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INFORMATION NOTE – VAT DOUBLE TAXATION – DIALOGUE BETWEEN TAX ADMINISTRATIONS

1. Participating Member States

Responding to the EU VAT Forum's request, the following Member States support a dialogue between tax authorities of the Member States concerned, in view of solving VAT double taxation issues: **Belgium, Denmark, Estonia, Ireland, Spain, France, Latvia, Lithuania, Netherlands, Finland, Sweden.**

2. Relevant situations/circumstances to initiate the dialogue

Situations may occur where VAT is wrongly paid in one Member State due to "errors". At a later stage, a dispute could arise in another Member State, when the tax authorities of that State claim VAT on the same transaction.

For business as well as for tax authorities, the correct VAT treatment of taxable transactions depends on:

- a correct understanding of the facts and conditions relating to the transaction concerned;
- a correct interpretation of the VAT rules applying to that situation.

It is possible that VAT is paid in one Member State, based on the contracting parties' assumption that the VAT is indeed due in that Member State. And there may have been a tax audit in that Member State which did not question the VAT treatment applied to this transaction.

If, at a later stage, another Member State considers that, for VAT purposes, the transaction at stake has taken place on its territory and that VAT should be paid in that other Member State, this claim could lead to a situation of double taxation, which is contrary to the principle that each transaction should only be taxed once.

3. Dialogue request

In such a case of two Member States claiming VAT on the same transaction, the **taxable person can ask that the Member States concerned enter into a dialogue** and that they endeavour to solve the case by mutual agreement.

The basic idea of this dialogue is that it may help to solve the problem, as it may change the views on the facts of a case, or on the interpretation of that case. So a dialogue may – depending on the case and the circumstances – make it clear for one of the Member States concerned that this Member State was wrong in taxing the transaction. In that case, it is presumed that there is no national legal problem to accept that the transaction is not

taxable in that country (although limitation periods may prevent a correction if VAT was wrongly paid in that Member State).

This is different from the EU VAT Cross Border Ruling Project (CBR)¹, which allows to ask for an official opinion from the tax authorities involved in advance of the transaction.

4. **Voluntary co-operation**

This initiative of the VAT Forum is based on a voluntary co-operation. It does not replace other specific legal arrangements or agreements (such as double taxation conventions, if they apply to VAT) imposing a clear legal obligation for the Member States concerned to enter into negotiations in such double taxation cases.

Furthermore, it is acknowledged that a certain number of Member States already practice a dialogue at the request of the taxable person concerned. In no way, the EU VAT forum initiative is meant to be a substitute for the existing dialogue channels and procedures between Member States.

The EU VAT Forum dialogue comes as an additional but not binding support for a more efficient VAT collection and allocation by tax authorities and fruitful cooperative compliance with taxpayers.

5. **Where and how to address a request for such a dialogue?**

The current participants indicated that a direct contact between the competent tax control offices of the Member States concerned can take place, on the basis of the information and possible contact details provided by the taxable person.

The taxable person introducing a request for a dialogue on a double taxation issue is considered to accept that the data provided can be shared with the tax authorities of the Member State(s) concerned.

Applicants are requested to provide a detailed and clear description of their case and of their opinion and/or doubts with regard to the applied VAT regime.

On the basis of such a request, the Member States concerned will consult each other. Contacts will be established as soon as possible. National rules with regard to reply deadlines may not apply to these dialogue requests.

6 **Limits**

The purpose is to help the taxable persons to solve problems of double taxation, but the aim is not to promote an agreement where one of the Member States gives up its legitimate taxing right – which is at the same time a taxing "obligation" – under its national law.

There is no obligation for the Member States concerned to come to a mutual agreement nor to start some kind of arbitration procedure in case of unresolved situations.

It is for each Member State to decide, in accordance with its own rules, about a possible review of time limits in national procedures when dealing with the reimbursement claims

¹ Further information on the CBR pilot project :
http://ec.europa.eu/taxation_customs/taxation/vat/traders/cross_border_rulings/index_en.htm

of undue VAT. It is also for the Member States to decide about retroactive corrections and to deal with potential VAT neutrality questions.

7. What if there is no agreement after the dialogue?

Obviously, it is not expected that the dialogue will lead to a mutual agreement in all circumstances. If two Member States are claiming VAT on the same transaction, this is not always due to "errors" relating to an unclear presentation or a misunderstanding of the precise facts and conditions of the case, or to errors in the interpretation of the VAT rules applying to that case

If a dispute remains about which Member State is entitled to tax – or if the taxable person does not wish to make a dialogue request – he may go to court and start proceedings against the Member State which in his view is not respecting the law.

However, even if the dialogue does not allow to solve the discussion, the dialogue may be of use to clarify the situation and properly frame the litigation before a Court. It would still help the taxpayer to fully understand the views of the VAT authorities of the Member States involved in the transactions at stake.

It is important to stress that in no way the dialogue is meant to interfere with the available appeal procedures in the Member States concerned.