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

2003/0170(CNS) - 31/07/2003 - Legislative proposal

PURPOSE : to modify certain provisions concerning Directive 77/799/EEC and to introduce two new elements on notification and on simultaneous controls of a business. CONTENT : Practices of tax evasion and tax avoidance, extending across the frontiers of Member States, lead to budget losses and violate the principle of fair taxation. In turn, these result in distortions of capital movements and conditions of competition and adversely affect the workings of the single market. Thus, there is a strong community interest in Member States being able to enforce their tax laws effectively. The cross-border nature of these offensive practices means that national measures on their own are not sufficient. Hence, provision is needed for Member States to be able to co-operate and to provide mutual assistance. The scope of the proposal is to modify several existing provisions of the Directive in order to make the language clearer and to shorten some of the procedures that need to be followed when assistance is requested. There are also some new elements. One of these concerns notification, in one Member State, of instruments or decisions originating in another Member State where a taxpayer has moved to the second state. Another makes provision for Member States to conduct simultaneous controls of a business that operates in a number of different countries. The Directive applies to direct taxation only because a separate instrument has been adopted for VAT and there is to be another for excise duties. It is important to keep these aligned even though direct taxes are exclusively the competence of the Member States. The modifications are as follows: - the Directive is amended so that any request for information is treated as made under the domestic laws and practices of the State in which the authority collecting the information is situated. The text of the suggested amendment is identical to that contained in the proposal relating to VAT; - currently it is only possible to disclose information where the competent authority of the Member State that supplies it makes no objection. There is some debate on whether explicit approval is necessary or whether tacit approval is sufficient. The purpose of the text is to eliminate any possible delay, by rendering it unnecessary to suspend court action pending clarification, in those Member states that consider explicit approval is necessary. - it is made explicit that a Member State may not refuse to obtain and exchange information on the grounds that the information in question was not required for its domestic tax purposes; - a new article sets out the procedure to be followed where it is necessary to notify a taxpayer of instruments or decisions emanating from the administrative authorities of the Member State where the tax liability arises; - simultaneous controls are regarded as one of the most efficient ways in which competent authorities can exchange information. Abuses involving under-invoicing and over-invoicing, where transactions took place between related entities in cross-border situations (transfer-pricing), may be tackled by stepping up information exchange. Synchronised inspections would be one way of developing increased co-operation between tax administrations. The amendment to the Directive would make it possible to havethese types of controls but only where the competent authorities agreed that they wanted to take part.