
concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums


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COUNCIL DIRECTIVE

of 19 December 1977

concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums

(77/799/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament (1),

Having regard to the opinion of the Economic and Social Committee (2),

Whereas practices of tax evasion and tax avoidance extending across the frontiers of Member States lead to budget losses and violations of the principle of fair taxation and are liable to bring about distortions of capital movements and of conditions of competition; whereas they therefore affect the operation of the common market;

Whereas, for these reasons the Council adopted on 10 February 1975 a resolution on the measures to be taken by the Community in order to combat international tax evasion and avoidance (3);

Whereas the international nature the problem means that national measures, whose effect does not extend beyond national frontiers, are insufficient; whereas collaboration between administrations on the basis of bilateral agreements is also unable to counter new forms of tax evasion and avoidance, which are increasingly assuming a multinational character;

Whereas collaboration between tax administrations within the Community should therefore be strengthened in accordance with common principles and rules;

Whereas the Member States should, on request, exchange information concerning particular cases; whereas the State so requested should make the necessary enquiries to obtain such information;

Whereas the Member States should exchange, even without any request, any information which appears relevant for the correct assessment of taxes on income and on capital, in particular where there appears to be an artificial transfer of profits between enterprises in different Member States or where such transactions are carried out between enterprises in two Member States through a third country in order to obtain tax advantages, or where tax has been or may be evaded or avoided for any reason whatever;

Whereas it is important that officials of the tax administration of one Member State be allowed to be present in the territory of another Member State if both the States concerned consider it desirable;

Whereas care must be taken to ensure that information provided in the course of such collaboration is not disclosed to unauthorized persons, so

(2) OJ No C 56, 7. 3. 1977, p. 66
that the basic rights of citizens and enterprises are safeguarded; whereas it is therefore necessary that the Member States receiving such information should not use it, without the authorization of the Member State supplying it, other than for the purposes of taxation or to facilitate legal proceedings for failure to observe the tax laws of the receiving State: whereas it is also necessary that the receiving States afford the information the same degree of confidentiality which it enjoyed in the State which provided it, if the latter so requires;

Whereas a Member State which is called upon to carry out enquiries or to provide information shall have the right to refuse to do so where its laws or administrative practice prevent its tax administration from carrying out these enquiries or from collecting or using this information for its own purposes, or where the provision of such information would be contrary to public policy or would lead to the disclosure of a commercial, industrial or Professional secret or of a commercial process, or where the Member State for which the information is intended is unable for practical or legal reasons to provide similar information;

Whereas collaboration between the Member States and the Commission is necessary for the permanent study of cooperation procedures and the pooling of experience in the fields considered, and in particular in the field of the artificial transfer of profits within groups of enterprises, with the aim of improving those procedures and of preparing appropriate Community rules,

HAS ADOPTED THIS DIRECTIVE:

**Article 1**

**General provisions**

1. In accordance with the provisions of this Directive the competent authorities of the Member States shall exchange any information that may enable them to effect a correct assessment of taxes on income and on capital, and any information relating to the establishment of taxes on insurance premiums referred to in the sixth indent of Article 3 of Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures (1).

2. There shall be regarded as taxes on income and on capital, irrespective of the manner in which they are levied, all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the disposal of movable or immovable property, taxes on the amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The taxes referred to in paragraph 2 are at present, in particular:

   in Belgium:
   - Impôt des personnes physiques—Personenbelasting
   - Impôt des sociétés—Vennootschapsbelasting
   - Impôt des personnes morales—Rechtspersonenbelasting
   - Impôt des non-résidents—Belasting der niet-verblijfhouders

   in Denmark:
   - Indkomstskat til staten

Selskabsskat
Den kommunale indkomstskat
Den amtskommunale indkomstskat
Folkepensionsbidragene
Sømandsskat
Den særlige indkomstskat
Kirkeskat
Formueskat til staten
Bidrag til dagpengefonden

_in Germany:_
Einkommensteuer
Körperschaftsteuer
Vermögensteuer
Gewerbesteuer
Grundsteuer

_in Greece:_
Φόρος εισοδήματος φυσικών προσώπων
Φόρος εισοδήματος νομικών προσώπων
Φόρος ακινήτου περιουσίας

_in Spain:_
Impuesto sobre la Renta de las Personas Físicas
Impuesto sobre Sociedades
Impuesto Extraordinario sobre el Patrimonio de las Personas Físicas

_in France:_
Impôt sur le revenu
Impôt sur les sociétés
Taxe professionnelle
Taxe foncière sur les propriétés bâties
Taxe foncière sur les propriétés non bâties

_in Ireland:_
Income tax
Corporation tax
Capital gains tax
Wealth tax

_in Italy:_
Imposta sul reddito delle persone fisiche
Imposta sul reddito delle persone giuridiche
Imposta locale sui redditi

_in Luxembourg:_
Impôt sur le revenu des personnes physiques
Impôt sur le revenu des collectivités
Impôt commercial communal
Impôt sur la fortune
Impôt foncier

in the Netherlands:
  Inkomstenbelasting
  Vennootschapsbelasting
  Vermogensbelasting

in Austria:
  Einkommensteuer
  Körperschaftsteuer
  Grundsteuer
  Bodenwertabgabe
  Abgabe von land- und forstwirtschaftlichen Betrieben

in Portugal:
  Contribuição predial
  Imposto sobre a indústria agrícola
  Contribuição industrial
  Imposto de capitais
  Imposto profissional
  Imposto complementar
  Imposto de mais-valias
  Imposto sobre o rendimento do petróleo
  Os adicionais devidos sobre os impostos precedentes

in Finland:
  Valtion tuloverot—de statliga inkomstskatterna
  Yhteisöjen tulovero—inkomstskatten för samfund
  Kunnallisvero—kommunalskatten
  Kirkollisvero—kyrkoskatten
  Kansaneläkevakuutusmaksu—folkpensionsförsäkringspremien
  Sairausvakuutusmaksu—sjukförsäkringspremien
  Korkotulon lähdevero—källskatten på ränteinomst
  Rajoitetusti verovelvollisen lähdevero—källskatten för begränsat skattskyldig
  Valtion varallisuusvero—den statliga förmögenhetsskatten
  Kiinteistövero—fastighetsskatten

in Sweden:
  Den statliga inkomstskatten
  Sjömansskatten
  Kupongskatten
  Den särskilda inkomstskatten för utomlands bosatta
  Den särskilda inkomstskatten för utomlands bosatta artister m.fl.
  Den statliga fastighetsskatten
Den kommunala inkomstskatten
Förmögenhetsskatten

in the United Kingdom:
Income tax
Corporation tax
Capital gains tax
Petroleum revenue tax
Development land tax

in the Czech Republic:
Daně z příjmů
Daň z nemovitostí
Daň dědictká, daň darovací a daň z převodu nemovitostí
Daň z přidané hodnoty
Spotřební daně

in Estonia:
Tulumaks
Sotsiaalmaks
Maamaks

in Cyprus:
Φόρος Εισοδήματος
Έκτακτη Εισφορά για την Άμυνα της Δημοκρατίας
Φόρος Κεφαλαιουχικών Κερδών
Φόρος Ακίνητης Ιδιοκτησίας

in Latvia:
iedzīvotāju ienākuma nodoklis
nekustamā īpašuma nodoklis
uzņēmumu ienākuma nodoklis

in Lithuania:
Gyventojų pajamų mokestis
Pelno mokestis
Išmonių ir organizacijų nekilnojamojų turto mokestis
Žemės mokestis
Mokestis už valstybinius gamtos išteklius
Mokestis už aplinkos teršimą
Naftos ir dujų išteklių mokestis
Paveldimo turto mokestis

in Hungary:
személyi jövedelemadó
társasági adó
osztalékadó
általános forgalmi adó
4. Paragraph 1 shall also apply to any identical or similar taxes imposed subsequently, whether in addition to or in place of the taxes listed in paragraph 3. The competent authorities of the Member States shall inform one another and the Commission of the date of entry into force of such taxes.

5. The expression ‘competent authority’ means:
in Belgium:
De Minister van financiën or an authorized representative
Le Ministre des finances or an authorized representative

in Denmark:
Skatteministeren or an authorized representative

in Germany:
Der Bundesminister der Finanzen or an authorized representative

in Greece:
Το Υπουργείο Οικονομικών or an authorized representative

in Spain:
El Ministro de Economía y Hacienda or an authorized representative

in France:
Le ministre de l'économie or an authorized representative

in Ireland:
The Revenue Commissioners or their authorized representative

in Italy:
Il Capo del Dipartimento per le Politiche Fiscali or his authorised representatives

in Luxembourg:
Le ministre de finance or an authorized representative

in the Netherlands:
De minister van financiën or an authorized representative

in Austria:
Der Bundesminister für Finanzen or an authorized representative

in Portugal:
O Ministro das Finanças or an authorized representative

in Finland:
Valtiovarainministeriö or an authorized representative
Finansministeriet or an authorized representative

in Sweden:
Chefen för Finansdepartementet or his authorised representative

in the United Kingdom:
The Commissioners of Customs and Excise or an authorised representative for information required concerning taxes on insurance premiums and excise duty
The Commissioners of Inland Revenue or an authorised representative for all other information

in the Czech Republic:
Ministr financi or an authorised representative
in Estonia:
Rahandusminister or an authorised representative

in Cyprus:
Υπουργός Οικονομικών or an authorised representative

in Latvia:
Finansņu ministrs or an authorised representative

in Lithuania:
Finansų ministras or an authorised representative

in Hungary:
A pénzügyminiszter or an authorised representative

in Malta:
Il-Ministru responsabbli għall-Finanzi or an authorised representative

in Poland:
Minister Finansów or an authorised representative

in Slovenia:
Minister za finance or an authorised representative

in Slovakia:
Minister financií or an authorised representative

in Bulgaria:
Изпълнителният директор на Националната агенция за приходите

in Romania:
Ministerul Finanțelor Publice or an authorised representative

Article 2

Exchange on request

1. The competent authority of a Member State may request the competent authority of another Member State to forward the information referred to in Article 1 (1) in a particular case. The competent authority of the requested State need not comply with the request if it appears that the competent authority of the State making the request has not exhausted its own usual sources of information, which it could have utilized, according to the circumstances, to obtain the information requested without running the risk of endangering the attainment of the sought after result.

2. For the purpose of forwarding the information referred to in paragraph 1, the competent authority of the requested Member State shall arrange for the conduct of any enquiries necessary to obtain such information.

In order to obtain the information sought, the requested authority or the administrative authority to which it has recourse shall proceed as though acting on its own account or at the request of another authority in its own Member State.
Article 3

Automatic exchange of information

For categories of cases which they shall determine under the consultation procedure laid down in Article 9, the competent authorities of the Member States shall regularly exchange the information referred to in Article 1 (1) without prior request.

Article 4

Spontaneous exchange of information

1. The competent authority of a Member State shall without prior request forward the information referred to in Article 1 (1) of which it has knowledge, to the competent authority of any other Member State concerned, in the following circumstances:

(a) the competent authority of the one Member State has grounds for supposing that there may be a loss of tax in the other Member State;

(b) a person liable to tax obtains a reduction in or an exemption from tax in the one Member State which would: give rise to an increase in tax or to liability to tax in the other Member State;

(c) business dealings between a person liable to tax in a Member State and a person liable to tax in another Member State are conducted through one or more countries in such a way that a saving in tax may result in one or the other Member State or in both:

(d) the competent authority of a Member State has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises;

(e) information forwarded to the one Member State by the competent authority of the other Member State has enabled information to be obtained which may be relevant in assessing liability to tax in the latter Member State.

2. The competent authorities of the Member States may, under the consultation procedure laid down in Article 9, extend the exchange of information provided for in paragraph 1 to cases other than those specified therein.

3. The competent authorities of the Member States may forward to each other in any other case, without prior request, the information referred to in Article 1 (1) of which they have knowledge.

Article 5

Time limit for forwarding information

The competent authority of a Member State which, under the preceding Articles, is called upon to furnish information, shall forward it as swiftly as possible. If it encounters obstacles in furnishing the information or if it refuses to furnish the information, it shall forthwith inform the requesting authority to this effect, indicating the nature of the obstacles or the reasons for its refusal.

Article 6

Collaboration by officials of the State concerned

For the purpose of applying the preceding provisions, the competent authority of the Member State providing the information and the competent authority of the Member State for which the information is intended may agree, under the consultation procedure laid down in Article
9, to authorize the presence in the first Member State of officials of the
tax administration of the other Member State. The details for applying
this provision shall be determined under the same procedure.

Article 7

Provisions relating to secrecy

1. All information made known to a Member State under this Direc-
tive shall be kept secret in that State in the same manner as information
received under its national legislation. In any case, such information:
— may be made available only to the persons directly involved in the
assessment of the tax or in the administrative control of this assess-
ment,
— may be made known only in connection with judicial proceedings or
administrative proceedings involving sanctions undertaken with a
view to, or relating to, the making or reviewing the tax assessment
and only to persons who are directly involved in such proceedings;
such information may, however, be disclosed during public hearings
or in judgements if the competent authority of the Member State
supplying the information raises no objection at the time when it
first supplies the information,
— shall in no circumstances be used other than for taxation purposes or
in connection with judicial proceedings or administrative proceed-
ings involving sanctions undertaken with a view to, or in relation
to, the making or reviewing of the tax assessment.

In addition, Member States may provide for the information referred to
in the first subparagraph to be used for assessment of other levies,
duties and taxes covered by Article 2 of Directive 76/308/EEC (1).

2. Paragraph 1 shall not oblige a Member State whose legislation or
administrative practice lays down, for domestic purposes, narrower li-
mits than those contained in the provisions of that paragraph, to provide
information if the State concerned does not undertake to respect those
narrower limits.

3. Notwithstanding paragraph 1, the competent authorities of the
Member State providing the information may permit it to be used for
other purposes in the requesting State, if, under the legislation of the
informing State, the information could, in similar circumstances, be used
in the informing State for similar purposes.

4. Where a competent authority of a Member State considers that
information which it has received from the competent authority of ano-
other Member State is likely to be useful to the competent authority of a
third Member State, it may transmit it to the latter competent authority
with the agreement of the competent authority which supplied the in-
formation.

Article 8

Limits to exchange of information

1. This Directive does not impose any obligation upon a Member
State from which information is requested to carry out inquiries or to
communicate information, if it would be contrary to its legislation or
administrative practices for the competent authority of that State to
conduct such inquiries or to collect the information sought.

2. The provision of information may be refused where it would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to public policy.

3. The competent authority of a Member State may decline transmission of information when the Member State requesting it is unable, for reasons of fact or law, to provide the same type of information.

**Article 8a**

**Notification**

1. At the request of the competent authority of a Member State, the competent authority of another Member State shall, in accordance with the rules governing the notification of similar instruments in the requested Member State, notify the addressee of all instruments and decisions which emanate from the administrative authorities of the requesting Member State and concern the application in its territory of legislation on taxes covered by this Directive.

2. Requests for notification shall indicate the subject of the instrument or decision to be notified and shall specify the name and address of the addressee, together with any other information which may facilitate identification of the addressee.

3. The requested authority shall inform the requesting authority immediately of its response to the request for notification and shall notify it, in particular, of the date of notification of the decision or instrument to the addressee.

**Article 8b**

**Simultaneous controls**

1. Where the tax situation of one or more persons liable to tax is of common or complementary interest to two or more Member States, those States may agree to conduct simultaneous controls, in their own territory, with a view to exchanging the information thus obtained, whenever they would appear to be more effective than controls conducted by one Member State alone.

2. The competent authority in each Member State shall identify independently the persons liable to tax whom it intends to propose for simultaneous control. It shall notify the respective competent authorities in the other Member States concerned of the cases which, in its view, should be subject to simultaneous control. It shall give reasons for its choice, as far as possible, by providing the information which led to its decision. It shall specify the period of time during which such controls should be conducted.

3. The competent authority of each Member State concerned shall decide whether it wishes to take part in the simultaneous control. On receipt of a proposal for a simultaneous control, the competent authority shall confirm its agreement or communicate its reasoned refusal to its counterpart authority.

4. Each competent authority of the Member States concerned shall appoint a representative with responsibility for supervising and coordinating the control operation.
Article 9

Consultations

1. For the purposes of the implementation of this Directive, consultations shall be held, if necessary in a Committee, between:
   — the competent authorities of the Member States concerned at the request of either, in respect of bilateral questions,
   — the competent authorities of all the Member States and the Commission, at the request of one of those authorities or the Commission, in so far as the matters involved are not solely of bilateral interest.

2. The competent authorities of the Member States may communicate directly with each other. The competent authorities of the Member States may by mutual agreement permit authorities designated by them: to communicate directly with each other in specified cases or in certain categories of cases.

3. Where the competent authorities make arrangements on bilateral matters covered by this Directive other than as regards individual cases, they shall as soon as possible inform the Commission thereof. The Commission shall in turn notify the competent authorities of the other Member States.

Article 10

Pooling of experience

The Member States shall, together with the Commission, constantly monitor the cooperation procedure provided for in this Directive and shall pool their experience, especially in the field of transfer pricing within groups of enterprises, with a view to improving such cooperation and, where appropriate, drawing up a body of rules in the fields concerned.

Article 11

Applicability of wider-ranging provisions of assistance

The foregoing provisions shall not impede the fulfilment of any wider obligations to exchange information which might flow from other legal acts.

Article 12

Final provisions

1. Member States shall bring into force the necessary laws, regulations and administrative provisions in order to comply with this Directive not later than 1 January 1979 and shall forthwith communicate them to the Commission.

2. Member States shall communicate to the Commission the texts of any important provisions of national law which they subsequently adopt in the field covered by this Directive.

Article 13

This Directive is addressed to the Member States.