Mutual assistance for the recovery of taxes

DG Taxation and Customs Union
Indirect taxation and tax administration
Administrative cooperation and fight against fiscal fraud

May 2006
I. GENERAL OVERVIEW

• A. What is the legal basis?

• B. Which claims are concerned?

• C. What are the means of recovery assistance?
A. Legal basis?

- Original directives:

- Legislation at present:
    - amended several times
    - Latest major change: Directive 2001/44/EC
B. Which claims are concerned?

- Agricultural levies and refunds
- Import and export duties
- VAT (scope extended by Dir. 79/1071/EEC)
- Harmonised Excise Duties (scope extended by Dir. 92/108/EEC)
- Taxes on income and capital, and taxes on insurance premiums (scope extended by Dir. 2001/44/EC).

- Further extensions? (cf. OECD Model convention)
C. Possible means of recovery assistance

• Requests for information
  – To obtain info on the debtor or a third party, or on assets

• Requests for notification
  – Notification of decisions or other documents relating to a claim and/or its recovery

• Requests for recovery or precautionary measures
  – To recover the money/ to guarantee the payment

• A. Number of information requests

• B. Number of notification requests

• C. Number of recovery requests

• D. Amounts recovered
A. Information requests received (according to requested MS)
B. Notification requests received (according to requested MS)
C. Recovery requests received (according to requested MS)
D. Amounts recovered by the requested MS
(according to these MS)
III. HANDLING OF RECOVERY REQUESTS

• A. Conditions

• B. Legislation applicable to the actions undertaken by the requested authority

• C. Disputes about the claim or the recovery procedure

• D. Costs of the assistance
A. Conditions

- Applicant Member State has applied appropriate recovery procedures (Art. 7(2)(b) Dir. 76/308/EEC).

- Claim and/or the instrument permitting is enforcement are not contested (Art. 7(2)(a) Dir. 76/308/EEC).
  - Exception: Art. 12(2) Dir. 76/308/EEC: if legislation of both Member State allows this.

- No obligation to provide assistance for claims of more than 5 years (Art. 14, 1st al., (b) Dir. 76/308/EEC).

- Minimum amount of the claim: 1500 euro (Art. 25(2) Dir. 2002/94/EC).
B. Legislation applicable

- **Direct recognition of the instrument permitting enforcement**
  - The instrument permitting enforcement is automatically treated as an instrument permitting enforcement in the Member State of the requested authority.
  - However, exceptions still possible (Art. 8(2) Dir. 76/308/EEC)

- **Requested authority applies national provisions applying to the recovery of similar claims** (Art. 6)
  - Exception: Art. 10: not necessarily the same privileges.
  - Exception: Art. 15: special rules for the suspension/interruption of periods of limitation
C. Disputes about the claim or the recovery procedure

- If the claim or the instrument permitting enforcement issued in the Member State of the applicant authority is contested → action to be brought before the competent body of the applicant Member State
  → suspension of the enforcement measures, unless requested otherwise (if allowed by law of both MS)
  → precautionary measures possible

- If the enforcement measures taken in the requested Member State are contested → action to be brought before the competent body of the requested Member State
**D. Costs of the recovery assistance**

- **Principle:** each authority bears its own costs.

- **Exception:** if recovery poses a specific problem, concerns a very large amount in costs or relates to the fight against organised crime:
  → the authorities may agree specific reimbursement arrangements.
IV. RELATION WITH OTHER ASSISTANCE AGREEMENTS

• Art. 23 Dir. 76/308/EEC: Member States can agree to afford each other more assistance.

• Note: No application of the Joint Council of Europe/OECD Convention of 1988 in relations between EU Member States, with regard to taxes falling within the scope of the EU Directives (Art. 27 (2) of this Convention).
V. CONCLUSIONS and FUTURE

- Tendency: increasing use + increasing results.
- Moreover: mutual recovery assistance is essential to prevent tax fraud! (deterrence)

- 2007: Commission proposal to improve the existing system.

Some ideas:
- Further extension of the scope
- Spontaneous exchange of information on refunds
- Harmonised instrument permitting enforcement
- Improved electronic forms