

L.N. 492 of 2004

**EUROPEAN UNION ACT, 2003
(ACT NO. V OF 2003)**

**Implementation of Directive 2004/56/EC
(Mutual Assistance by the Competent Authorities of the
Member States in the field of Direct Taxation, certain Excise
Duties and taxation of Insurance Premiums) Order, 2004**

IN exercise of the powers conferred by sub-article (2) of article 4 of the European Union Act, 2003, hereinafter referred to as “the Act”, the Prime Minister and Minister of Finance has made the following Order:-

1. (1) The title of this Order is the Implementation of Directive 2004/56/EC (Mutual Assistance by the Competent Authorities of the Member States in the field of Direct Taxation, certain Excise Duties and taxation of Insurance Premiums) Order, 2004. Citation,
application and
commencement.

(2) This Order shall come into force on the 1st January, 2005.

(3) The provisions of this Order shall be without prejudice to the provisions of the European Union Directives Regulations, 2004 issued under and for the purposes of the Income Tax Act. L.N. 267 of 2004.
Cap 123.

2. In this Order, unless the context otherwise requires: Interpretation.

“the Directive” means the provisions of Council Directive 77/799/EEC on mutual assistance by the competent authorities of the Member States in the field of direct taxation, certain excise duties and taxation of insurance premiums of the 19th December, 1977 as amended and of Council Directive 2004/56/EC of the 21st April, 2004 laying down detailed directives for implementing certain provisions of the said Council Directives other than the provisions of the said Directives insofar as they relate to Income Tax payable in terms of the Income Tax Act.

“Member State” means any State referred to in the definition of “the Treaty” contained in article 2(1) of the Act.

Directive to have effect.

3. The Directive is adopted as part of the laws of Malta and shall have effect in Malta accordingly.

Appointment of the competent authority.

4. (1) For the purpose of the Directive, the competent authority in Malta is the Minister responsible for finance or any other person or persons designated by the Minister responsible for finance by means of an order in writing.

(2) An order in writing as provided for in sub-article (1) hereof may designate different persons to act as the competent authority for different types of taxation or for different purposes of the Directive.

Information at the disposal of the competent authority.

5. (1) In order to obtain the information sought, the competent authority shall proceed as though acting on its own account or at the request of another authority in Malta.

(2) All information made known to the competent authority shall be kept secret in the same manner as information received under other national legislation. In any case, such information:

(a) may be made available only to the persons directly involved in the assessment of the tax or in the administrative control of this assessment;

(b) may be made known only in connection with judicial proceedings or administrative proceedings involving sanctions undertaken with a view to, or relating to, the making or reviewing the tax assessment and only to persons who are directly involved in such proceedings; such information may, however, be disclosed during public hearings or in judgements if the competent authority of the Member State supplying the information raises no objection at the time when it first supplies the information;

(c) shall in no circumstances be used other than for taxation purposes or in connection with judicial proceedings or administrative proceedings involving sanctions undertaken with a view to, or in relation to, the making or reviewing of the tax assessment.

(3) The information referred to in article 5 may be used for assessment of other levies, duties and taxes covered by Article 2 of Directive 76/308/EEC.

6. (1) The competent authority may refrain to provide information or carry out inquiries or communicate information if it would be contrary to other national legislation or administrative practices.

Withholding of information.

(2) The competent authority may refrain from transmitting such information when the Member State requesting it is unable, for reasons of fact or law, to provide the same type of information.

7. (1) At the request of the competent authority of another Member State, the competent authority shall, in accordance with rules governing the notification of similar instruments in the requested Member State, notify the addressee of all instruments and decisions which emanate from the administrative authorities of the requesting Member State and which concern the application in its territory of legislation on taxes covered by the Directive.

Notification.

(2) Requests for notification shall indicate the subject of the instrument or decision to be notified and shall specify the name and address of the addressee, together with any other information which may facilitate identification of the addressee.

(3) The competent authority shall inform the requesting authority immediately of its response to the request for notification and shall notify it, in particular, of the date of notification of the decision or instrument to the addressee.

8. (1) Where the tax situation of one or more persons liable to tax is of common or complementary interest to two or more Member States, the competent authority may agree to conduct simultaneous controls with its counterparts in other Member States, with a view to exchanging information thus obtained, whenever they would appear to be more effective than controls conducted on its own.

Simultaneous controls.

(2) The competent authority shall identify independently the persons liable to tax whom it intends to propose for simultaneous control. It shall notify the respective competent authorities in the other Member States concerned of the cases which, in its view, should be subject to simultaneous control. It shall give reasons for its choice, as far as possible, by providing the information which led to its decision. It shall specify the period of time during which such controls should be conducted.

(3) The competent authority shall decide whether it wishes to take part in simultaneous controls. It shall confirm its agreement or communicate its reasoned refusal to its counterpart authority.

(4) The competent authority shall appoint a representative with responsibility for supervising and coordinating the control operation.