Direct and indirect taxation: mutual assistance by the competent authorities (amend. Directive 77 /799/EEC)

2003/0170(CNS) - 21/04/2004 - Final act

PURPOSE : to improve and clarify the rules on mutual assistance in the field of indirect taxation. LEGISLATIVE ACT : Council Directive 2004/56/EC amending Directive 77/799/EEC concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation, certain excise duties and taxation of insurance premiums. CONTENT : Council Directive 77/799/EEC established the ground rules for administrative cooperation and the exchange of information between Member States in order to detect and prevent tax evasion and tax fraud and to enable Member States to carry out a correct tax assessment. This Regulation aims to improve, expand and modernise those rules. The main points are as follows: - when a Member State conducts enquiries in order to obtain the information necessary to respond to a request for assistance, that State will be regarded as acting on its own account; in that way, there will only be one set of rules applying to the information-gathering process and the investigation will not be undermined by delays; - if a Member State has received information from another Member State, it will not subsequently have to request permission to disclose the information in public hearings or judgements; - a Member State is not under any obligation to carry out enquiries in order to obtain the information necessary to respond to a request for assistance where either its legislation or administrative practices do not permit its competent authority to conduct enquiries or to collect such information; - the competent authority of a Member State may refuse information or assistance when the requesting Member State is not in a position to supply the same type of information, whether for reasons of fact or of law; - there is a legal requirement in certain Member States that a taxpayer must be notified of decisions and instruments concerning his tax liability. This may cause difficulties for the tax authorities, including cases where the taxpayer has relocated to another Member State. In such circumstances, the tax authorities may call upon the assistance of the competent authorities of the Member State to which the taxpayer has relocated; - since the tax situation of one or more persons liable to tax established in several Member States often is of common or complementary interest, it is now possible for simultaneous controls to be carried out to such persons by two or more Member States, by mutual agreement and on a voluntary basis; This may take place whenever such controls appear to be more effective than controls carried out by only one Member State; It should be noted that the Commission submitted its proposal for a Directive on the basis of Article 95 of the Treaty. The Council, taking the view that the proposal for a Directive related to the harmonisation of legislation in the field of both direct and indirect taxation and that the act should therefore be adopted on the basis of Articles 93 and 94 of the Treaty, consulted the European Parliament by letter dated 12 November 2003 informing it of the Council's intention of changing the legal basis. ENTRY INTO FORCE : 29 April 2004. DATE OF TRANSPOSITION : 1 January 2005.