Screening Serbia
15.10.2014

Mutual assistance for the recovery of taxes

DG Taxation and Customs Union
Indirect taxation and tax administration
Unit C4 – Sector C

10 September 2014
• **History:**


• **Present legislation (since 01.01.2012)**

    (OJ L 84, 31.3.2010, p. 1)

    (OJ L 302, 19.11.2011, p. 16)
Scope (Art. 2)

- All taxes and duties of any kind levied:
  - by or on behalf of a Member State
  - by or on behalf of its territorial or administrative subdivisions
  - by or or behalf of local authorities
  - on behalf of the EU
  - agricultural levies (EU agricultural funds)

- Including administrative penalties, interest and costs

- But not:
  - compulsory social security contributions (recovery assistance under other EU legislation)
  - dues of a contractual nature (consideration for public utilities)
Forms of assistance

- **Requests for information** (Art. 5)
  - To obtain info on the debtor or a third party, or on assets

- **Requests for notification** (Art. 8)
  - Notification of decisions or other documents relating to a claim and/or its recovery

- **Requests for recovery or precautionary measures** (Art. 11 and 16)
  - To recover the money/ to guarantee the payment

- **Exchange of info without prior request** (Art. 6)

- **Presence in administrative offices and participation in administrative enquiries in another Member State** (Art. 7)
• **Minimum threshold?**
  – Not anymore for information and notification requests
  – Requests for recovery or precautionary measures:
    no obligation to grant assistance under 1500 €

• **Maximum age?**
  – For all requests: no obligation to grant assistance if claim is > 5 years
    (from the due date of the claim to the date of the initial request for assistance).

• **Recovery assistance: specific conditions:**
  – Not if claim is contested (unless possible in both States)
  – Appropriate recovery measures must be taken in the applicant State first, unless:
    • If obvious that there are no assets for recovery in applicant State;
    • If obvious that procedures in applicant State will not result in full payment and the person concerned has assets in the other Member State;
    • If disproportionate difficulty to recover in the applicant Member State.
• EU-legislation: rules about mutual assistance between MS

• Requested authority applies national provisions applying to the recovery of similar claims (if no similar claim: then law concerning personal income tax is to be applied)
  – Exception: Art. 13(1): not necessarily the same privileges.
  – Exception: Art. 19: special rules for the suspension/interruption of periods of limitation

• No recognition or replacement of other Member States’ instruments permitting enforcement (use of UIPE; cf. infra)
• Accompanies each request for notification
  
  − Notification in accordance with national law of requested MS (= cf. current situation)
  
  − But notified documents are accompanied by the UNF.

- UNF contains a description of the notified document

- no translation of attached document required

- model form, integrated in the request form, and automatically translated

  facilitates the work of the requested MS

  = guarantee for the tax debtor

  (cf. ECJ, 14.1.2010, C-233/08, Kyrian)
UIPE (Art. 12)

- **UIPE**: Uniform instrument permitting enforcement in the requested MS

- **Reasons:**
  - to solve problems of acknowledgment, replacement, translation of instruments of other MS
  - to reduce the workload for the requested MS

- **Recovery measures in the requested MS are based on the UIPE**
  - Model form
  - UIPE is created automatically when the electronic request form is filled out.
  - UIPE is translated automatically.
Permitting Enforcement

MS of the AA

Tax claim

National Instrument Permitting Enforcement
in the MS of the AA

- payment
- no payment

- recovery
  - no recovery

Uniform Instrument Permitting Enforcement
in the MS of the RA

Recovery measures

Recovery request
Disputes (Art. 14)

Tax claim

National Instrument Permitting Enforcement
in the MS of the AA

Notification made by authorities of the applicant MS

Uniform Instrument Permitting Enforcement
in the MS of the RA

NATIONAL COURT

Payment

No payment

Recovery

No recovery

Notifications made by authorities of the requested MS

Recovery request

NATIONAL COURT

MS of the AA

MS of the RA

Recovery measures
Dispute → revised UIPE (Art. 15 (2))

MS of the AA
- Tax claim
- National Instrument Permitting Enforcement in the MS of the AA
  - payment
  - no payment
    - recovery
    - no recovery

National Court

MS of the RA
- NATIONAL COURT
- Recovery measures
- Amended recovery request
- REVISED Uniform Instrument Permitting Enforcement in the requested MS
Costs (Art. 20)

- Requested MS can deduct its costs from the recovered amounts

- If costs > recovered amounts: no reimbursement by the applicant MS, unless specific arrangement is agreed.
Standard forms – Means of communication (Art. 21)

- Use of standard e-forms:
  - For the requests
  - For the uniform instrument permitting enforcement in the requested MS
  - For the uniform notification form

- Electronic communication of requests
Application of other agreements (Art. 24)

- Extension of the scope → little use of other arrangements between MS

- But Directive allows to use other agreements « providing wider assistance ».

MS can use the electronic communication network and the request forms developed by the EU.
ECJ, 1.7.2004, C-361/02 & C-362/02, Tsapalos & Diamantakis:

Application in relations with new Member States

Date of accession

Claim assessed before that date

Recovery assistance is possible,
Also for the old claims*
(for old & new MS)

* But with age limit (cf. supra)
1. Nature of the claims for which recovery assistance is requested

<table>
<thead>
<tr>
<th>Year</th>
<th>VAT</th>
<th>Direct taxes</th>
<th>customs</th>
<th>Other taxes</th>
<th>Other claims</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011 (26 MS)</td>
<td>62,48 %</td>
<td>28,68 %</td>
<td>3,44 %</td>
<td>1,28 %</td>
<td>4,12 %</td>
</tr>
<tr>
<td>2012 (26 MS)</td>
<td>42 %</td>
<td>20 %</td>
<td>14 %</td>
<td>21 %</td>
<td>3 %</td>
</tr>
<tr>
<td>2013 (26 MS)</td>
<td>57,83 %</td>
<td>18,37 %</td>
<td>1,67 %</td>
<td>1,28 %</td>
<td>20,85 %</td>
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</table>
2. Evolution of number of requests

<table>
<thead>
<tr>
<th>Year</th>
<th>Requests for information</th>
<th>Requests for notification</th>
<th>Requests for precautionary measures</th>
<th>Requests for recovery</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>435</td>
<td>123</td>
<td></td>
<td>2797</td>
</tr>
<tr>
<td>2004</td>
<td>727</td>
<td>182</td>
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<td>3735</td>
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<tr>
<td>2005</td>
<td>1488</td>
<td>654</td>
<td></td>
<td>6327</td>
</tr>
<tr>
<td>2006</td>
<td>1730</td>
<td>953</td>
<td></td>
<td>7041</td>
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<td>2007</td>
<td>2026</td>
<td>1325</td>
<td></td>
<td>8443</td>
</tr>
<tr>
<td>2008</td>
<td>1889</td>
<td>1974</td>
<td></td>
<td>8221</td>
</tr>
<tr>
<td>2009</td>
<td>2259</td>
<td>1946</td>
<td></td>
<td>6575</td>
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<tr>
<td>2010</td>
<td>2975</td>
<td>1284</td>
<td></td>
<td>8587</td>
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<tr>
<td>2011</td>
<td>3218</td>
<td>1284</td>
<td>34</td>
<td>9566</td>
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<td>2012</td>
<td>6081</td>
<td>1323</td>
<td>51</td>
<td>7661</td>
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<tr>
<td>2013</td>
<td>8250</td>
<td>2066</td>
<td>102</td>
<td>10391</td>
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</table>
3. Evolution of amounts recovered

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount in €</th>
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<tbody>
<tr>
<td>2003</td>
<td>6,363,483</td>
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<tr>
<td>2004</td>
<td>6,752,569</td>
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<td>2005</td>
<td>19,746,635</td>
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<td>2006</td>
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<td>2010</td>
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<td>2011</td>
<td>62,475,879</td>
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<td>2012</td>
<td>32,076,738</td>
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<tr>
<td>2013</td>
<td>41,115,223</td>
</tr>
</tbody>
</table>
DG Taxation and Customs Union
Directorate C. Indirect taxation and tax administration
Unit C4 – Sector C