

**COUNCIL DIRECTIVE 2004/56/EC**  
of 21 April 2004

**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**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 93 and 94 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament <sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee <sup>(2)</sup>,

Whereas:

- (1) Council Directive 77/799/EEC of 19 December 1977 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 <sup>(3)</sup> 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. It is essential to improve, expand and modernise those rules.
- (2) When a Member State conducts enquiries in order to obtain the information necessary to respond to a request for assistance, that State should 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.
- (3) It is inappropriate, if the fight against tax fraud is to be effective, that a Member State which has received information from another Member State should subsequently have to request permission to disclose the information in public hearings or judgements.
- (4) It should be made clear that 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.
- (5) It should be possible for the competent authority of a Member State to 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.

- (6) In view of the legal requirement in certain Member States that a taxpayer be notified of decisions and instruments concerning his tax liability and of the ensuing difficulties for the tax authorities, including cases where the taxpayer has relocated to another Member State, it is desirable that, in such circumstances, the tax authorities should be able to call upon the assistance of the competent authorities of the Member State to which the taxpayer has relocated.
- (7) 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 should be made 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, whenever such controls appear to be more effective than controls carried out by only one Member State.
- (8) 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.
- (9) Directive 77/799/EEC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Directive 77/799/EEC is hereby amended as follows:

1. Article 1(5) shall be amended as follows:
  - (a) the wording under 'in Italy' shall be replaced by the following:  
'il Capo del Dipartimento per le Politiche Fiscali or his authorised representatives'
  - (b) the wording under 'in Sweden' shall be replaced by the following:  
'Chefen för Finansdepartementet or his authorised representative'

<sup>(1)</sup> Opinion delivered on 15 January 2004 (not yet published in the Official Journal).

<sup>(2)</sup> OJ C 32, 5.2.2004, p. 94.

<sup>(3)</sup> OJ L 336, 27.12.1977, p. 15. Directive as last amended by Directive 2003/93/EC (OJ L 264, 15.10.2003, p. 23).

2. in Article 2(2), the following subparagraph shall be added:

'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.'

3. Article 7(1) shall be replaced by the following:

'1. All information made known to a Member State under this Directive 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 assessment,
- 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 proceedings 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 (\*).

(\* ) OJ L 73, 19.3.1976, p. 18.'

4. Article 8 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

'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.'

(b) paragraph 3 shall be replaced by the following:

'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.'

5. the following Articles shall be inserted:

'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 2*

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 2005. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

*Article 3*

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

*Article 4*

This Directive is addressed to the Member States.

Done at Luxembourg, 21 April 2004.

*For the Council*

*The President*

J. WALSH

---