

# Constitutional, EU and International Framework of Mutual Assistance in Tax Matters

Gabi Gold

Steuerberaterin, Master of International Taxation

73432 Aalen

# AGENDA

## I. EU-legislation in general

1. EU-treaty
2. EU-regulations
3. EU-directives

## II. German constitution rules

## III. EU-regulations

1. Regulation (EG) No. 1798/2003 → V.A.T.
2. Example (1): Mutual assistance in the area of V.A.T.
3. Regulation (EG) No. 2006/2004 → Consumer protection
4. Regulation No. 1408/71 → Social security systems and following directives

## IV. EU-directives

1. Directive No. 77/799/EWG and following directives → Mutual assistance information exchange
2. NEW directive for mutual assistance in future (2015)
3. German legislation for mutual assistance in information exchange
4. Additional OECD-model for mutual assistance and German legislation hereto
5. Directive No. 76/308 and following directives → Mutual assistance in the collection of taxes
6. German legislation for mutual assistance in collection of taxes
7. Example (2): Mutual assistance in the collection of taxes
8. Directive No. 2003/48 (EG) → Mutual assistance in the area of taxation of interests (→ Savings tax directive)
9. German legislation for mutual assistance in the area of taxation of interests
10. Example (3): Mutual assistance belonging to savings tax directive

## V. Summary I – Overview

## VI. Summary II – Information exchange in practice (→ figures)

# AGENDA

## I. EU-legislation in general

1. EU-treaty
2. EU-regulations
3. EU-directives

## II. German constitution rules

## III. EU-regulations

1. Regulation (EG) No. 1798/2003 → V.A.T.
2. Example (1): Mutual assistance in the area of V.A.T.
3. Regulation (EG) No. 2006/2004 → Consumer protection
4. Regulation No. 1408/71 → Social security systems and following directives

## IV. EU-directives

1. Directive No. 77/799/EWG and following directives → Mutual assistance information exchange
2. NEW directive for mutual assistance in future (2015)
3. German legislation for mutual assistance in information exchange
4. Additional OECD-model for mutual assistance and German legislation hereto
5. Directive No. 76/308 and following directives → Mutual assistance in the collection of taxes
6. German legislation for mutual assistance in collection of taxes
7. Example (2): Mutual assistance in the collection of taxes
8. Directive No. 2003/48 (EG) → Mutual assistance in the area of taxation of interests (→ Savings tax directive)
9. German legislation for mutual assistance in the area of taxation of interests
10. Example (3): Mutual assistance belonging to savings tax directive

## V. Summary I – Overview

## VI. Summary II – Information exchange in practice (→ figures)

# Constitutional Rules

## I. EU-legislation in general

### 1. Art. 249 EU-treaty (former Art. 189 EU-treaty)

- ⇒ Art. 249 treats the work between the European institutions
- ⇒ Paragraph 1: General rules
- ⇒ Paragraph 2: Regulations
- ⇒ Paragraph 3: Directives

### 2. EU-regulations

- ⇒ EU-regulations are set in paragraph 2
- ⇒ They have direct effect to all EU-member states
- ⇒ EU-regulations are based on the EU-contract

# Constitutional Rules

## I. EU-legislation in general

### 3. EU-directives

⇒ They are for several/addressed EU-member states (Art. 249 EU – treaty paragraph 3)

Possible conflict potential!!!

#### - Directives

- are valid in their aims

.....  
- gives the member states the liberty of measures to transfer it into national rules

- have a deadline for transfer into national rules

# AGENDA

## I. EU-legislation in general

1. EU-treaty
2. EU-regulations
3. EU-directives

## II. German constitution rules

## III. EU-regulation

1. Regulation (EG) No. 1798/2003 → V.A.T.
2. Example (1): Mutual assistance in the area of V.A.T.
3. Regulation (EG) No. 2006/2004 → Consumer protection
4. Regulation No. 1408/71 → Social security systems and following directives

## IV. EU-directives

1. Directive No. 77/799/EWG and following directives → Mutual assistance information exchange
2. NEW directive for mutual assistance in future (2015)
3. German legislation for mutual assistance in information exchange
4. Additional OECD-model for mutual assistance and German legislation hereto
5. Directive No. 76/308 and following directives → Mutual assistance in the collection of taxes
6. German legislation for mutual assistance in collection of taxes
7. Example (2): Mutual assistance in the collection of taxes
8. Directive No. 2003/48 (EG) → Mutual assistance in the area of taxation of interests (→ Savings tax directive)
9. German legislation for mutual assistance in the area of taxation of interests
10. Example (3): Mutual assistance belonging to savings tax directive

## V. Summary I – Overview

## VI. Summary II – Information exchange in practice (→ figures)

# Constitutional Rules

## II. German constitution rules

⇒ Validity of the **territory principle**

- The German constitution has **no regulation of mutual assistance**
- Art. 35 GG set the assistance of national authorities
- Art. 23 GG was inserted in 1992 for the transfer of EU-legislation

# AGENDA

## I. EU-legislation in general

1. EU-treaty
2. EU-regulations
3. EU-directives

## II. German constitution rules

## III. EU-regulations

1. Regulation (EG) No. 1798/2003 → V.A.T.
2. Example (1): Mutual assistance in the area of V.A.T.
3. Regulation (EG) No. 2006/2004 → Consumer protection
4. Regulation No. 1408/71 → Social security systems and following directives

## IV. EU-directives

1. Directive No. 77/799/EWG and following directives → Mutual assistance information exchange
2. NEW directive for mutual assistance in future (2015)
3. German legislation for mutual assistance in information exchange
4. Additional OECD-model for mutual assistance and German legislation hereto
5. Directive No. 76/308 and following directives → Mutual assistance in the collection of taxes
6. German legislation for mutual assistance in collection of taxes
7. Example (2): Mutual assistance in the collection of taxes
8. Directive No. 2003/48 (EG) → Mutual assistance in the area of taxation of interests (→ Savings tax directive)
9. German legislation for mutual assistance in the area of taxation of interests
10. Example (3): Mutual assistance belonging to savings tax directive

## V. Summary I – Overview

## VI. Summary II – Information exchange in practice ( → figures)

# III. EU-regulations

## 1. Regulation (EG) No. 1798/2003

- ⇒ is dated 07.10.2003
- ⇒ **Subject matter** is the cooperation of the national authorities in the area of **V.A.T.**
- ⇒ Answer to requests should be given as soon as possible, latest 3 month after request (Art. 8 paragraph 1)
- ⇒ Personally presence of employees of the competent foreign authorities in the other member state is possible (Art. 11)
- ⇒ Possibility of audits in different EU-member states to the relevant subject matter at the same time (Art. 12)
- ⇒ Possibility of spontaneous requests (Art. 17 – 21)

.....

- ⇒ **Former secondary EU-legislation: See directive No. 77/799/EWG**

### III. EU-regulations

2. Example (1): Mutual assistance in the area of V.A.T.

V.AT. / **Art. 28 c part A a) paragraph 1 6. directive** – Intracommunity supply (tax free)

**Directive 77/799 (EWG) – regulation No. 218/92**

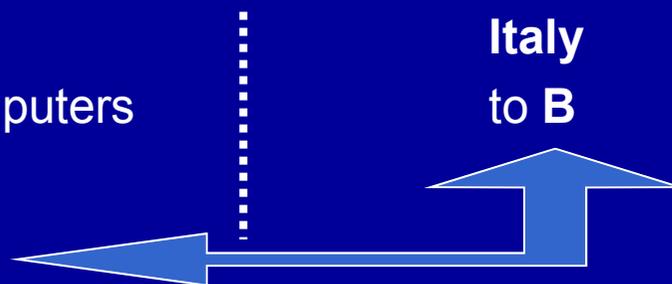
Subject matter: Cooperation of the administration authorities in the area of indirect taxes

Judgement EuGH, 27.09.2007, Rs. C – 184/05 (Twoh)

**NL**

**A** supplies parts of computers

Incoterm: Ex work NL



**Italy**

to **B**

1. **A** has no certificates (like export declaration, customs etc.)
2. The Invoice from **A** to **B** charges not any V.A.T.
3. To the intracommunity V.A.T. legislation should it be NL–V.A.T. (→ place of starting transport)
4. NL belastingdienst charges NL–V.A.T. afterwards

### III. EU-regulations

Continuation to Example (1): Mutual assistance in the area of V.A.T.

- ⇒ **A** institutes against belastingdienst NL
- ⇒ Statement of the claim from **A** to the court: Belastingdienst NL should act via mutual assistance to check the intra EU–acquisition in Italy
- ⇒ The Hoge Raad of NL therefore asks the EuGH (because these are questions in the area of EU–legislation, the EuGH has to decide):  
Could **A** claim the mutual assistance?
- ⇒ Answer EuGH: **NO!**

### III. EU-regulations

Continuation to Example (1): Mutual assistance in the area of V.A.T.

⇒ **Reasons for the judgement:**

1. **A** could not proof the physical transfer out of NL (Schengen agreement → **Art. 28 c. part A a paragraph 1**)
2. The 6. directive for V.A.T. purposes has **no rules** about the necessary proofs for the intracommunity supply
3. Aim of the mutual assistance in **directive 77/799 (EWG)** is to control/avoid tax fraud/tax evasion and to set correct tax assessment
4. The directive for mutual assistance (**77/799 (EWG)**) give no rights in this way to the taxable persons! The **directive is set up for the authorities!**
5. The **wording** of the **directive 77/799** for cooperation in the area of V.A.T.– legislation in Art. 5 paragraph 1 is “**could**” not “**must**” claim mutual assistance. That means, that the authorities has the power of discretion to claim mutual assistance or not

# III. EU-regulations

Additional EU-regulations for mutual assistance

3. Regulation (EG) No. 2006/2004 dated 27.10.2004

For complete information!!

⇒ Cooperation between the national authorities, competent for the interests of **consumer protection**

4. Regulation No. 1408/71 dated 14.06.1971

⇒ Systems for social security for employees and self employed persons followed now by

- Regulation No. 883/04, deadline **01.05.2010**
- Regulation No. 987/09
- Regulation No. 1231/10 treats non EU-family members

# AGENDA

## I. EU-legislation in general

1. EU-treaty
2. EU-regulations
3. EU-directives

## II. German constitution rules

## III. EU-regulations

1. Regulation (EG) No. 1798/2003 → V.A.T.
2. Example (1): Mutual assistance in the area of V.A.T.
3. Regulation (EG) No. 2006/2004 → Consumer protection
4. Regulation No. 1408/71 → Social security systems and following directives

## IV. EU-directives

1. Directive No. 77/799/EWG and following directives → Mutual assistance information exchange
2. NEW directive for mutual assistance in future (2015)
3. German legislation for mutual assistance in information exchange
4. Additional OECD-model for mutual assistance and German legislation hereto
5. Directive No. 76/308 and following directives → Mutual assistance in the collection of taxes
6. German legislation for mutual assistance in collection of taxes
7. Example (2): Mutual assistance in the collection of taxes
8. Directive No. 2003/48 (EG) → Mutual assistance in the area of taxation of interests (→ Savings tax directive)
9. German legislation for mutual assistance in the area of taxation of interests
10. Example (3): Mutual assistance belonging to savings tax directive

## V. Summary I – Overview

## VI. Summary II – Information exchange in practice ( → figures)

## IV. EU-directives

1. Directive No. 77/799 / EWG dated 19.12.1977 (4 pages)  
deadline **01.01.1979**

- ⇒ Actual subject matter: Mutual assistance between the competent authorities in the area of **direct taxes** and taxes on **insurance premiums**
- ⇒ **Aims:** Installation of direct information systems between the EU (tax) authorities to reduce tax fraud and tax haven zones

# V.A.T. (No. 79/1070/EWG)

## IV. EU-directives

1. No. 77/799/EWG (3,5 pages)

↓  
Replaced by regulation  
No. 1798/2003  
dated 07.10.2003

↓  
Changed by directive  
2003/93 EG dated  
07.10.2003

Taxes from **income  
and property**  
(= direct taxes)

↓  
See definitions **OECD  
model tax treaty**



**Excise tax/  
Tax on consumption:**

↓  
Additional since directive  
No. 92/12/EWG dated  
06.03.1992 (**24 pages**)

↓  
Replaced by regulation EG  
2073/2004 dated 16.11.2004  
changed by directive  
2004/106 (EG) dated  
16.11.2004

**Taxes on insurance premium**

↓  
Additional since directive  
No. 2003/93/EG  
dated 29.04.2004

## IV. EU-directives

### 1. No. 77/799/EWG

⇒ Additional changes: Directive 2004/56 (EG) dated 21.04.2004 (2 pages),  
deadline **01.01.2005**

⇒ Art. 1, paragraph 5 Italy: “Il cupo del dipartimento per le politiche Fiscali  
or his engaged persons”

#### **New inserted:**

⇒ Art. 8 a: (Postal) service abroad of any legal acts of administration  
authorities in other number states

⇒ Art. 8 b: Audits of the tax authorities at the same time in several  
member states

## IV. EU-directives

### 2. NEW directive for mutual assistance in future (2015)

- ⇒ **Starting from 2015:**                      **A new directive will come for the mutual**  
**(ECONFIN 07.12.2010)**                      **assistance (proposal commission 2009)**

**Additional scope to directive No. 77/799/EWG etc.:**

- ⇒ **Indirect taxes, e.g. V.A.T.**
- ⇒ **Automatic information exchange**

**Starting from 2015: For 5 sorts of income**

- ⇒ **Income of employees**
- ⇒ **Income of self employed persons**
- ⇒ **Income from management/of managers**
- ⇒ **Income from life insurance products**
- ⇒ **Property in the member states and income from renting property**

## IV. EU-directives

### ⇒ Automatic information exchange

**Starting from 2017:** For 3 additional sorts of income

- ⇒ Licence fees
- ⇒ Dividends
- ⇒ Pension income

### Changes in the procedure:

- ⇒ Employees of the finance authorities of a member state could participate in audits etc. in any other member state (**77/799**, Art. 6 agreement in special cases)
- ⇒ Bank secrecy is no longer a reason to refuse the mutual assistance
- ⇒ The request for mutual assistance has to name to identity of the taxpayer and the reasons for the mutual assistance
- ⇒ Formulas and electronic information exchange

## IV. EU-directives

### 3. German legislation for mutual assistance in information exchange

AO =  $\alpha$  &  $\Omega$  like bible for catholics; The German AO (duty legislation) is here the basic legislation for taxation

- ⇒ § 117 AO works **parallel** to EU–mutual assistance legislation in Germany, e. g. with the double tax treaties
- ⇒ § 117 AO sets the German view for mutual assistance to other states

#### In detail:

- ⇒ § 117 Abs. 1 AO → German requests for mutual assistance
- ⇒ § 117 Abs. 2 + 3 AO → Foreign requests for mutual assistance
- ⇒ Paragraph 3 contents the **limitations for mutual assistance**. For example:
  - Not reciprocity for mutual assistance from the other state
  - Warranty/guarantee that the given information will only used for taxation purposes
  - Assessment/trade off from tax secrecy for the German taxable persons (→ business secrecy = should not be disclosed, if it is not necessary because of tax fraud/tax evasion)

## IV. EU-directives

### 3. German legislation for mutual assistance in information exchange

§ 9 VwZG = Content is the administration postal service legislation in foreign countries and their formalities

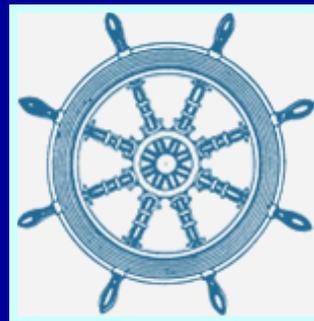
- ⇒ Registered post with feed back
- ⇒ Through foreign (tax) authorities or the German consulate in the relevant other country
- ⇒ Special rules for individuals in policy/politics (→ immunity)
- ⇒ Deadline for postal service: Fiction rule – At the 7. day after posting (Germany in general: Fiction is the 3 day after posting - § 122 Abs., 2 No. 1 AO)

## IV. EU-directives

### 3. German legislation for mutual assistance in information exchange

#### Legislation to directive No. 77/799/EWG

German mutual assistance  
legislation dated 19.12.1985  
(see deadline directive: **01.01.1979**)  
several changes 1999 until 2001



§ 117 AO  
Change paragraph 2  
through EU mutual  
assistance confirming  
legislation dated  
19.12.1985

§ 9 VWZG dated  
12.08.2005  
see Art. 8 a directive  
2004/56 (EG)

## IV. EU-directives

### 4. Additional OECD–model for mutual assistance and German legislation hereto

To complete the total view: From the perspective of OECD exists:

#### **Tax Information Exchange Agreement Model (short: TIEMA)**

= Treaty between the OECD and the EU–council, dated 25.01.1988

- ⇒ Germany joined to this treaty with date 17.04.2008
- ⇒ The treaty is signed by **16 countries**
- ⇒ **3 countries has not ratified** to TIEMA (one of these countries is Germany!)
- ⇒ **Aim of TIEMA:** To arrange treaties with tax haven countries – see hereby the lecture over the tax haven information–exchange
- ⇒ German legislation since Anti–Tax–Evasion–Law 2009:
  - Cutting the tax free dividend taxation from foreign countries in this case (→ 8 b corporation taxation legislation)
  - Refusal of deduction of operating expenses

## IV. EU-directives

5. Directive No. 76/308 and following directives → Mutual assistance in the collection of taxes

⇒ dated 15.03.1976 (3 pages)

⇒ **Subject matter:** Mutual assistance between the competent authorities for the collection of (here) taxes

⇒ **Actual:** Directive 2008/55 (EG) dated 26.05.2008 (8 pages) + regulation 1179/2008 (EG) dated 28.11.2008

⇒ **Aims:** Get over the territory principle in validity of enforcement that means enforcement assistance

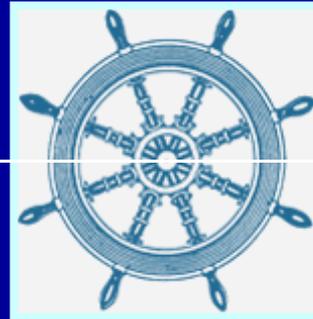
⇒ **Additional** (details see next page):

- Validity of enforcement titles (judgement) directly in the other member state
- Translation of the application for assistance in collection of taxes
- Rules for paying the collection costs (tax payer in default)

## IV. EU-directives

5. Directive No. 76/308 and following directives  
→ Mutual assistance in the collection of taxes

~~Directive 76/308~~  
**No taxes!**



**Important:** No costs for assistance in enforced tax collection  
deadline: **01.01.1978**

Additional scope:  
V.A.T. since directive 79/107/EWG dated 06.12.1979 (1 page)  
deadline: **01.01.1981**

Additional scope:  
Income taxes and capital taxes (insurance premiums) since directive 2001/44 (EG) dated 15.01.2001, deadline: **30.06.2002**

Additional:

Directive 2002/94 (EG) (6 pages directive, 8 pages forms) dated 09.12.2002

- form requests/formulas
- written form

- amount of receivables min. 1.500 EUR

**Valid!**

## IV. EU-directives

### 6. German legislation for mutual assistance in collection of taxes

= **EG-collection legislation dated 10.08.1979, implementation 18.08.1979**

⇒ **Original 10 articles, actual 8 articles**

⇒ Changed 07.08.1981, implementation **01.01.1981**

⇒ Changed 21.12.1992, implementation 01.01.1993

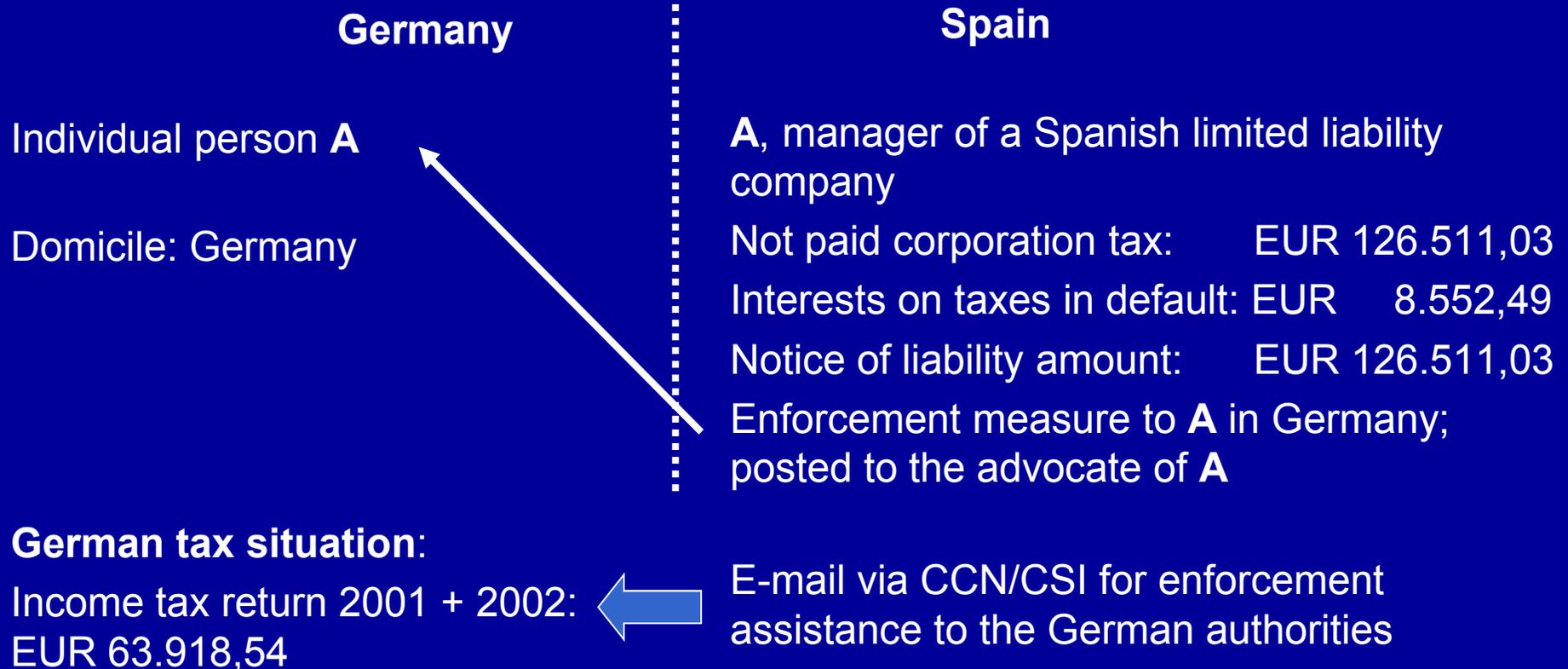
⇒ Changed 05.10.1994, implementation 01.01.1999

⇒ Changed 20.12.2001, implementation 23.12.2001

# IV. EU-directives

7. Collection of taxes – Directive 2008/55 and regulation 1179/2008

German Highest Court for taxation, dated 30.08.2010, VII B 48/10



## IV. EU-directives

### 7. Collection of taxes – Directive 2008/55 and regulation 1179/2008

⇒ Enforcement assistance: Attachment of tax return for the Spanish authorities.  
A institutes against that enforcement measure (not concrete enough, absence of documentation of the tax liability in the request of enforcement)

⇒ **Judgement:**

1. Enforcement declaration is only an intern administration measure which is only as a matter of convenience arranged extern
2. The right for enforcement exists in the notice of liability in Spain. It is concrete and the official document for the necessity to pay these taxes
3. The money order is nothing additional in this case in relation to the notice of liability. Consequently, the money order must not be “concrete”
4. Direct enforcement in Germany is o.k.
5. Not a case of Art. 8 paragraph 2 of the regulation for mutual assistance for collection of taxes (regulation 2008/55 (EG–approval enforcement order)

## IV. EU-directives

8. Directive No. 2003/48 (EG) → Mutual assistance in the area of taxation of interests (→ Savings tax directive)

⇒ dated 03.06.2003, transfer deadline **01.01.2004**, implementation **01.01.2005**

⇒ **Subject matter:** Mutual assistance between the member states in the area taxation of interests (savings tax regulation)

⇒ **Aims:** Interests of included persons in one member state with domicile in another member state to tax in the state of domicile

⇒ **Process:** Documentation of all these interests through the paying agent and information exchange between the member states

.....  
⇒ **NOT:** Payment of rents and insurance services

## IV. EU-directives

8. Directive No. 2003/48 (EG) → Mutual assistance in the area of taxation of interests (→ Savings tax directive)

⇒ **Exceptions:** No information exchange to the member states (Art. 10 ff)

- Belgium
- Luxembourg
- Austria

⇒ Compensated through withholding tax, starting 01.07.2011: 35 %

No deduction of withholding tax (Art. 13)

- Allowance for information exchange to the relevant member state
- Certificate from the competent authority in the other member state with address/domicile (legislation in Austria)

## IV. EU-directives

8. Directive No. 2003/48 (EG) → Mutual assistance in the area of taxation of interests (→ Savings tax directive)

⇒ Check of the savings tax regulation:

**New savings tax regulation comes (ECOFIN 12/2010): expected 2013**

⇒ **New planned:**

- No appeal to bank secrecy (accepting OECD-standard from Switzerland, Austria and Luxemburg in 3/2009)
- Bilateral contracts, e. g. Germany – Switzerland against EU-directive
- Tax avoiding via intermediate structures outside EU, trusts, foundations

## IV. EU-directives

### 9. German legislation for mutual assistance in the area of taxation of interests

- ⇒ **Article 45e income tax legislation, transfer deadline 26.01.2004**
- ⇒ Regulation about interests information implementation **01.07.2005**  
(→ see law article 17 paragraph 2 directive No. 2003/48)
- ⇒ German legislation has parallel to EU -regulation 17 articles

# IV. EU-directives

## 10. Example (3): Mutual assistance belonging to savings tax directive

Individual

**Main Domicile**

**Germany**

- ⇒ World wide income taxation
- ⇒ Austrian Interests are taxed in Germany

Individual

**Second Domicile**

**Austria**

- ⇒ Interests
- ⇒ Austria Art. 13 Abs. 2 Savings tax directive: No withholding tax of certificate from Germany over the main domicile → here no certificate

1



**! Double taxation !**



2

Withholding tax

## IV. EU-directives

### 10. Example (3): Mutual assistance belonging to savings tax directive

#### **Solution: See Art. 14 Savings tax directive**

- ⇒ Any double taxation is to eliminate through the member state with the main domicile!
- ⇒ The tax payer get an tax credit in the amount of the paid taxes in the state of his main domicile for the paid taxes in the state of his second domicile (Art. 14 Abs. 2 S. 1 Savings tax directive)
- ⇒ If the real paid amount of taxes is higher than the tax credit in the state of his main domicile, the tax payer gets an tax return (→ Art. 14 Abs. 2 S. 2 Savings tax directive)
- ⇒ See one aim of the Savings tax directive: The taxation to the taxable persons should realise the legislation of the member state of his main domicile!

# AGENDA

## I. EU-legislation in general

1. EU-treaty
2. EU-regulations
3. EU-directives

## II. German constitution rules

## III. EU-regulations

1. Regulation (EG) No. 1798/2003 → V.A.T.
2. Example (1): Mutual assistance in the area of V.A.T.
3. Regulation (EG) No. 2006/2004 → Consumer protection
4. Regulation No. 1408/71 → Social security systems and following directives

## IV. EU-directives

1. Directive No. 77/799/EWG and following directives → Mutual assistance information exchange
2. NEW directive for mutual assistance in future (2015)
3. German legislation for mutual assistance in information exchange
4. Additional OECD-model for mutual assistance and German legislation hereto
5. Directive No. 76/308 and following directives → Mutual assistance in the collection of taxes
6. German legislation for mutual assistance in collection of taxes
7. Example (2): Mutual assistance in the collection of taxes
8. Directive No. 2003/48 (EG) → Mutual assistance in the area of taxation of interests (→ Savings tax directive)
9. German legislation for mutual assistance in the area of taxation of interests
10. Example (3): Mutual assistance belonging to savings tax directive

## V. Summary I – Overview

## VI. Summary II – Information exchange in practice (→ figures)

# V. Summary I - Overview

Remaining problems:

- ⇒ **Validity of territory principle** in the area of **direct taxes** via EU – treaty (→ see summary report of the commission consultation, January 2011):  
***“The EU–member states remain largely free to design their direct tax system”***
  
- ⇒ **Third countries** and their taxation systems are without influence from EU. The summary report of the commission notes:
  - Double taxation with **Non EU-member states**
  - Transfer pricing problems in global business
  - Differences in the scale of tax (corporate tax payers ⇔ individual persons)
  - Tax fraud via V.A.T. carousel, especially with participation of **Non EU-member states**

## V. Summary I - Overview

⇒ The **lacks/exceptions** of the EU-regulations and EU-directives

Examples:

- **Savings taxation measures** – Withholding tax system for Austria, Belgium and Luxemburg
- Possibilities for the **refusal of mutual assistance** in the information exchange (examples: bank secrecy (→ change in future!), tax secrecy/business damage for taxable persons, no reciprocity in mutual assistance)
- **Collection of taxes** in foreign countries – see above, possibilities for refusal

.....

⇒ EU harmonized V.A.T.: Legislation is perforated through the temporarily conditions in the directive (→ see example 1)

# AGENDA

## I. EU-legislation in general

1. EU-treaty
2. EU-regulations
3. EU-directives

## II. German constitution rules

## III. EU-regulations

1. Regulation (EG) No. 1798/2003 → V.A.T.
2. Example (1): Mutual assistance in the area of V.A.T.
3. Regulation (EG) No. 2006/2004 → Consumer protection
4. Regulation No. 1408/71 → Social security systems and following directives

## IV. EU-directives

1. Directive No. 77/799/EWG and following directives → Mutual assistance information exchange
2. NEW directive for mutual assistance in future (2015)
3. German legislation for mutual assistance in information exchange
4. Additional OECD-model for mutual assistance and German legislation hereto
5. Directive No. 76/308 and following directives → Mutual assistance in the collection of taxes
6. German legislation for mutual assistance in collection of taxes
7. Example (2): Mutual assistance in the collection of taxes
8. Directive No. 2003/48 (EG) → Mutual assistance in the area of taxation of interests (→ Savings tax directive)
9. German legislation for mutual assistance in the area of taxation of interests
10. Example (3): Mutual assistance belonging to savings tax directive

## V. Summary I – Overview

## VI. Summary II – Information exchange in practice (→ figures)

## VI. Summary II - Information exchange in the EU-practice

⇒ Report EU (**KOM 2006/043** final, dated 08.02.2006 for the years **2003/2004**)

- The deadlines for transfer in national rules will not be fulfilled by the member states
- Art. 29 of the directive 2002/94 (EG) for mutual assistance – deadline for statistic information to the EU date 15.03. each year is not observed

Remark to **Germany**: Germany has statistics of the requests for mutual assistance since 2007 (official document of the German parliament 17/2743 dated 06.08.2010, No. 19)

- Requests reported to the commission:  
**2003: 435 requests for information exchange**  
**2004: 727** “ “ “ “

## VI. Summary II - Information exchange in the EU-practice

⇒ **KOM 2009/xxx** not concrete figures the request rate has increased

Important

– **The most requests belong to V.A.T. and income taxation**

– **Efficient result in collection of taxes will be at the level of 5 %**

.....

⇒ German figures of mutual assistance in information exchange  
(→ see official document of the German parliament 17/2743 dated 06.08.2010)

Conflict!!

## VI. Summary II - Information exchange in the EU-practice

### ⇒ Requests for mutual assistance

	2007	2008	2009
To Germany	1.683	1.190	2.125
From Germany	584	605	478

### ⇒ Spontaneous information exchange

	2007	2008	2009
To Germany	958.446	359.716	1.403.001
From Germany	9.206	25.247	26.389

# VI. Summary II - Information exchange in the EU-practice

## ⇒ Automatic information exchange

	2007	2008	2009
To Germany	232.018	337.905	295.706
From Germany	111.666	34.578	208.730

## ⇒ Information exchange in the area of V.A.T.

	2004	2005	2006	2007	2008	2009
To Germany	6.962	8.295	8.139	8.106	8.217	8.868
From Germany	8.295	6.316	6.821	6.916	6.640	5.029

## VI. Summary II - Information exchange in the EU-practice

- ⇒ Efficient tax result in Germany (→ see official document of the German parliament 17/2743 dated 06.08.2010 No. 24 and attachment No. 4 and 5)
- 7.488.327 control information from foreign countries for the years 2005 – 2008
  - 19.117 effective controls (criteria: financial efficiency)
  - 687 effective more tax results (= 0,0092 %):  
361 cases in Nordrhein–Westfalen  
120 cases in Baden-Württemberg

## VI. Summary II - Information exchange in the EU-practice



Faire taxation all over the world!!!

Thank you very much for your attention!