

Taxation: administrative cooperation

2009/0004(CNS) - 02/02/2009 - Legislative proposal

PURPOSE: to improve administrative cooperation in the field of taxation.

PROPOSED ACT: Council Directive.

BACKGROUND: Member States' need for mutual assistance in the field of taxation and especially for direct taxation is growing rapidly in a globalised era. There is a tremendous development of the mobility of taxpayers, of the number of cross border transactions and of the internationalisation of financial instruments, which makes it more and more difficult for Member States to assess taxes due properly, while they stick to national sovereignty as regards the level of taxes.

This increasing difficulty in assessing taxes correctly affects the functioning of taxation systems and entails double taxation, which itself incites to tax fraud and tax evasion, while the powers of controls remain at national level. It thus jeopardises the functioning of the internal market.

Directive 77/799/EEC, even with its later amendments, was designed in a different context from the present internal market requirements. Today, Directive 77/799/EEC is no longer able to meet the new requirements of administrative cooperation. Therefore, it must be repealed and replaced by a new legal instrument. That instrument should apply to direct taxes and indirect taxes that are not yet covered by other Community legislation. To this end, a new Directive is considered to be the proper instrument in terms of effective administrative cooperation.

CONTENT: the Commission proposes to the Council to adopt a new Directive on administrative cooperation in the field of taxation. The aim is to create a legal instrument of high quality for enhancing administrative cooperation in the field of taxation, in order to allow a smooth functioning of the internal market by circumventing the negative effects of harmful tax practices. Such an approach will have to effect to bring this cooperation into line with the existing provisions in the field of VAT and excise duties administrative cooperation.

The Commission proposes in particular to:

- extend cooperation between Member States to **cover taxes of any kind**. The scope extends to indirect taxes not yet covered by European Union legislation on administrative cooperation. It means that apart from VAT and excise duties, the Directive applies to all the other indirect taxes (together with direct taxes) to make cooperation more effective;
- introduce a procedure devoted to the **exchange of information on request and administrative enquiries** by regulating the time limits for the provision of information;
- prescribe the **automatic exchange of information** for a number of income types to be defined under the comitology procedure. For other types of income, it allows Member States to conclude supplementary agreements;
- introduce **compulsory spontaneous exchange of information** concerning refunds of taxes made by national tax authorities to non residents, notably where taxation is deemed to take place in the Member State of destination of the information, and the effectiveness of the control system may be facilitated by the information provided by the Member State of origin;
- allow **officials** of one country to actively participate in administrative enquiries on the territory of another country;

- allow for recovery assistance to be requested in an **early stage of the recovery process**, if this leads to an increase of the recovery chances;
- provide that Member States' competent authorities shall send **feedback** to other Member States, as soon as possible and no later than three months after making use of any answer to a request for information or spontaneous information;
- provide that exchanges of information should be made through **standardized forms, formats and channel of communication**;
- provide the same level of cooperation to their EU partners as they have agreed to with any **third country**, thus stressing the specific EU dimension.

The question of **bank secrecy** is also tackled in the draft Directive: the proposal contains a provision by which a requested Member State cannot refuse to supply information concerning a taxpayer of the requesting Member State solely because this information is held by a bank or other financial institution. As such, the proposal abolishes bank secrecy in the relations between tax authorities when a requesting Member State is assessing the tax situation of one of its resident taxpayers.