

Administrative cooperation in the field of Direct taxation

**Michèle PEROLAT
Principal administrator
DG TAXUD/D/4**



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Background (1)

- **No specific provision in the EC Treaty for Direct taxes**
- **Only one possibility for action :
Article 94 of the EC Treaty**



Background (2)

**GLOBALISATION
FISCAL COMPETITION**

**Volatility of taxpayers
and income**

**Fiscal evasion and
avoidance**

LISBON STRATEGY





Framework (1)

- **International instruments and fora**
 - **OECD Model Convention on Income and Capital → double taxation conventions**
 - **Council of Europe and OECD Convention on mutual assistance in the taxation field**
- **Directive 77/799/EEC of 19.12.1977**
- **Directive 2003/48/EC of 03.06.2003**
- **Court of Justice rulings**



Framework (2)

Report of the Council Ad Hoc Working Group of 22 May 2000 (FISC 67 – CRIMORG 183)

- **Identification of types of fraud in the direct taxation field, e.g.**
 - false invoicing,
 - non declaration of income earned abroad from work, savings or services
 - use by taxpayers of fictitious tax domicile, with the purpose of evading their tax obligations in their country of domicile for tax purposes
 - failure to submit tax returns and treatment as deductible costs unrelated to a business, such as stakeholders' private expenses
 - under invoicing or over invoicing of goods and services



Framework (3)

**Report of the Council Ad Hoc Working Group of 22
May 2000 (FISC 67 – CRIMORG 183)**

- **Identification of weaknesses in the legal Community framework as regards the lack of contacts between Member States**
- **Identification of recommendations aiming at reinforcing Directive 77/799/EEC and at creating a network of contact points**



Framework (4)

Report of the Council Ad Hoc Working Group of 22 May 2000 (FISC 67 – CRIMORG 183)

- **Following this report, the Commission proposed amendments to Directive 77/799/EEC aiming at reinforcing Article 7 on limitations and at creating Article 8(3) on simultaneous controls (Directive 2004/56)**
- **However, this is only a first step towards a better administrative cooperation at Community level as the most appropriate tool to fight against fiscal fraud at Community level.**



Origins of Directive 77/799

Council Resolution of 10 February 1975

- identifies actions that the Community should adopt in order to make the exchange of information more effective
- invites the Commission to take appropriate steps



Amendments

1. **Directive 79/1070/CEE of 6.12.1979;**
2. **Directive 92/12/CEE of 25.2.1992;**
3. **Directive 2003/93/CE of 7.10.2003;**
4. **Directive 2004/56/CE of 21.4.2004;**
5. **Directive 2004/106/CE of 16.11.2004.**



General provisions

Article 1 (1) – Directive 2004/106/CE

→ **Obligation for Member States to exchange any information that may enable them to effect a correct assessment of :**

- **taxes on income and capital**
- **taxes on insurance premium of Art. 3 of Directive 76/308/EEC**



Competent authorities

The exchange of information can take place only between Competent Authorities, defined in **Article 1 (5)**



Time limit

Article 5

" The competent authority of a MS which, ...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 of its refusal."



Modalities

EXCHANGE OF INFORMATION

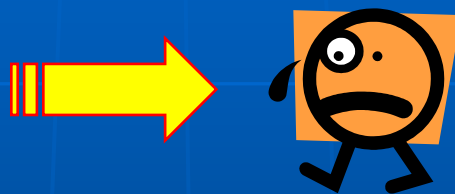
COLLABORATION OF OFFICIALS

SIMULTANEOUS CONTROLS

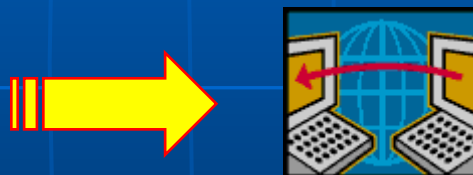


Typology of exchange

Three
different
procedures



ON DEMAND



AUTOMATIC



SPONTANEOUS



Collaboration by officials of the State concerned

- **Objective: to reinforce the procedures of exchange of information**
- **Possibility to agree, under **Article 9**, to authorise the presence in a MS of officials of the tax administration of another MS**



Simultaneous controls

> Directive 2004/56, Article 8b

More effective exchange of information

Implication of one or more MS

Voluntary basis

Reciprocal agreement

Common and complementary interest

Autonomous identification of subjects





Limits to the exchange of information

- Principle of equivalence
- Principle of reciprocity
- Disclosure of commercial, industrial and professional secrecy
- Disclosure would be contrary to the "Public Order"



Savings – Exchange of information

- ❑ Council Directive 2003/48/EC of 3 June 2003
- ❑ Entry into practical application : 1st July 2005
- ❑ The aim is to enable savings income in the form of interest payments to be made subject to effective taxation in the state of residence under the domestic law of that latter



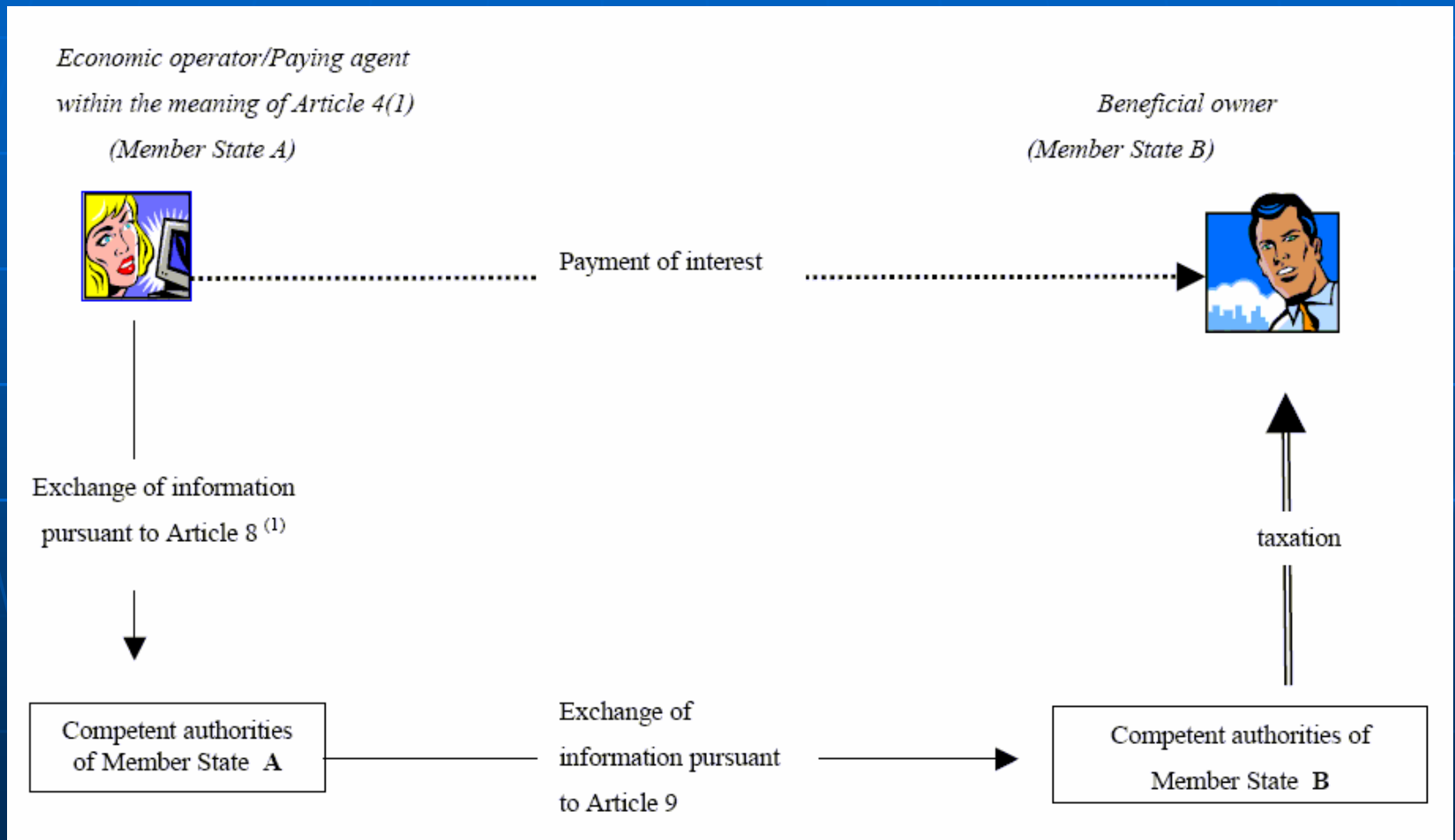
Directive 2003/48



The effective taxation of interests in the state of residence of the beneficial owner can be achieved through an effective and automatic exchange of information



Exchanges of Article 9.1





Modalities of exchange (1)

- **All information is exchanged at least once a year to competent authorities of the state of residence of the beneficial owner**
 1. identity and residence of beneficial owner
 2. name and address of paying agent
 3. account number of beneficial owner or identification of debt claim
 4. amount of interest or sale paid



Modalities of exchange (2)

- **Within 6 months following the end of the tax year of the MS of the paying agent**
 1. All MS : exchanges between 01/01 and 31/06 – Y. n
 2. UK : exchanges between 06/04 and 05/10 – Y. n

- **Time schedule of exchanges for 2005/2006**
 1. Collection of information at national level:
from 01/07/05 to 31/12/05 or +
 2. Exchange of information: from 01/01/06 to 05/10/06



Conditions of exchange



**NO RESTRICTION ON
INFORMATION AVAILABLE**



**APPLICABILITY OF
DIRECTIVE 77/799/EEC**



Transitional period

AUSTRIA – BELGIUM – LUXEMBURG
SHALL LEVY A WITHHOLDING TAX

- ① 15 % DURING FIRST 3 YEARS**
- ② 20 % NEXT THREE YEARS**
- ③ 35 % THERE AFTER**



Commission role (1)

- 1. 5 May 2002** – ECOFIN Council adopted FISC 39 on SMF (Standard Magnetic Format)
- 2. 15 January 2005** – OECD approved new STF (Standard Transmission Format)
- 3. 12 December 2005** – Council on General Affairs adopted FISC 153, based on the new OECD format as from 2008 and decided that during the interim period of 2006/2007, information will be exchanged by using FISC 39 on CCN-Mail 2



Commission role (2)

**TWO PHASES
DEVELOPMENT**

PHASE 1

**COMMON FORMAT
FOR THE EXCHANGE
OF DATA**

PHASE 2

**COMPUTERISED
SYSTEM**



Perspectives

Communication COM (2004) 611 of 27.09.2004 – PARMALAT case

- **Reinforcement of Directive 77/799/EC**
- **Use of FISCALIS programme**
- **Agreement with third countries**
- **...**



Actions (1)

FISCALIS Seminar PRAGUE (17-19 October 2005)

- **Confirmation of weaknesses and needs identified in 2000 and 2004**
- **Necessity to have a forum of discussion and contact points**
- ***...inter alia...***



Actions (2)

Setting-up of an Expert group : WG on Administrative Cooperation in the field of Direct taxation

- **Set up on 20 December 2006 by a Decision of DG TAXUD**
- **Already hold 4 meetings, both for defining a working programme and for developing the Saving computerised system**
- **This action will be completed by a discussion on the draft Communication on fiscal fraud, to be released by June 2006**



**Thank you for
your attention**

