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► **M5** COUNCIL DIRECTIVE

of 19 December 1977

concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums

(77/799/EEC) ◀

(OJ L 336, 27.12.1977, p. 15)

Amended by:

		Official Journal		
		No	page	date
► <u>M1</u>	Council Directive 79/1070/EEC of 6 December 1979	L 331	8	27.12.1979
► <u>M2</u>	Council Directive 92/12/EEC of 25 February 1992	L 76	1	23.3.1992
► <u>M3</u>	Council Directive 2003/93/EC of 7 October 2003	L 264	23	15.10.2003
► <u>M4</u>	Council Directive 2004/56/EC of 21 April 2004	L 127	70	29.4.2004
► <u>M5</u>	Council Directive 2004/106/EC of 16 November 2004	L 359	30	4.12.2004
► <u>M6</u>	Council Directive 2006/98/EC of 20 November 2006	L 363	129	20.12.2006

Amended by:

► <u>A1</u>	Act of Accession of Austria, Sweden and Finland (adapted by Council Decision 95/1/EC, Euratom, ECSC)	C 241 L 1	21 1	29.8.1994 1.1.1995
► <u>A2</u>	Act of Accession of Greece	L 291	17	19.11.1979
► <u>A3</u>	Act of Accession of Spain and Portugal	L 302	23	15.11.1985
► <u>A4</u>	Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded	L 236	33	23.9.2003

Corrected by:

► **C1** Corrigendum, OJ L 346, 2.12.1981, p. 24 (00/0000)

▼B▼M5**COUNCIL DIRECTIVE****of 19 December 1977****concerning mutual assistance by the competent authorities of the
Member States in the field of direct taxation and taxation of
insurance premiums**

(77/799/EEC)

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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Whereas practices of tax evasion and tax avoidance extending across the frontiers of Member States lead to budget losses and violations of the principle of fair taxation and are liable to bring about distortions of capital movements and of conditions of competition; whereas they therefore affect the operation of the common market;

Whereas, for these reasons the Council adopted on 10 February 1975 a resolution on the measures to be taken by the Community in order to combat international tax evasion and avoidance ⁽³⁾;

Whereas the international nature the problem means that national measures, whose effect does not extend beyond national frontiers, are insufficient; whereas collaboration between administrations on the basis of bilateral agreements is also unable to counter new forms of tax evasion and avoidance, which are increasingly assuming a multinational character;

Whereas collaboration between tax administrations within the Community should therefore be strengthened in accordance with common principles and rules;

Whereas the Member States should, on request, exchange information concerning particular cases; whereas the State so requested should make the necessary enquiries to obtain such information;

Whereas the Member States should exchange, even without any request, any information which appears relevant for the correct assessment of taxes on income and on capital, in particular where there appears to be an artificial transfer of profits between enterprises in different Member States or where such transactions are carried out between enterprises in two Member States through a third country in order to obtain tax advantages, or where tax has been or may be evaded or avoided for any reason whatever;

Whereas it is important that officials of the tax administration of one Member State be allowed to be present in the territory of another Member State if both the States concerned consider it desirable;

Whereas care must be taken to ensure that information provided in the course of such collaboration is not disclosed to unauthorized persons, so

⁽¹⁾ OJ No C 293, 13. 12. 1976, p 34.

⁽²⁾ OJ No C 56, 7. 3. 1977, p. 66

⁽³⁾ OJ No C 35, 14. 2. 1975, p. 1.

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that the basic rights of citizens and enterprises are safeguarded; whereas it is therefore necessary that the Member States receiving such information should not use it, without the authorization of the Member State supplying it, other than for the purposes of taxation or to facilitate legal proceedings for failure to observe the tax laws of the receiving State: whereas it is also necessary that the receiving States afford the information the same degree of confidentiality which it enjoyed in the State which provided it, if the latter so requires;

Whereas a Member State which is called upon to carry out enquiries or to provide information shall have the right to refuse to do so where its laws or administrative practice prevent its tax administration from carrying out these enquiries or from collecting or using this information for its own purposes, or where the provision of such information would be contrary to public policy or would lead to the disclosure of a commercial, industrial or Professional secret or of a commercial process, or where the Member State for which the information is intended is unable for practical or legal reasons to provide similar information;

Whereas collaboration between the Member States and the Commission is necessary for the permanent study of cooperation procedures and the pooling of experience in the fields considered, and in particular in the field of the artificial transfer of profits within groups of enterprises, with the aim of improving those procedures and of preparing appropriate Community rules,

HAS ADOPTED THIS DIRECTIVE:

*Article 1***General provisions****▼M5**

1. In accordance with the provisions of this Directive the competent authorities of the Member States shall exchange any information that may enable them to effect a correct assessment of taxes on income and on capital, and any information relating to the establishment of taxes on insurance premiums referred to in the sixth indent of Article 3 of Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures ⁽¹⁾.

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2. There shall be regarded as taxes on income and on capital, irrespective of the manner in which they are levied, all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the disposal of movable or immovable property, taxes on the amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

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3. The taxes referred to in paragraph 2 are at present, in particular:

in Belgium:

Impôt des personnes physiques—Personenbelasting

Impôt des sociétés—Vennootschapsbelasting

Impôt des personnes morales—Rechtspersonenbelasting

Impôt des non-résidents—Belasting der niet-verblijfhouders

in Denmark:

Indkomstskat til staten

⁽¹⁾ OJ L 73, 19.3.1976, p. 18. Directive as last amended by the 2003 Act of Accession.

▼ A1

Selskabsskat
Den kommunale indkomstskat
Den amtskommunale indkomstskat
Folkepensionsbidragene
Sømandsskat
Den særlige indkomstskat
Kirkeskat
Formueskat til staten
Bidrag til dagpengefonden

in Germany:

Einkommensteuer
Körperschaftsteuer
Vermögensteuer
Gewerbsteuer
Grundsteuer

in Greece:

Φόρος εισοδήματος φυσικών προσώπων
Φόρος εισοδήματος νομικών προσώπων
Φόρος ακινήτου περιουσίας

in Spain:

Impuesto sobre la Renta de las Personas Físicas
Impuesto sobre Sociedades
Impuesto Extraordinario sobre el Patrimonio de las Personas Físicas

in France:

Impôt sur le revenu
Impôt sur les sociétés
Taxe professionnelle
Taxe foncière sur les propriétés bâties
Taxe foncière sur les propriétés non bâties

in Ireland:

Income tax
Corporation tax
Capital gains tax
Wealth tax

in Italy:

Imposta sul reddito delle persone fisiche
Imposta sul reddito delle persone giuridiche
Imposta locale sui redditi

in Luxembourg:

Impôt sur le revenu des personnes physiques
Impôt sur le revenu des collectivités

▼ A1

Impôt commercial communal

Impôt sur la fortune

Impôt foncier

in the Netherlands:

Inkomstenbelasting

Vennootschapsbelasting

Vermogensbelasting

in Austria:

Einkommensteuer

Körperschaftsteuer

Grundsteuer

Bodenwertabgabe

Abgabe von land- und forstwirtschaftlichen Betrieben

in Portugal:

Contribuição predial

Imposto sobre a indústria agrícola

Contribuição industrial

Imposto de capitais

Imposto profissional

Imposto complementar

Imposto de mais-valias

Imposto sobre o rendimento do petróleo

Os adicionais devidos sobre os impostos precedentes

in Finland:

Valtion tuloverot—de statliga inkomstskatterna

Yhteisöjen tulovero—inkomstskatten för samfund

Kunnallisvero—kommunalskatten

Kirkollisvero—kyrkoskatten

Kansaneläkevakuutusmaksu—folkpensionsförsäkringspremien

Sairausvakuutusmaksu—sjukförsäkringspremien

Korkotulon lähdevero—källskatten på ränteinkomst

Rajoitetusti verovelvollisen lähdevero—källskatten för begränsat skattskyldig

Valtion varallisuusvero—den statliga förmögenhetsskatten

Kiinteistövero—fastighetsskatten

in Sweden:

Den statliga inkomstskatten

Sjömansskatten

Kupongskatten

Den särskilda inkomstskatten för utomlands bosatta

Den särskilda inkomstskatten för utomlands bosatta artister m.fl.

Den statliga fastighetsskatten

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Den kommunala inkomstskatten

Förmögenhetsskatten

in the United Kingdom:

Income tax

Corporation tax

Capital gains tax

Petroleum revenue tax

Development land tax

▼ A4

in the Czech Republic:

Daně z příjmů

Daň z nemovitostí

Daň dědická, daň darovací a daň z převodu nemovitostí

Daň z přidané hodnoty

Spotřební daně

in Estonia:

Tulumaks

Sotsiaalmaks

Maamaks

in Cyprus:

Φόρος Εισοδήματος

Έκτακτη Εισφορά για την Άμυνα της Δημοκρατίας

Φόρος Κεφαλαιουχικών Κερδών

Φόρος Ακίνητης Ιδιοκτησίας

in Latvia:

iedzīvotāju ienākuma nodoklis

nekustamā īpašuma nodoklis

uzņēmumu ienākuma nodoklis

in Lithuania:

Gyventojų pajamų mokestis

Pelno mokestis

Įmonių ir organizacijų nekilnojamojo turto mokestis

Žemės mokestis

Mokestis už valstybinius gamtos išteklius

Mokestis už aplinkos teršimą

Naftos ir dujų išteklių mokestis

Paveldimo turto mokestis

in Hungary:

személyi jövedelemadó

társasági adó

osztalékadó

általános forgalmi adó

▼ A4

jövedéki adó

épitményadó

telekadó

in Malta:

Taxxa fuq l-income

in Poland:

Podatek dochodowy od osób prawnych

Podatek dochodowy od osób fizycznych

Podatek od czynności cywilnoprawnych

in Slovenia:

Dohodnina

Davki občanov

Davek od dobička pravnih oseb

Posebni davek na bilančno vsoto bank in hranilnic

in Slovakia:

daň z príjmov fyzických osôb

daň z príjmov právnických osôb

daň z dedičstva

daň z darovania

daň z prevodu a prechodu nehnuteľností

daň z nehnuteľností

daň z pridanej hodnoty

spotrebné dane

▼ M6

in Bulgaria:

данък върху доходите на физическите лица

корпоративен данък

данъци, удържани при източника

алтернативни данъци на корпоративния данък

окончателен годишен (патентен) данък

in Romania:

impozitul pe venit

impozitul pe profit

impozitul pe veniturile obținute din România de nerezidenți

impozitul pe veniturile microîntreprinderilor

impozitul pe clădiri

impozitul pe teren.

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4. Paragraph 1 shall also apply to any identical or similar taxes imposed subsequently, whether in addition to or in place of the taxes listed in paragraph 3. The competent authorities of the Member States shall inform one another and the Commission of the date of entry into force of such taxes.

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5. The expression ‘competent authority’ means:

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in Belgium:

De Minister van financiën or an authorized representative

Le Ministre des finances or an authorized representative

in Denmark:

Skatteministeren or an authorized representative

in Germany:

Der Bundesminister der Finanzen or an authorized representative

in Greece:

Το Υπουργείο Οικονομικών or an authorized representative

in Spain:

El Ministro de Economía y Hacienda or an authorized representative

in France:

Le ministre de l'économie or an authorized representative

in Ireland:

The Revenue Commissioners or their authorized representative

in Italy:

▼ M4

Il Capo del Dipartimento per le Politiche Fiscali or his authorised representatives

▼ A1

in Luxembourg:

Le ministre de finance or an authorized representative

in the Netherlands:

De minister van financiën or an authorized representative

in Austria:

Der Bundesminister für Finanzen or an authorized representative

in Portugal:

O Ministro das Finanças or an authorized representative

in Finland:

Valtiovarainministeriö or an authorized representative

Finansministeriet or an authorized representative

in Sweden:

▼ M4

Chefen för Finansdepartementet or his authorised representative

▼ A1

in the United Kingdom:

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The Commissioners of Customs and Excise or an authorised representative for information required concerning taxes on insurance premiums and excise duty

The Commissioners of Inland Revenue or an authorised representative for all other information

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in the Czech Republic:

Ministr financí or an authorised representative

▼ A4

in Estonia:

Rahandusminister or an authorised representative

in Cyprus:

Υπουργός Οικονομικών or an authorised representative

in Latvia:

Finanšu ministrs or an authorised representative

in Lithuania:

Finansų ministras or an authorised representative

in Hungary:

A pénzügyminiszter or an authorised representative

in Malta:

Il-Ministru responsabbli għall-Finanzi or an authorised representative

in Poland:

Minister Finansów or an authorised representative

in Slovenia:

Minister za finance or an authorised representative

in Slovakia:

Minister financií or an authorised representative

▼ M6

in Bulgaria:

Изпълнителният директор на Националната агенция за приходите

in Romania:

Ministerul Finanțelor Publice or an authorised representative

▼ B*Article 2***Exchange on request**

1. The competent authority of a Member State may request the competent authority of another Member State to forward the information referred to in Article 1 (1) in a particular case. The competent authority of the requested State need not comply with the request if it appears that the competent authority of the State making the request has not exhausted its own usual sources of information, which it could have utilized, according to the circumstances, to obtain the information requested without running the risk of endangering the attainment of the sought after result.

2. For the purpose of forwarding the information referred to in paragraph 1, the competent authority of the requested Member State shall arrange for the conduct of any enquiries necessary to obtain such information.

▼ M4

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.

▼B*Article 3***Automatic exchange of information**

For categories of cases which they shall determine under the consultation procedure laid down in Article 9, the competent authorities of the Member States shall regularly exchange the information referred to in Article 1 (1) without prior request.

*Article 4***Spontaneous exchange of information**

1. The competent authority of a Member State shall without prior request forward the information referred to in Article 1 (1) of which it has knowledge, to the competent authority of any other Member State concerned, in the following circumstances:

- (a) the competent authority of the one Member State has grounds for supposing that there may be a loss of tax in the other Member State;
- (b) a person liable to tax obtains a reduction in or an exemption from tax in the one Member State which would give rise to an increase in tax or to liability to tax in the other Member State;
- (c) business dealings between a person liable to tax in a Member State and a person liable to tax in another Member State are conducted through one or more countries in such a way that a saving in tax may result in one or the other Member State or in both;
- (d) the competent authority of a Member State has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises;
- (e) information forwarded to the one Member State by the competent authority of the other Member State has enabled information to be obtained which may be relevant in assessing liability to tax in the latter Member State.

2. The competent authorities of the Member States may, under the consultation procedure laid down in Article 9, extend the exchange of information provided for in paragraph 1 to cases other than those specified therein.

3. The competent authorities of the Member States may forward to each other in any other case, without prior request, the information referred to in Article 1 (1) of which they have knowledge.

*Article 5***Time limit for forwarding information**

The competent authority of a Member State which, under the preceding Articles, is called upon to furnish information, shall forward it as swiftly as possible. If it encounters obstacles in furnishing the information or if it refuses to furnish the information, it shall forthwith inform the requesting authority to this effect, indicating the nature of the obstacles or the reasons for its refusal.

*Article 6***Collaboration by officials of the State concerned**

For the purpose of applying the preceding provisions, the competent authority of the Member State providing the information and the competent authority of the Member State for which the information is intended may agree, under the consultation procedure laid down in Article

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9, to authorize the presence in the first Member State of officials of the tax administration of the other Member State. The details for applying this provision shall be determined under the same procedure.

*Article 7***Provisions relating to secrecy****▼M4**

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 ⁽¹⁾.

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2. Paragraph 1 shall not oblige a Member State whose legislation or administrative practice lays down, for domestic purposes, narrower limits than those contained in the provisions of that paragraph, to provide information if the State concerned does not undertake to respect those narrower limits.

3. Notwithstanding paragraph 1, the competent authorities of the Member State providing the information may permit it to be used for other purposes in the requesting State, if, under the legislation of the informing State, the information could, in similar circumstances, be used in the informing State for similar purposes.

4. Where a competent authority of a Member State considers that information which it has received from the competent authority of another Member State is likely to be useful to the competent authority of a third Member State, it may transmit it to the latter competent authority with the agreement of the competent authority which supplied the information.

*Article 8***Limits to exchange of information****▼M4**

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.

⁽¹⁾ OJ L 73, 19.3.1976, p. 18.

▼B

2. The provision of information may be refused where it would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to public policy.

▼M4

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.

*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.

▼B*Article 9***Consultations**

1. For the purposes of the implementation of this Directive, consultations shall be held, if necessary in a Committee, between:
 - the competent authorities of the Member States concerned at the request of either, in respect of bilateral questions,
 - the competent authorities of all the Member States and the Commission, at the request of one of those authorities or the Commission, in so far as the matters involved are not solely of bilateral interest.
2. The competent authorities of the Member States may communicate directly with each other. The competent authorities of the Member States may by mutual agreement permit authorities designated by them: to communicate directly with each other in specified cases or in certain categories of cases.
3. Where the competent authorities make arrangements on bilateral matters covered by this Directive other than as regards individual cases, they shall as soon as possible inform the Commission thereof. The Commission shall in turn notify the competent authorities of the other Member States.

*Article 10***Pooling of experience**

The Member States shall, together with the Commission, constantly monitor the cooperation procedure provided for in this Directive and shall pool their experience, especially in the field of transfer pricing within groups of enterprises, with a view to improving such cooperation and, where appropriate, drawing up a body of rules in the fields concerned.

*Article 11***Applicability of wider-ranging provisions of assistance**

The foregoing provisions shall not impede the fulfilment of any wider obligations to exchange information which might flow from other legal acts.

*Article 12***Final provisions**

1. Member States shall bring into force the necessary laws, regulations and administrative provisions in order to comply with this Directive not later than 1 January 1979 and shall forthwith communicate them to the Commission.
2. Member States shall communicate to the Commission the texts of any important provisions of national law which they subsequently adopt in the field covered by this Directive.

Article 13

This Directive is addressed to the Member States.