

Trust is the basis of collaboration

In this pitch - without going into too much detail, I will discuss the various relationships of trust regarding mutual assistance in the recovery of tax claims within the EU. Trust or better mutual trust seems simple but is complex in the context of mutual assistance procedure for the recovery of tax claims (MAP for the recovery of tax claims). Trust is based on reciprocity while respecting each other's sovereignty. This is due to the system of cross-border recovery whereby the national recovery systems are linked through an inter-state procedure regulated in the provisions of an international law instrument, Directive 2010/24/EU. Thus, where appropriate one must deal with two national legal systems and procedural rules laid down in the Directive. In besides, trust plays a role not only between member states, but also between tax administration and taxpayer, and between member states and the European Commission.

Trust between Member States

To do justice to Member States' sovereignty, Directive 2010/24/EU, which is the legal basis for providing MAP for the recovery of tax claims, has many provisions referring to national law.

The assessment of requests is limited to an overall review. In practice, each request is assumed to be correctly filled. If that trust were lacking, the receiving Member State would have to examine all the incoming requests and diminishes the efficiency and effectiveness of mutual recovery assistance. In such case, it is stressed that time is essential to the success of the MAP for the recovery of tax claims. In other words, the longer it takes the less there is a chance of successful recovery, which could have a major impact on the financial interests of the EU and its member states. The examination of each request is very time-consuming and would seriously harm the mutual assistance system when it comes to time and available manpower. Two factors that most tax administrations lack. Indeed, were each Member State start examining requests, it would be a race to the bottom and ultimately collapse the European recovery system. This all adds to the effectiveness and efficiency of the operation of Directive 2010/24/EU.

Another issue is that member states trust each other that they have done all the necessary to collect the tax claim themselves and in the case of a request that has been settled that all the necessary has been done to recover the tax claim. A check on this is virtually impossible and a check would only happen if there were a cause. Thus, in conclusion, trust does not mean blind trust. The question that then arises is how far does trust extend? Here, of course, the relationship between tax administration and taxpayer also plays a role.

Trust between tax administration and taxpayers

However, if it is subsequently found that the request does not contain the correct information based on which recovery measures were taken against a taxpayer, the taxpayer could be seriously harmed. This is not just about possible compensation to the taxpayer, as some damages are irreversible, such as the sale of a property where the taxpayer lived with his family. Compensation, while mitigated, will be deemed insufficient in most cases. In such a case, this could seriously damage the relationship of trust between the taxpayer and the tax administration in the requesting Member State. The lack of trust in the relationship between the tax administration and taxpayers will result in a decline in compliance. With many taxpayers seeking publicity these days, this may have an even greater effect on the relationship between tax administration and taxpayers.

As supposedly well known, the Netherlands Tax and Customs Administration is experiencing the lack of trust of society due to the "Toeslagenaffaire" (family benefit affair). This has led to the introduction of a new phenomenon, the menselijke maat (human factor), which is a mere political fabrication. Legally, the general principles of good governance are more appropriate, based on which tax officers make decisions that do justice to the situation of a taxpayer concerned within the bounds of what is reasonable and proportionate (principle of proportionality).

Trust between Member States and the EU Commission

A few issues come into play in this relationship. First, Member States may rely on the Commission's role as watchdog of EU law, that it will act in case a Member State fails to fulfil its obligations under the directive. In that case, the Commission is expected to either bring that Member State into line or find that there is a justification for a Member State not fulfilling its obligations. Failure to do so could lead to a situation in the relationship between Member States and the Member State that is not fulfilling its obligations, where assistance in recovery no longer takes place, if you do nothing for me, I will do nothing for you which is a negative application of the principle of reciprocity. This means a shutdown of the cross-border recovery system.

When it comes to the operation of the provisions of the directive, statistical data is very important. Reports on this subject are published periodically. It is not only an accountability to the European Parliament and the European Council, but also an accountability to society (transparency). It can be trusted that such reports accurately reflect the functioning of the

Directive's provisions. However, the static data is subject to criticism especially if there are member states that this information shows are performing poorly. Given the high financial stakes for the EU and its member states, it could be included in EU rules to stipulate that the European Court of Auditors can carry out an investigation into the correctness of the report, as the Belgian Court of Auditors did into the functioning of mutual assistance from the Belgian perspective.

Although trust is of eminent importance in all the above-mentioned relationships relating to MAP for the recovery of tax claims, in the relationship between member states, trust is a hard condition for MAP for the recovery of tax claims to function efficiently and effectively. A lack of trust will collapse this system. Of course, the role of trust in the other relationships should not be underestimated, as there too the lack of trust will have major consequences, but MAP for the recovery of tax claims will then continue to function.

As already mentioned, taxpayer rights could play a role to strengthen the position of the "weaker" party, the taxpayer. In many countries, taxpayers' rights and obligations are contained in case law or in various legislative acts and even in unwritten rules, but not in a comprehensive document that taxpayers can rely on. An initiative has been launched within the EU to further strengthen the position of the taxpayer introducing the European taxpayer rights Charter. However, this charter cannot be enforced by a taxpayer because it is soft law. A real strengthening of the taxpayer's position should therefore be the codification of the charter.

Moreover, a system will not work if proper enforcement cannot take place. If a taxpayer or a Member State is to avoid non-cooperation, deterrent measures must be available. In any case, it must be possible to intervene when a taxpayer or a Member State fails to cooperate voluntarily without justification. Such a comprehensive recovery system must be balanced between the powers of the tax administration and the taxpayer, and between the Member State and the European Commission.