



Federation of European Accountants
Fédération des Experts comptables Européens

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Dear Mr Dulière,

Re: Council directive 2010/24/EU concerning mutual assistance for the recovery of claims relating taxes, duties and other measures

We would like to express our concerns about the Directive concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (Mutual Assistance Directive) that is due to be transposed by Member States by 31 December 2011 and the possible risks to taxpayer rights that it can pose. The Commission should closely monitor the actual operation of the Directive and, if our concerns are substantiated, take the opportunity to put forward proposals to correct its defects when it falls to be reviewed within 5 years.

We are concerned that the interaction of the many EU initiatives which seek to simplify the cross-border administration of tax (in particular the Administrative Cooperation Directive, the Savings Taxation Directive and of course the Mutual Assistance Directive) may introduce a structural bias that actually promotes less favourable treatment of those individuals and companies who seek to exercise the basic Treaty freedoms. There is a risk that mechanisms designed to promote mobility will in fact restrict it by exposing tax payers who operate in more than one Member State to regulations and recovery mechanisms which discourage them from venturing into cross border operations.

We note also developments in the jurisprudence of the European Court of Justice, which recognise the rights of Member States to retain taxing rights over certain income. Where it appears that income has been transferred to a second Member State offering significant disparities in the tax base or rates of tax applied simply in order to avoid the tax which would otherwise have been due in the first Member State, the first State will be justified in enacting measures which bring the income back within its own tax base. In such a circumstance, the taxpayer may be subject to claims from the authorities in both states for tax on the income, both of which would fall to be enforced by the same authority.

As it is difficult for taxpayers to operate under the tax system of another state, it would be beneficial if the mutual assistance directive for example would allow the collection of taxes by a designated central liaison office. It is stating the obvious to point out that citizens will be more comfortable dealing with the tax system and authority of their home state than they will of any other state in which they may wish to operate economically, but a balance must be struck. In particular, where that familiar system is itself operating under rules and concepts it is not used to, there is the risk that the wrong taxes may be collected. Worse yet, there is the possibility for tax authorities to request recovery of debts which are not in fact due. The shape of the current mechanism for mutual assistance gives the taxpayer little opportunity to address this until matters have reached an advanced stage, typically a formal judicial hearing, with the expense that this incurs for both taxpayer and tax authorities.

Moreover, the recipient state need not provide information in a manner that conflicts with its own domestic legislation, or information that it does not routinely collect – for example, information on trusts in certain countries. The levels of administrative complexity imposed upon the requesting state, combined with the many options for the recipient to avoid providing the information, severely limit the utility of these provisions.

On balance, the impact of EU tax directives has not yet been to cause significant issues for the majority of compliant tax payers, whether operating across Member State borders or entirely domestically. While there may have been isolated instances of difficulty under the previous Mutual Assistance Directive (2008/55/EC), these have not been significant or widespread. However, the EU must be on its guard to ensure that these difficulties do not spread to become major barriers to mobility.

For further information on this letter, please contact Petra Weymüller, FEE Project Manager, at +32 2 285 40 75 or via email at petra.weymuller@fee.be.

Yours sincerely,



Philip Johnson
President