



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Indirect Taxation and Tax administration
Tax administration and fight against tax fraud

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Summary Report

Responses received on the Commission's public consultation on the functioning of mutual assistance between EU Member States for the recovery of taxes

**European Commission,
Directorate General for Taxation and Customs Union**

The Commission services thank the respondents participating in this public consultation. Their replies and comments are helpful in the evaluation of the EU tax recovery assistance.

Disclaimer: This summary report provides an overview of the contributions received. The contents of this document therefore cannot be regarded as reflecting the position of the Commission.

1. Background

Everyone is expected to pay his/her share of taxes. If taxes remain unpaid, tax authorities take recovery actions to collect the taxes. The tax authorities' competence is however limited to their national territory. They cannot take recovery actions in other countries, although tax debtors may have moved to another country or may dispose of assets in other countries. Therefore, the EU has adopted legislation which allows the EU Member States to provide mutual assistance to each other, for the recovery of their taxes. The European Commission is currently undertaking an evaluation of this legislation. Therefore, an open public consultation was held from 30 November 2016 till 8 March 2017, using the EU Survey tool. All responses were submitted via this EU Survey tool.

The Commission received a total of 24 responses from individuals and organisations residing in 15 Member States. Some organisations represent the views of multiple members.

Residence	BE	DE	IE	ES	FR	IT	CY	LT	HU	NL	AT	PT	SI	SE	UK	OTHER
# replies	3	2	1	1	1	4	1	1	1	1	3	1	1	1	1	1

The language of the responses was as follows:

Language used	EN	DE	IT	FR	LT	NL	SI
# replies	14	4	2	1	1	1	1

Half of the respondents (12) replied to the questionnaire in their personal capacity, while the other half (12) represented a professional interest, as they replied on behalf of a national public authority (3), consultancy or law firm (2), research and academia (2), a non-governmental organisation (2), a trade, business or professional association (2), or a regional or local authority (1).

The respondents replying in their personal capacity in general only selected predefined responses. They made little or no use of the opportunity to elaborate on their replies.

Only a few respondents – all replying in their professional capacity – declared to have a personal experience with regard to the application of recovery assistance on the basis of Directive 2010/24:

- two of them represented a national public authority; one of them is working in the area of tax recovery; the other one declared that she has been confronted with this legislation in just one case, but her explanation led to the conclusion that this case did not involve an effective use of the recovery assistance Directive;
- another respondent represented a tax consultancy firm (KPMG). He declared to have an experience with regard to the use of the Directive, in assisting clients as a consultancy firm;
- and the last one represented a trade business or professional organisation (the Consultative Committee of Accountancy Bodies Ireland). She reported about the information provided by a member of this committee, who had experience in one case as a tax agent of a taxpayer.






Given the relatively low number of responses, the facts that most respondents had no or little experience with the use of this Directive and that they only partially completed the questionnaire, the results of this consultation do not permit very firm conclusions. However, a number of useful comments have been made, and the replies clearly indicate important expectations and concerns with regard to international tax recovery assistance.

2. General opinion on the existing EU framework for recovery assistance

The EU offers tax administrations of the EU Member States a set of common rules to help each other recover the unpaid taxes. These rules set out when and how the Member States can help each other get these taxes back. They can, amongst others, exchange information on a secured IT platform, on the basis of automatically translatable forms.

The respondents expressed the following opinions with regard to the usefulness and the effect of this EU framework.

Note: the replies to the standardised questions below are indicated as follows:

	I strongly agree
	I agree
	I neither agree nor disagree
	I disagree
	I have no opinion / I don't know

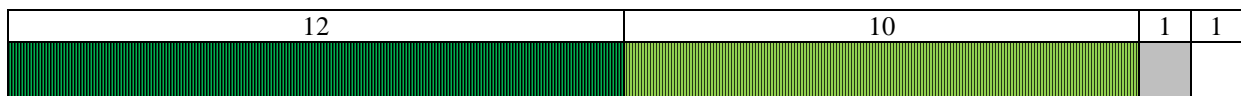
It was unanimously agreed that this EU framework makes it easier for the Member States to help each other recover taxes (e.g. uniform forms are easily recognisable, more accurate request for help, etc.):



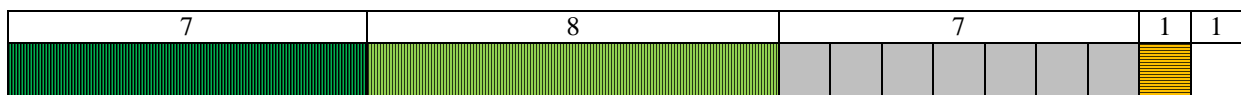
It was almost unanimously agreed that this EU framework makes it less costly for the Member States to help each other recover taxes (e.g. no translation required, uniform forms, etc.):



A large majority (22) of the respondents also believed that this EU framework facilitates the recovery of taxes that would otherwise remain unpaid:



Most respondents (15) considered that the existence of this EU framework discourages taxable persons from not paying their taxes in other MS:



A majority of respondents (14) was of the opinion that this EU framework discourages taxable persons from not paying their taxes in their own state. Some respondents (5) did not agree nor disagree; two respondents disagreed; and 3 respondents did not have an opinion on this question:



One of the responding organisations (CFE) emphasized that: *"(a)n effective system of mutual recovery assistance between Member States is not only important for tax authorities but also for business and taxpayers; having clear, concise, and efficient procedures in place for the mutual recovery assistance will benefit all parties in such proceedings, and reduce the financial and administrative burden of complying for both the tax authorities and taxpayer. However, any such measures must contain adequate safeguards to the taxpayers' rights both legal and procedural and the taxpayer must be made aware of those rights"*.

3. Conditions governing requests for recovery assistance

3.1. Request for recovery assistance relating to contested tax claims

A tax debtor may consider that the tax is not due at all or that its amount is not correct. In that case, he can contest the tax claim in the Member State where that tax is levied. This contestation must be introduced before the competent administrative body or judge, in accordance with the law of that Member State. It may take a long time before this contestation is finished by a final decision of the competent administrative body or judge. The question was raised whether tax recovery assistance should be provided, pending this contestation (i.e. before there is a final decision on the validity or the amount of the claim).

The answers regarding the recovery assistance of the contested tax claims were mixed and there was no clear preference among the respondents:

Answer options	Number of respondents agreeing
1) Yes, recovery assistance should be possible, irrespective of the nature or the reasons of the contestation of the tax claim.	3
2) Recovery assistance should be permitted under specific conditions which make it clear that the contestation of the claim will be unsuccessful.	4
3) Recovery assistance should be permitted under specific conditions which make it clear that the claim is only contested to delay the tax collection.	5
4) No, recovery assistance should not be permitted as long as the claim is contested.	8
5) No opinion	3
6) Other: recovery assistance should be possible insofar as the legislation of the requested Member State allows it. ¹	1
6) Other: The requested authority should be allowed to take precautionary measures to ensure that the recovery of taxes after the contestation of the claim in the requesting state is guaranteed. ²	1

¹ Note: Art. 14(4), third subparagraph, of Directive 2010/24 effectively allows this.

² Note: Art. 14(4), second subparagraph, of Directive 2010/24 effectively allows to take precautionary measures to guarantee the recovery of contested claims.

One respondent, replying in his personal capacity, expressed the view that recovery should be possible, irrespective of the reasons of the contestation, but not for small tax amounts.

A few respondents who opposed to recovery assistance for contested claims provided some further explanation. Two of them considered that such recovery may put pressure on the tax debtor and frustrate a tax debtor's rights before the courts in the applicant Member State; another respondent argued that this recovery would be a waste of the tax authority's limited resources. The latter observation of course relies on the assumption that the contestation of the claim is successful.

In relation to option 3) above (i.e. recovery assistance is permitted if the specific circumstances make it clear that the claim is only contested to delay the tax collection), one respondent held that any such terms would lead to uncertainty and potentially insert an unnecessary subjective element to the proceedings. This respondent explained that the decision on the fulfilment of this condition would add additional complexities to the financial and administrative burden on all of the parties.

3.2. Threshold for recovery assistance

In principle, EU Member States have to help each other to recover all unpaid taxes. However, they are not obliged to do so for small amounts (less than EUR 1500). The purpose of this threshold is to limit the administrative burden and to allow Member States to focus on high claims. A refusal to grant recovery assistance for tax amounts below this threshold may have a considerable impact on a global scale, e.g. if lots of small cross-border transactions (like in eCommerce) are carried out without payment of VAT.

The survey asked for the respondents' opinion on this threshold.

Answer options	Number of respondents agreeing
The current threshold is optimal	10
The threshold is too high	3
The threshold is too low	6
No threshold should be set	4
No opinion	1

The explanations expressed on this point make it clear that all respondents were aware of the concern with regard to the costs related to cross-border recovery of taxes. However, some respondents also emphasized the need to have an effective recovery system.³ On the basis of these concerns:

- 10 respondents came to the conclusion that the current threshold is optimal. Some respondents preferred a higher threshold; one of them recommended to increase it to € 10.000;

³ One respondent observed that recovery assistance should be possible in a situation of accumulation of small tax claims, possibly levied by different tax authorities. The Directive indeed permits to take account of the global amount of all tax claims.

- other respondents suggested to reduce the threshold; one of them recommended a threshold of € 500;
- some respondents took the view that no threshold should be set, permitting the authorities concerned to evaluate the specific circumstances and costs of each particular case.

4. Information channels on recovery assistance

Several actions are taken to provide information on how tax recovery assistance operates in practice, e.g. "frequent questions and answers" about tax debtors' rights and obligations are published on the website of the European Commission.

Most respondents (16) were not aware of this information channel. This information was known to some respondents (7) (of which only one was responding to the survey in his personal capacity).

Most respondents (16) were of opinion that the EU should take more actions to explain the legislation on mutual tax recovery assistance. This was considered to be in the interest of taxpayers and companies. Some respondents replying in favour of more information actions observed that this raises awareness of recovery actions and contributes to building a positive image of the EU. One respondent also observed that in this way, the EU could set an example for other countries.

A few respondents (3) answered that more information actions are not needed. (One of the latter 3 respondents was a tax official dealing with tax recovery). The other respondents (5) did not have an opinion on this issue.

One respondent also suggested that the tax authorities of the Member States publish the guides and documents relating to mutual tax recovery assistance on their local websites.

5. Suggestions for changes and for other actions at EU level or in the Member States

The following suggestions have been made with regard to possible changes of Directive 2010/24 or with regard to other measures to improve the tax recovery assistance:⁴

- comments with regard to the assistance framework:
 - the scope of the Directive should be extended to compulsory social security contributions and the reference to "fees" in Article 2 should be eliminated;
 - 3 respondents emphasized the need to strengthen precautionary measures. The procedure to adopt precautionary/interim measures in the requested state and the intervention of the authorities of the applicant Member State in this procedure should be enhanced;
 - timelines to grant the recovery should be introduced (the requested State has to answer a request within five months);⁵

⁴ A few suggestions have not been retained here, since they were incomprehensible or did not relate to improvement of recovery assistance. They are however available for viewing in the raw published responses to the consultation provided they did not contain defamatory or inappropriate content and the contributors' consent to publish was expressed.

- sensible thresholds should be set;
- there should be a common point for reporting suspected tax avoidance and a common enforcement body rather than one taxable entity being chased by potentially 28 different Member States in 28 languages. (e.g. this is all missing in the EU digital VAT system; those outside of the EU receive an advantage as the chances of being detected and enforcement actions are minimal, giving them a competitive advantage against those within the EU);
- approach with regard to non-cooperative Member States or other countries:⁶
 - a system of penalties could be introduced for countries that are not implementing the European standards or that do not fulfil their obligations to provide tax recovery assistance;
 - a strict approach should be applied with regard to countries or regions that do not cooperate;
 - a comparison should be made between EU Member States where this recovery assistance was effectively used and those where it was less used;
- communication between the competent authorities:
 - 2 respondents emphasized that tax officials should be well-trained. Training courses for public administration offices should be organised in order to explain the procedures and the powers to recover tax claims abroad, and they should also have more IT resources;
 - the EU-forms could be made more user-friendly: requests for recovery concerning multiple claims could be made easier to read by including a table of the claims concerned; and the history of an assistance request is not clear for all questions or answers in the request forms;
 - there should be an increased transparency about the status of the claim, particularly in communicating whether a claim is contested or not when assistance with recovery is requested;
- relation with the tax debtor:
 - more communication about the tools for tax recovery assistance would help to have an indirect dissuasive effect;
 - taxpayers should be informed about transfer of their data to another Member State;
 - taxpayers should be informed about recovery assistance requests to other Member States, particularly if the information being requested is to be used as a ground for a tax reassessment;

⁵ It should be noted that time limits for replies to requests for assistance are already adopted in Commission Implementing Regulation 1189/2011. The requested authority has to acknowledge receipt of the request within seven calendar days of such receipt (Arts. 7, 12, 19). At the end of each period of 6 months from the date of acknowledgement of receipt of the request, an update about the status of the request needs to be provided (Arts. 8(2) and 20(2)).

⁶ It is not clear from all responses whether they relate to the situation of Member States and/or other countries.

- the taxpayer's rights should be enhanced (the EU Charter of Fundamental Rights must guide the procedural framework of recovery);

6. Personal experience with regard to the application of recovery assistance on the basis of Directive 2010/24

As already mentioned in the introduction, only two respondents declared to have a personal experience with regard to the application of recovery assistance on the basis of Directive 2010/24, as they (or members of their organisation) represented tax debtors in situations where this legislation was applied.

Both respondents indicated that they were aware of the possibility for a Member State to ask recovery assistance from another Member State and of their clients' payment obligation and possibilities to contest the claim in the applicant Member State. They were also aware of the possibilities to contest the measures taken by the requested Member State to recover the claim or to guarantee the claim.

One of these respondents reported not to have experienced any problems with regard to the application of this legislation:

- the Uniform Notification Form (UNF) received was considered to be useful;
- the respondent (or the member of his organisation) contacted the office responsible with regard to the notified documents, which was mentioned on this UNF document, and this contact was useful;
- the person concerned also received a Uniform Instrument Permitting Enforcement (UIPE) and this document was also considered useful;
- the office responsible for assessing this claim was mentioned on the UIPE document and the contact with this office was also useful;
- the person concerned contested the claim for which recovery assistance was requested, and the applicant Member State correctly informed the requested Member State about this contestation, so that the requested Member State suspended the recovery measures.

The other respondent claimed that his client(s) had experienced problems with regard to the application of this legislation. This respondent indicated that his experience related to requests for recovery assistance sent by Belgium, Italy, the Netherlands and Spain to Italy and the Netherlands.⁷

- apparently, the debtor(s) did not receive sufficient information about the tax debt(s) by the Member State requesting the payment before this Member State requested recovery assistance, and there was also a lack of transparency about the status of the recovery claim;
- this respondent also considered that the UNF document was useful. He observed that this document includes a good amount of details with respect to competent offices, amounts, financial years concerned, etc.;
- his contact with the office, mentioned on the UNF document, where further information could be obtained, was indeed useful;

⁷ However, this contribution did not indicate in a precise way whether (and which) problems were experienced in each of these Member States.

- to the contrary, a particular contact with an Italian office responsible with regard to the notified documents was not useful at all. According to the respondent's explanation, different tax offices were involved in this case, making it difficult to coordinate their role;
- the UIPE document was also considered to be useful;
- however, the contacts with the two offices mentioned on this UIPE document (i.e. the office responsible for assessing the claim and the office where further information could be obtained concerning the claim or the possibilities for contesting the payment obligation) were not entirely useful;
- this last respondent also reported that his client had contested the claim for which recovery assistance was requested, and that the applicant Member State correctly informed the requested Member State about this contestation. However, in accordance with Article 14(4) of Directive 2010/24, the requested Member State (Italy) did not remove the precautionary measure until the decision favourable to the tax debtor became final.

Although there is only little personal experience reported about the use of the EU framework for tax recovery assistance, the above responses give a positive impression of this framework and in particular of the use of the UNF and UIPE documents.