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Mutual assistance in the recovery of tax claims: no Government of India in the European Union?

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Legislation: [Council Directive 76/308 on mutual assistance for the recovery of claims resulting from operations forming part of the system of financing the European Agricultural Guidance and Guarantee Fund](#)

Case: [India v Taylor \[1955\] A.C. 491 \(HL\)](#)

IT would have been very easy to miss a proposal from the European Commission which may significantly restrict the *Government of India* principle within the European Union. In June, last year, the Commission adopted a proposal to amend Directive 76/308/EEC. The impact of this proposal would be wide-reaching.

It is a generally recognised principle of international law that one state will not assist in the enforcement of a tax debt due to another state. In the United Kingdom this is recognised as the principle in *Government of India v. Taylor*.¹ The principle is recognised by many other countries around the world including other members of the European Union.

There are, however, exceptions. Within the European Union, an exception is found in Council Directive 76/308/EEC of March 15, 1976. That Directive provides for certain debts for unpaid taxes and duties owed to another Member State to be recovered elsewhere within the Union.

The Directive originally applied only to refunds connected with the common agricultural policy, agricultural levies and customs duties. In 1979, however, the Directive was extended to VAT and excise duties on tobacco, alcohol and mineral oils.² Up to this point there was a certain logic. Customs duties, for example, are collected by Member States on behalf of the European Union: it was logical that they should be recoverable throughout the Union. Similarly, when VAT was added to the Directive, this could be justified on grounds that part of the VAT receipts constituted the resources available to the institutions of the European Union.

The new proposal from the Commission, however, would extend the provisions for mutual assistance in the recovery of unpaid taxes to "taxes on income and capital". These are defined as those taxes enumerated in Article 1 of the directive providing for exchange of information between Member States.³ In the case of the United Kingdom, the taxes to which this would apply would be income tax, corporation tax, capital gains tax, petroleum revenue tax and (to the extent still outstanding) development land tax. For other Member States the taxes that would now be eligible for assistance in recovery would include similar individual and corporate taxes on income and on capital.

If the Commission's proposal is adopted then the principle of non-assistance in the direct enforcement of foreign tax debts all but disappears within the European Union. Revenue authorities of Member States will be obliged to collect unpaid taxes on behalf of other Member States with the exception only of taxes such as estate duties, inheritance taxes and stamp duties.

This proposal for a major extension of mutual assistance in recovery has gone largely unnoticed. In the past, the United Kingdom government has been unenthusiastic about proposals for mutual assistance in the recovery of tax claims. The United Kingdom decided not to sign up to the OECD/Council of Europe multilateral agreement for mutual assistance. It would be interesting to see whether the United Kingdom is willing to accept this new proposal from the Commission or to reject an extension of mutual assistance in recovery to taxes which have no direct relevance to community funding.

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1.[1955] A.C. 491.

2.By Council Directive 79/1071/EEC.

3.Directive 77/799/EEC.

4.Gray's Inn Tax Chambers.

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