or documents which exists apart from this section.

174C Disclosure of information to customs service by enforcing authorities.

(1) This section applies to any information which is held by or on behalf of an enforcing authority.

(2) No obligation of secrecy imposed by statute or otherwise prevents the disclosure to the Treasury, the Collector or an officer, in accordance with this section, of information or documents to which this section applies if the disclosure is made for the purpose of enabling or assisting the Treasury, the Collector or an officer to discharge their respective functions in relation to an assigned matter.

(3) Information obtained by means of a disclosure authorised by subsection (2) shall not be disclosed except —

- (a) for a purpose mentioned in that subsection; and
- (b) with the consent of the relevant enforcing authority.

(4) A consent for the purposes of subsection (3) may be given either in relation to a particular disclosure or in relation to disclosures made in such circumstances as may be specified or described in the consent.

(5) Nothing in this section authorises the making of any disclosure which is prohibited by any provision of the Data Protection Act 1986².

(6) References in this section to information which is held on behalf of an enforcing authority include references to information which —

- (a) is held by a person who provides services to the enforcing authority; and
- (b) is held by that person in connection with the provision of those services.

(7) Nothing in this section shall be taken to prejudice any power to disclose information or documents which exists apart from this section.

174D Matters supplementary to ss.174B and 174C

In sections 174B and 174C —

"crime" means any conduct which —

- (a) constitutes one or more criminal offences (whether under the law of the Island or of any country or territory outside the Island); or
- (b) is, or corresponds to, any conduct which, if it all took place in the Island, would constitute one or more criminal offences;

and references to "criminal proceedings" shall be construed accordingly;

"criminal investigation" means an investigation of any crime, including an investigation of any alleged or suspected crime and an investigation of whether a crime has been committed;

"enforcing authority" means —

- (a) the Financial Supervision Commission;
- (b) the Insurance and Pensions Authority;
- (c) the Chief Constable and the members of the Police Force;

² 1986 c.21

- (d) the Isle of Man Office of Fair Trading;
- (e) the Isle of Man Gaming Control Commissioners; and
- (f) any other person who is prescribed for the purpose of this definition by an order made by the Treasury."

2. Assigned matters

In section 184(1) of the Customs and Excise Management Act 1986 (general interpretation), for the definition of "assigned matter" substitute —

"assigned matter" means—

- (a) any matter in relation to which the Treasury or the Collector is for the time being required to perform any duties or empowered to perform any functions under or in relation to any statutory provision relating to —
 - (i) customs or excise; or
 - (ii) the prohibition, restriction or regulation of the import or export of goods; or
 - (iii) value added tax;
- (b) any other matter in relation to which the Treasury is for the time being required to perform any duties or empowered to perform any functions under or in relation to —
 - (i) an order made under section 1 of the United Nations Act 1946 (an Act of Parliament)³ (implementation of United Nations resolutions, etc.);
 - (ii) an order to which section 2A(4A) of the European Communities (Isle of Man) Act 1973⁴ (imposition, etc. of sanctions, embargoes or restrictive measures) applies;
 - (iii) any regulation under section 2B of that Act;
 - (iv) an order under section 1 or 2 of the Customs and Excise Act 1993⁵;
- (c) any matter in relation to which an officer is for the time being required to perform any duties or empowered to perform any functions under or in relation to any statutory provision;
- (d) any other matter which is prescribed for the purpose of this definition by an order made by the Treasury;"

³ 1946 c.45

⁴ 1973 c.14

⁵ 1993 c.7

3. Supply of services.

(1) The Customs and Excise Act 1993 is amended in accordance with this section.

(2) In section 1(3) —

(a) after paragraph (d) insert —

"(da) any enactment of Parliament prohibiting, restricting, or relating to, the supply of services in the United Kingdom or elsewhere;

(db) any enactment of Parliament prohibiting, restricting, or relating to the buying or selling of goods in the United Kingdom or elsewhere;"

(b) in paragraph (g), after sub-paragraph (iii) insert —

"(iv) the supply of services;

(v) the buying and selling of goods;"

(3) After section 3 insert —

"3A Interpretation.

In this Act —

"buying", in relation to goods, includes hiring, borrowing, accepting as a gift or otherwise acquiring them (whether in the United Kingdom or elsewhere), and "selling" shall be construed accordingly;

"supply of services" includes all forms of supply and all forms of services (whether supplied for a consideration or not) , and, but without prejudice to the generality of the foregoing, includes —

(a) the production, delivery, transfer or communication of (by tangible or intangible means) —

(i) any information capable of use for any purpose mentioned in sub-paragraph (i) or (ii) of paragraph (b); or

(ii) any computer software;

(b) the provision of technical assistance of any description in connection with —

(i) the development, production or use of any goods, information or computer software; or

(ii) the development of the means of carrying out, or the carrying out, of any industrial or commercial activity whatsoever;

(c) anything done in connection with the foregoing."

4. Short title and commencement.

(1) This Act may be cited as the Customs and Excise etc. (Amendment) Act 2001.

(2) This Act shall come into operation on such day as the Treasury may by order appoint and different days may be so appointed for different provisions and for different purposes.