

Tax Recovery Scheme within the European market

Most tax claims (or debts) due to national treasuries are collected promptly through spontaneous payment by the debtor. When the claims are not settled promptly, national tax administrations can resort to a range of powers to recover the claim. At the limit, the claim can be



recovered through the seizure and sale of the debtor's property by the tax administration ("enforcement").

With the European market growth it was realized that the debtor, or recoverable assets belonging to the debtor, was within the jurisdiction of another Member State. Arrangements at Community level were necessary to ensure that taxpayers did not successfully evade their obligations in this way. These arrangements, though originally developed to cover agricultural levies and customs duties as sources of Community revenue (traditional own resources), were later extended to VAT, excise duties, taxes on income and capital and taxes on insurance premiums.

On 16 March 2010, the Council adopted a new Directive on mutual assistance for the recovery of taxes: [Council Directive 2010/24/EU](#). The aim is to extend the scope to all taxes and duties levied by Member States and by their territorial or administrative subdivisions. The creation of a European instrument permitting enforcement in another Member State and the reinforcement of the possibility to take precautionary measures in another member State are two elements which are expected to improve the capacity of Member States in cross border collection of taxes. Portugal has applied to this new Directive, through the publication of the Decree Law n° 263/2012, published on 20th December 2012.

Therefore, any tax debt forgotten within a European Country can be requested and collected now very easily within other European Country, through the correspondent Tax Authority.

Then, any debtor asset found in a European Country will be seized and sold to pay the debt, plus interest and collection fees, related. There are many cases, where people are being notified on their residence country, by the correspondent Tax Authority, to pay capital gains missing to pay in Portugal, regarding property sales done.

Council Directive [2010/24/EU](#) of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures.

This directive applies to claims relating to:

- all taxes and duties levied by or on behalf of any European Union (EU) country or on behalf of the EU as a whole;
- refunds, interventions and other measures which contribute to the total or partial financing of the European Agricultural Guarantee Fund (EAGF) and the [European Agricultural Fund for Rural Development](#) (EAFRD);
- levies and other duties on the sugar sector market.

EU countries must notify the Commission of its **competent national authority** or authorities by 20 May 2010. The Commission will then publish a list of all competent national authorities in the Official Journal. Each competent authority must designate a central liaison office which will be responsible for contacts with other EU countries in this field.

Request for information

A competent authority is obliged to provide another competent authority with any information relevant to that applicant authority in the recovery of its claims, except if:

- the requested authority would **not be able to obtain such information** for the recovery of similar claims occurring in its own country;
- the information would disclose any **commercial, industrial or professional secrets**;

- the disclosure of the information would **put at risk the security** or **contravene the public policy** of the requested EU country.

Request for notification of documents

When requested for notification of documents relating to claims, the requested authority must notify to the addressee all documents which emanate from the applicant EU country relating to a claim or to its recovery.

The request for notification must include relevant information, such as the **name and address of the addressee**, the **purpose of the notification**, a **description of the nature** and **amount of the claim**, and the **contact details of the offices responsible** for the documents and for obtaining further information.

Recovery procedures

Any available appropriate recovery procedures must be applied before the applicant authority makes a request for recovery, except where:

- it is evident that there are **insufficient or no assets for recovery** in the applicant EU country but that the person concerned has the necessary assets in the requested EU country;
- it would result in **disproportionate difficulty**.

Any request for recovery must be accompanied by a **uniform instrument permitting enforcement** in the requested EU country.

The requested competent authority will employ the powers and procedures provided under the laws, regulations or administrative provisions of the requested EU country regarding claims on the same or similar tax or duty. If the requested authority does not consider that the same or similar taxes or duties are applicable in the requested EU country, it shall instead apply the rules relating to tax levied on personal income.

Disputes

Disputes relating to the claim, the initial or uniform instrument permitting enforcement, and the validity of a notification by the applicant authority are the responsibility of the competent authorities of the applicant EU country.

Disputes relating to the validity of a notification made by a competent authority of the requested EU country will be brought before the competent authority of that EU country.

The applicant authority may make a request for recovery of a contested claim. If the contestation is successful, the applicant authority will be responsible for the reimbursement of the amount recovered, in addition to any compensation due.

Amendment or withdrawal of the request for recovery assistance

The applicant authority must immediately notify the requested authority of any amendment to or withdrawal of its request for recovery, detailing the reasons for amendment or withdrawal.

Request for precautionary measures

Where the claim or the instrument permitting enforcement in the applicant EU country is contested at the time when the request is made, the requested authority will take precautionary measures, in accordance with its national law, to ensure recovery when requested to do so by the applicant authority.

Limits to the requested authority's obligations

The requested authority is **not obliged** to grant the recovery assistance if:

- recovery of the claim would result in **serious economic or social difficulties** in the requested EU country;
- the initial request for assistance relates to claims **more than 5 years old**;
- the total sum of the claims is **less than EUR 1 5000**.

General provisions

Any information and documents disclosed under this directive will be covered by the obligation of official secrecy and will therefore be protected under the appropriate national law of the EU country which received it.

This directive repeals Directive [2008/55/EC](#) from 1 January 2012.
References to the repealed directive will be understood as references to this directive.