EU AND INTERNATIONAL TAX COLLECTION NEWS

2015 – 3

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EU ACTIVITIES

Tax Collection Platform (FPG 33)

Fiscalis Conference Lisbon October 2015

This newsletter contains the public version of reports prepared within the EU Fiscalis project group 33 "Tax Collection Platform" for the conference in Lisbon (Portugal) in October 2015.

This conference allowed the EU Fiscalis project group of the Tax Collection Platform to share and discuss with all EU Member States the state of play of its on-going work, including the following topics: organisation of recovery at national level in the execution of mutual recovery assistance; precautionary measures; disqualification orders; retracing missing debtors; e-services for instalment; criteria for identifying and prioritizing tax debtors; insolvency.

Group of participants (Lisbon, 27-28 October 2015)

This conference focused on two main topics:

- **the use of e-instalment services**

  Some Member States' delegates presented their "best practices" in this field. These presentations clearly illustrated the efforts of the Member States concerned to facilitate tax collection and to cope with the challenges resulting from the considerable number of instalment requests (administrative burden related to the approval and follow-up of the requests ↔ reduction of the staff also affecting the number of officials dealing with these requests).

  It was also noted that the automated handling of e-instalment requests should not exclude risk assessment.

- **precautionary measures**

  Precautionary measures safeguarding the rights of tax collection authorities are an important tool in the fight against tax fraud.

  The EU rules concerning requests for precautionary measures were presented and an overview was made of national practices and conditions in the field of precautionary measures.

  The working sessions on this topic led to the conclusion that new initiatives could improve the use of this tool in international assistance in tax collection. The information collected in the preparation of this conference will be made available to all tax authorities involved in cross border assistance, and further work could be undertaken for the development of the LISBOA (Listing of Information and Statement for Building up the Other's Actions) module, in order to facilitate the follow-up of requests for precautionary measures.

General report on e-services for instalment

Report by: L. Mulqueen

Contributors: L. Mulqueen, T. Kutberg, R. Cabeza Chevron, A. van Eijsden, J.P. Cordeiro, S. Wells

The report outlines the procedures involved in dealing with e-instalments/e-deferment in Estonia and Spain[1] and addresses the questions raised by the group members under the various headings below. The report includes a brief note on the operation of e-Instalments in USA and Australia.

1. e-Instalment conditions

1.1. Thresholds

EE

Small claim is a debt up to €3200. This is the maximum debt threshold allowable for e-Instalments. If the tax debt and calculated interest total over €3,200, you cannot apply for an e-instalment arrangement. €3,200 includes the claims for interests where due date has passed.

ES

There is no maximum or minimum amount of debt required to qualify for e-instalment.

1.2. Tax Types

EE

In the e-Instalment environment all tax types are included with the exception of fines, penalty payments, court claims and any tax arrear already referred to a bailiff for collection.

ES

All debts can be included with the following exceptions, certain debts in bankruptcies procedures, withholding taxes (with exceptions) and debts paid with revenue stamps.

1.3. Duration of e-Instalment

EE

Maximum length of an e-Instalment arrangement is 6 months and min length is 2 months.

ES

The maximum length of an instalment arrangement is never more than 5 years and the minimum length is 1 month or shorter if requested by the taxpayer.

1.4. Qualification Criteria

EE

- All tax returns must be submitted,
- A natural person must have a legal income,
- A legal person must have declared turnover for 3 months or must have declared the payments subject to social tax according to the submitted TSD (income and social tax return);

Note: Legal Person means all kind of companies, general partnership, limited partnership, private limited company, public limited company, commercial association, sole proprietors.

A person:

- must not have unpaid fines, penalty payment or court claims,
- must not be in bankruptcy, liquidation or have reorganisation proceedings initiated,
- must not have any solidary debt,
- must not have tax arrears with the bailiff for collection,
- must not have had a payment arrangements cancelled in the last six months.

The debt is not subject to any appeals.

If the criteria for e-instalment are fulfilled, then other information concerning the past performance of arrangements is not analysed.

ES

There are no special criteria to be fulfilled for e-instalments. Once the request is submitted, rules applied are those in place for any type of an instalment arrangement.

2. Processing of application

2.1. The application

EE

In order to set up an e-Instalment arrangement, debtors must login through the e-Tax Board/e-Customs system and complete the online application form. On the homepage www.emta.ee the user can enter the e-Tax Board system via http://www.emta.ee/index.php?id=12223 . To enter this system, a person has to use their ID-card, Mobile-

[1] The procedures and regulations in Spain are applicable to all types of applications for instalment arrangements/deferments.

ID or internet bank. The e-Instalment application must be submitted through this system.
Debtors can avail of the instalment calculator on the webpage. This calculator is provided to allow the debtor to quantify the interest due but is not linked to the application submitted. The real schedule is set up when the arrangement is approved by the Tax Officer.

ES
In order to use the e-services related to deferments, taxpayer must access via the electronic office located on the webpage www.agenciatributaria.es. Taxpayers must have an electronic signature in order to use e-services.

2.2. Processing of application

EE
The Estonian Tax Authority will be aware when an e-Instalment application is submitted. All e-Instalment applications are allocated a specific sign. When the decision is made, it will be given a reference number in order to differentiate the schedules. The system does not confirm/approve the applications automatically; it will be checked by a Tax Officer. To do this, a list of persons who have applied for an e-instalment are extracted from the system and the applications are bulk approved/confirmed and signed digitally by Tax Officer.

Where the debtor satisfies all the conditions above the application will be accepted (notification on the screen) and after the Tax Officer has confirmed/approved, the debtor will receive a decision and schedule through the e-system or by post,(requirement to have the decision by e-system is to have a valid e-mail or telephone number in the system).

Notification of qualification is issued in real time (Immediate) and the decision and schedule is sent to debtors via e-mail or post.

Where debtor fails to satisfy the conditions they are automatically notified on the screen, i.e. e-instalment cannot be processed and the application will have to be submitted by post or by e-mail.

If the conditions/circumstances have changed between the application stage and approval stage and the debtor does not now qualify for e-instalment, the application will be dismissed.

ES
All applications types i.e. paper, online, etc., are treated the same way, same rules and procedures are applied. When the taxpayer submits his electronic request for e-instalment, it creates a file in their "IT tool for deferment applications" which is manager by Tax officer. Once the action is carried out by the Tax Officer, the deferment file go through another IT tool, the "IT tool for deferment decisions" (grant, deny), proceeding as regulations allow. The subsequent online actions regarding those deferment files (answer to a request of information, a modification of the bank account) will also appear on their IT tools allowing Tax officer to proceed.

If the deferment application fulfils the requirements to receive an automated treatment, it´s managed without human intervention. The IT tools will pass the file to another stage, verifying if it fulfils the requirement to be granted, deny etc. This option **does not rely on how the application was submitted originally e.g.** online, offices, by phone etc.

2.3. Manual Intervention:

EE
Where the debtor fails to qualify or no longer qualifies for an e-instalment arrangement,
Tax Officer will contact the debtor to notify that person of the decision. The only manual interventions are confirming/approving the applications, contacting debtors who fail to qualify for the e-instalment and checking whether the e-instalments are paid correctly, if not debtors will be contacted by the Tax Officer.

All instalments over €3200 are dealt with via a manual process and debtors have to submit additional documentation to support their request for an arrangement.

ES
If the deferment file does not meet the requirements to receive an automated management, the Instalment arrangement is manually controlled by the Tax officer regardless of how the application was submitted.

3. Payment methods

EE
The rules and regulation for making an instalment arrangement are prescribed in the Estonian Tax Act.

The amount of the tax arrears to be paid by instalments may range from €50 to €3200.

There is no minimum amount for each payment.

Estonian Tax Authority operate a prepayment account system, which means that the debtor can make payments by using a payment schedule reference number and all debts are paid according to the due date, starting from the oldest debt first. Debtor cannot select which tax to pay first, this is done automatically by the system. Payments can be made manually by the debtor or by direct debit through a bank. There is also the option on the e-system that allows the Debtor to login to their internet banking and pay the debt in full or by instalment.

ES

Payment by Direct Debits is compulsory since 01/01/2010 with some exceptions, debtors without legal personality. The Bank account requirements for Direct Debits are established by order EHA/1658/2009. The debtor or his representative can manage the bank accounts online.

4. Interest

EE

In the e-instalment arrangement, Interest is included, which is paid as per the schedule. The interest is not added automatically to the monthly payments, but debtors have an option to make a claim for interest or contact the Tax Officer to arrange it. Interest is calculated until the principal debt is fully paid and the new claim for interest can be made when the current e-instalment is completed or if the e instalment is cancelled.

It is possible to set up a new e-instalment for the calculated interest when the tax is fully paid. It is also possible to pay the interest in full at the end of the current arrangement. A claim (demand) for interest will issue to the debtor with an instruction to pay within 10 days.

ES

When the deferment is granted, interest is automatically added. The interest rate may vary.

5. Monitoring e-Instalments/Reports

EE

Our system provides an opportunity to extract list of persons, who have an e-instalment arrangement in place and who are in breach of the qualifying conditions (parameters used-it is possible by using a certain interval of alphabet and marking that debtor has a valid graphic). The debtors on the list are contacted by the Tax officers by phone or by e-mail to remind them the payment obligation (it is not done automatically).

There is a reporting facility built into this e-service system which allows Tax Officers to extract information on

- How many arrangement applications,
- Number of approved/disapproved e instalment applications
- How many annulments and default arrangements.

ES

IT Tools allow full control over deferment applications and deferment decisions. It is capable of detecting what stage the application is currently at and extracting that data in report format.

6. Cancel/Annul an e Instalment

EE

The conditions to annul/cancel the arrangement are prescribed in the Estonian Tax Act. If the person doe not pay the instalments, the Tax Authority have right to cancel the arrangement at anytime.

The e-instalment arrangement is cancelled if a debtor does not pay any additional or other taxes that fall due, during this period. Debtors are notified and the arrangement is cancelled.
If a taxable person does not meet the schedule for the payment of tax arrears, does not pay taxes which become due during the period of validity of the schedule on time, does not perform an obligation provided for in the Law of Property Act to keep a thing encumbered with a pledge in order to guarantee tax arrears or, in the event of a decrease in the value of security, does not submit replacement security accepted by the tax authority, the tax authority has the right to revoke the decision on the payment of tax arrears in instalments. Tax Authority will issue a decision to the debtor that the payment arrangement is cancelled and the debt has to be paid at once.

ES

Granted deferments can be cancelled if they are not paid or if taxpayer fails to give proper documents within two months from date the deferment was notified.

7. Re-Apply for e Instalment

EE

If you re-apply after defaulting on a previous arrangement, within the 6 months since the last arrangement was cancelled, the new arrangement of e-instalments will not be approved. This rule does not differentiate between ordinary (paper) or e instalment arrangements.

ES

If the taxpayer re-submits a deferment application, identical to original submission, the application is rejected.

8. Number of arrangements:

EE

You can only have one active arrangement at any given time; however, there are no limits on the number of time you can apply for a payment arrangement.

ES

It is possible to have different deferments granted or active at the same time provided the debts included are different.

9. Post failed Arrangements

EE
Where the e instalment arrangement is cancelled and the debtor is notified, enforcement proceeding will commence immediately in relation to this debt.

ES
When the deferment arrangement fails and the debtor is notified. The consequences depends on whether it was necessary to offer a guarantee or was it offered a global guarantee for all instalments granted or if there were different guarantees, (not global) for each instalment granted. It also depends on the period when the application was submitted, voluntary or compulsory period of payments.

10. Appeal

EE
All the decisions can be appealed within 30 days.

ES
All decisions can be appealed. There are two types of appeals. Appeal must be lodged within 1 month after the deferment decision notification.

11. Staff Instruction

EE
The Estonian Tax authority provides a guide to assist staff in dealing with instalment arrangements.

ES
The Spanish tax Agency provides instructions for staff in dealing with instalments arrangements,

12. Statistics

EE
There is no separate statistic for e-instalments. The default percentage will be calculated concerning all the payment arrangements (e-instalment and ordinary arrangements) together.

ES
With IT Tools available, it is possible to extract statistics related to e-deferments.

13. Advantages/Disadvantages of e-Instalment system

EE
Advantages:
- quick proceeding, convenient, easy, less manual work
- user-friendly,
- quick, convenient and easy way to make a payment arrangement,
- debt can be paid by instalments, no additional documents or information required
- no enforcement proceedings on the tax debt,
- reduction of interest rate
- customers can send feedback through the e-system notifications or by e-mail, any time.

Disadvantages:
- paying time of the taxes will be extended
- limited period of arrangement
- limited debt amount
- no payment holiday

ES
Advantages:
- quick proceeding, convenient, easy for taxpayers to submit applications
- user-friendly,
- taxpayers can manage their e-deferments/instalments files easily

Disadvantages:
- IT errors could occur and must be corrected.

e-Services for Instalments (United States of America)

Apply for an Online Payment Agreement for Individuals and Businesses

This application allows a qualified taxpayer or authorized representative (Power of Attorney) the opportunity to avoid long telephone wait times or the need to visit or write to an IRS office to apply for an instalment agreement. Once you complete the online process, you will receive immediate notification of whether your agreement has been approved.

Individuals

Do You Qualify?

You owe $50,000 or less in combined tax, penalties and interest, and filed all required returns. You may also qualify for a short term agreement if your balance is under $100,000.

What Do You Need to Apply?

- Name
- Valid e-mail address
- Address from most recently processed tax return
- Date of birth
- Filing status
- Your Social Security Number (or spouse's if filed jointly) or Individual Tax ID Number (ITIN)

If you previously registered for an Online Payment Agreement, Get Transcript, or an Identity Protection PIN (IP PIN), you should log in with the same user ID and password.

Power of Attorney

Applying as Power of Attorney (POA) for an individual? You need:

- Taxpayer's Social Security Number (SSN) or Individual Taxpayer Identification Number (ITIN)
- Your Centralized Authorization File (CAF) number
- Caller ID from notice or POA's signature date on Form 2848
- Taxpayer's last year's Adjusted Gross Income (if 2014 was recently filed, then use 2013's AGI)

Businesses

Do You Qualify?

You owe $25,000 or less in combined tax, penalties and interest for the current year or last year's liabilities, and filed all required returns.

What Do You Need to Apply?

- Your Employer Identification Number (EIN)
- Date your EIN was assigned (MM/YYYY)
- Address from most recently processed tax return

  Your Caller ID from notice

Power of Attorney

Applying as Power of Attorney (POA) for a business? You need:

- Taxpayer's Employer Identification Number (EIN)
- Your Centralized Authorization File (CAF) number
- Caller ID from notice or POA's signature date on Form 2848

Based on the type of agreement requested, you may also need:

- Business address of most recently filed tax return
- Tax form filed or examined
- Tax period filed or examined

NOTE:

Set Up Fees

$52 for direct debit agreement

$120 for agreements not debited directly from your bank account

$43 if your income is below a certain level

No set up fees for those who qualify for Short Term agreement (120 days or less)

e-Services for Instalments.

Payment arrangements for debts under $25,000

Your client will usually be eligible to pay their tax debt by instalments if the outstanding debt is less than $25,000 and certain other conditions are met.

A payment arrangement can be organised either by your clients themselves or by you, on behalf of your clients, by calling our automated self-help numbers and following the prompts - there is no need to talk to a tax officer.

How payment arrangements work

Provided we accept the proposed arrangement, personalised payment slips will be issued within 15 working days to the postal address we currently have for your client on our records, which may be your own address.

To use this automated service you will need:

- the Australian business number (ABN) or tax file number (TFN) of your client
- full details of the amount outstanding - check the Tax Agent Portal to establish the account balance
- details of the arrangement your client would like to make, including the first payment date, payment frequency and the amount of each payment.

The first payment date must be at least 15 working days after your phone call to allow for the processing and mailing to you of your clients' personalised payment slips. These payment slips will then have to be forwarded to your clients to enable them to make their payments.

General interest charge

General interest charge (GIC) is imposed on any amount not paid by the due date. If we allow your client to pay the tax debt late, they are required by law to pay the GIC. The GIC is tax deductible in the financial year in which it is incurred. The law also provides for remission of all or part of the GIC in limited circumstances.

Eligibility to pay by instalments

Your client will usually be eligible to pay their tax debt by instalments if they meet the following conditions:

- the outstanding debt is less than $25,000 (check the portal to establish the account balance)
- your client is unable to pay the debt off in full by the due date
- your client wants to pay the debt in instalments
- the debt can be paid off by instalments within two years
- your client has a good compliance history and adequate funds to enter into the payment arrangement and meet any future tax obligations on time.

Requests for precautionary measures: the EU framework

Report by: L. Vandenberghe

Contributors: H. Steffens, J.M. Moriceau

The term "precautionary measures"

1. Directive 2010/24/EU does not define the term "precautionary measures". In the OECD and the UN model conventions (Art. 27(4)) and the OECD-Council of Europe Convention on Mutual Administrative Assistance in Tax Matters (Art. 12), the term "measures of conservancy" is used to describe this type of actions. Such measures aim at safeguarding the rights of the tax authorities, in particular where a claim or the instrument permitting enforcement is contested, or where the claim is not yet the subject of an instrument permitting enforcement. Precautionary measures have a temporary character; while recovery measures aim at creating a definitive effect.

2. Examples of precautionary measures: the seizure or the freezing of assets of the taxpayer before a final judgment on the tax debt, to guarantee that they will still be there when the enforcement takes place[1]; bank guarantees, freezing of assets belonging to the taxpayer but held by contracting parties.

Conditions for sending a request for precautionary measures

3. A request for precautionary measures can be sent where a claim or the instrument permitting enforcement in the applicant Member State is contested at the time when the request is made,[2] or where the claim is not yet the subject of an instrument permitting enforcement in the applicant Member State (Art. 16(1), first paragraph of Directive 2010/24).

4. Is it possible to send a request for precautionary measures with regard to cases where there the claim and the (already existing) instrument permitting enforcement in the applicant Member State are not contested? In these cases, the applicant Member State should – and will – normally try to recover the claim itself before asking any assistance, in accordance with Art. 11(2) of Directive 2010/24. However, recovery assistance can be requested before the appropriate recovery procedures available in the applicant Member State are applied (1°) where it is obvious that there are no assets for recovery in the applicant Member State or that such procedures will not result in the payment in full of the claim, and the applicant authority has specific information indicating that the person concerned has assets in the requested Member State; or (2°) where recourse to such procedures in the applicant Member State would give rise to disproportionate difficulty (Art. 11(2)). In the latter cases, it seems logic that the applicant Member State immediately sends a request for recovery measures and not a request for precautionary measures.

5. It may be envisaged to amend Directive 2010/24, adding a clear possibility for the applicant Member State to send a request for precautionary measures in those situations where the recovery measures available in the applicant Member State have not yet been exhausted or have not yet started.

6. Article 16(1), first paragraph of Directive 2010/24 also imposes another condition for sending requests for precautionary measures: such a request is only allowed in so far as precautionary measures are also possible, in a similar situation, under the national law and administrative practices of the applicant Member State. On this point, it should be emphasized that the directive only refers to "precautionary measures" in general. It means that such a request is possible in situations where the national law and administrative practice of the applicant Member State allows some but not all precautionary measures.

7. It is not necessary for the applicant Member State to apply precautionary measures available on its own territory before sending a request for precautionary measures to another Member State. In this regard, it should be noted that Art. 17 of the directive, concerning "rules governing the request for precautionary measures" does not refer 'mutatis mutandis' to Art. 11(2) of the Directive, which imposes this condition in case of requests for recovery. On this point, the different treatment of requests for precautionary measures is justified, since normally a request for precautionary measures will only be sent if the applicant authorities have specific reasons to believe that precautionary measures can effectively be taken in the requested Member State. Precautionary measures are mostly needed in situations where an immediate action is wishful or required to guarantee the later enforcement. Therefore, the EU directive does not submit such a request for precautionary measures to the condition of prior application of appropriate precautionary measures in the applicant Member State. (Of course, it is clear that such measures will also – or first – be taken in the applicant Member State if they can be applied there).

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1 Revised Explanatory Report to the OECD-Council of Europe Convention, point 123.

2 It is also possible that a request for recovery assistance is sent before the claim or the related instrument is contested. In that case, the requested authority can still take precautionary measures once it is contested, at the request of the applicant authority "or where otherwise deemed necessary by the requested authority" (Art. 14(4), 2nd subparagraph of Directive 2010/24/EU).

On this point, the EU approach is not different from the approach adopted at the level of the OECD-Council of Europe Convention. Article 12 of that convention does not submit a request for measures of conservancy to any specific condition. The explanatory report to this Convention (point 125) explicitly states that a request for measures of conservancy cannot be made before the applicant State itself "can" take such measures[3]; however, it does not mention that the applicant State should take such measures itself before it can make such a request to another State.

Accompanying document ?

8. Directive 2010/24 does not provide for a "uniform instrument permitting precautionary measures in the requested Member State". The European Commission had suggested the adoption of such a uniform instrument when it presented its proposal for this directive, but the Council did not follow this suggestion.

9. The directive nevertheless contains some provisions that are of interest in this respect:
- *"Any request for recovery shall be accompanied by a uniform instrument permitting enforcement in the requested Member State. This uniform instrument permitting enforcement in the requested Member State shall reflect the substantial contents of the initial instrument permitting enforcement, and constitute the sole basis for the recovery and precautionary measures taken in the requested Member State."* (Art. 12(1), 1st and 2nd paragraph, of the directive);
- *"The document drawn up for permitting precautionary measures in the applicant Member State and relating to the claim for which mutual assistance is requested, if any, shall be attached to the request for precautionary measures in the requested Member State"* (Art. 16(1), 2nd subparagraph, of the directive).

10. With regard to the two above provisions, it should be noted:
- that the uniform instrument permitting recovery measures in the requested Member State does not necessarily exist at the time of the request for precautionary measures. Indeed, Article 16(1), first subparagraph, of the directive clearly confirms that precautionary measures can be requested "where the claim is not yet the subject of an instrument permitting enforcement in the applicant Member State", which implies that there is no possibility to create a uniform instrument permitting enforcement in the requested Member State that reflects the substantial contents of the initial instrument permitting enforcement;
- that there is not necessarily a "document drawn up for permitting precautionary measures in the applicant Member State" Article 16(1), 2nd subparagraph, of the directive states that such a document shall only be attached if it exists ("if any").

11. The following conclusions can be made:
- a request for precautionary measures may be accompanied by a uniform instrument permitting recovery measures in the requested Member State. This could be the case if the claim or the instrument permitting enforcement in the applicant Member State is contested. In that situation, this uniform instrument permitting recovery measures in the requested Member State shall constitute the sole basis for the precautionary measures taken in the requested Member State. It shall not be subject to any act of recognition, supplementing or replacement in that requested Member State (Art. 12(1°), 2nd subparagraph, of the directive);
- a request for precautionary measures may be accompanied by another document (than a uniform instrument permitting recovery measures in the requested Member State) drawn up for permitting precautionary measures in the applicant Member State. If this other document exists, it should be added to the request ("shall be attached"). Also this document "shall not be subject to any act of recognition, supplementing or replacement in the requested Member State" (Article 16(1), 2nd subparagraph, of the directive). In this particular case, it can thus be concluded that the document drawn up for permitting precautionary measures in the applicant Member State is also a sufficient basis for the precautionary measures in the requested Member State[4]. However, the requested authority may, where necessary, require from the applicant authority a translation of this document into the official language, or one of the official languages, of the requested Member State, or into any other language bilaterally agreed between the Member States concerned (Art. 22(3) of the directive);
- a request for precautionary measures may not be accompanied by any of the above documents. In itself, this does not constitute a problem for the validity of the request. In practice, however, it may make it more difficult for the requested authorities to justify the precautionary measures intended or taken in the requested Member State (cf. infra).

The execution of the request for precautionary measures

[3] This is in line with the EU condition (see point 6).

[4] C. M. VASCEGA and S. VAN THIEL, "Council adopts New Directive on Mutual Assistance in Recovery of Tax and Similar Claims", *European Taxation*, 2010, (231), 236; I. DE TROYER, "Tax Recovery Assistance in the EU: Execution of Requests for Recovery and/or Precautionary Measures in Other EU Member States", *EC Tax Review*, 2014, (207), 208-209.

12. For the purpose of the precautionary measures in the requested Member State, any claim in respect of which a request for precautionary measures has been made shall be treated as if it was a claim of the requested Member State (except where otherwise provided for in the directive). The requested authority shall make use of the powers and procedures provided under the laws, regulations or administrative provisions of the requested Member State applying to claims concerning the same or, in the absence of the same, a similar tax or duty, (except where otherwise provided for in the directive) (art. 17 referring to Art. 13(1) of the directive).

13. It is not up to the requested authority nor to a judge or another body to recognize, supplement or replace the uniform instrument permitting recovery (and, consequently, precautionary) measures in the requested Member State or the document drawn up for permitting precautionary measures in the applicant Member State (cf. supra, point 11).

14. However, the competent judge or other body in the requested Member State is entitled to examine whether the precautionary measures (to be) taken by the requested authorities are justified, just as it is entitled to exercise the same competence with regard to precautionary measures relating to claims originating from the requested Member State (in accordance with Art. 17 referring to Art. 13(1) of the directive). This competence must be considered within the perspective of the need to guarantee a sufficient protection to the tax debtor: it must be checked – or the person concerned must have the possibility to discuss – whether the precautionary measure envisaged or taken in the requested Member State is a means proportionate to the objective of guaranteeing the enforcement of the tax claim: *"whilst it is legitimate for the measures adopted by the Member States to seek to preserve the rights of the Treasury as effectively as possible, they must not go further than is necessary for that purpose"*.[5] In regard to a precautionary measure (consisting in the attachment of refundable amounts of VAT), the EUCJ has confirmed that *"the availability of effective judicial review is necessary both in the proceedings on the substance of the case*[6] *and in those before the judge hearing attachment proceedings"*.[7] This judicial control will be exercised *ex ante* (before the precautionary measures are taken and/or announced to the tax debtor) or *ex post* (afterwards, when a precautionary measure is contested by the person concerned), depending on the national legislation at stake.

15. In the light of this need, it may be useful for the applicant authority requesting precautionary measures:

- to substantiate the reasons underlying this request (in the request form communicated to the requested Member State); and, if necessary,
- to assist the competent officials of the requested Member State during court proceedings in the requested member State (in accordance with Art. 7(1)(c) of Directive 2010/24).

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5 Cf. EUCJ 10 July 2008, C-25/07, Sosnowska, point 24; EUCJ 18 December 1997, joined cases C-286/94, C-340/95, C-401/95 and C-47/96, Garage Molenheide and Others, points 46-47.

6 In case of contestation of the claim or a later assessment of the claim.

7 EUCJ 18 December 1997, joined cases C-286/94, C-340/95, C-401/95 and C-47/96, Garage Molenheide and Others, point 55.

Precautionary measures in the EU Member States and Norway:

Overview of the main conditions

Report by: T. Kutberg

Contributors: C. Lamur, L. Vandenberghe, A. Huber-Mandl, M. Roekaerts, D. Kirova, M. Stavrou, A. Chmelik, H. Steffens, H. Bendixen, R. Cabeza, E. Karhusaari, J.-M. Moriceau, G. Vasila, A. Eljuga, P. Meszaros, L. Mulqueen, G. Grattorola, G. Ivaskeviciene, C. Hentzen, I. Birzniece, V. Grech, A. Drapikowska, J. Pedro Cordeiro, R. Zamfir, M. Berglund, B. Vasle, J. Ščepková, M. Nicholas, T. Wettre

This summary report presents an overview of the main conditions under which tax authorities in the EU Member States and Norway can take precautionary measures to guarantee the collection of their tax claims.

Precautionary measures include: freezing money on bank accounts, blocking payments/refunds by authorities to the tax debtor, precautionary seizure of immovable property, freezing transfer of goods or assets of the debtor; precautionary actions against a debtor of the tax debtor or against a person who is jointly liable for the tax debt, etc.

Such precautionary measures can be applied in tax proceedings in almost all Member States, although the legal framework and the possibilities to adopt such measures are different from one country to another. The precise conditions and modalities also depend on the nature of each specific precautionary measure.

The main conclusions with regard to the conditions for applying such measures can be summarized as follows:

In what phase can precautionary measures be taken?

	Yes	No	Depending on PM selected (or on specific tax)
Before the claim is assessed	BE*, EE, SI, BG, DE, EL, LV, NL, IT, FR*, ES, AT, RO, UK*, SK, SE, FI, MT, PL, PT, FI	UK (Scotland)	LT, CY, NO
Before the end of the time period foreseen for voluntary payment	EE, SI, DE,EL, LV, LT, NL, IT, FR, ES, AT*, RO, UK*, SK, FI, BE, MT, PL, PT, FI	BG, UK (Scotland)	CY, SE, NO

	Yes	No	Depending on PM selected (or on specific tax)
Possible if the claim is contested	BE, NO, SI, BG, DE, LT, NL*, FR, ES, AT*, RO, UK*, IT*,MT, PL, PT*	EE, LV, FI UK (Scotland), SK	CY, SE, EL
Can be maintained if the claim is afterwards contested	EE, NO, SI, BG, DE, LV, LT, NL, FR, ES*, AT*, RO, UK, SK, BE, IT*,MT, PT*	PL, FI	CY, SE, EL

Are precautionary measures only possible if the claim exceeds a specific threshold?

Yes		No
Legal conditon	Practical arrangement	
SE, IT	FR, BG, MT, FI, LT	EE, BE*, SK, UK, RO, AT, ES, NL, LV, DE, SI, NO, EL,CY, MT, PL, PT

Is authorisation needed?

Yes		No	Depends on PM selected or phase when PM taken, but if needed then…	
By a judical body	By an adm.body		By a judical body	By an adm.body
EE, NL*, UK, FI, BE*, MT, PT	NL*, ES*, AT, IT*	BG, DE, LV, LT, SK, PL, RO	NO, SI, FR*, CY*, SE, EL	EL , CY*

How long can the precautionary measures have effect ?

Indefinitely	For a certain period
EE, UK, RO, LT, LV, DE, BG, SI*,EL, FR*,PL, PT, SK	BE, FI, SE, CY, ES, FR, AT*, IT, NL, NO, MT,

» If the precautionary measures has effect for a certain period the validity varies according Member States' national law from weeks to years.

Insolvency and disqualification orders:

Some EU and Member States' initiatives which may have an impact on tax collection and tax recovery activities

Report by: H. Michard

1. Insolvency

a) EU insolvency register, interconnecting national insolvency registers, IRI [1].

1. The insertion of information on disqualifications in the insolvency registers has been debated in the Council in the context of the revision of the Insolvency Regulation, but the idea to include obligatory information on managers' disqualification in the interconnected registers[2] was rejected. It appeared that Member States did not have a problem with the idea of transparency as such but argued that the insolvency registers were not the right place for such information since disqualifications can also occur outside of insolvency and that it would be technically difficult to include information about disqualification of directors in a register that is entity/company-based.

What is now in the text of the revised Regulation is an option for Member States as referred to in Article 24(3) of the European Insolvency Register recast:

> *"Paragraph 2 shall not preclude Member States from including documents or additional information in their national insolvency registers, such as directors' disqualifications related to insolvency."*

2. Article 90(3) of the recast requests the Commission to conduct a "study on the cross-border issues in the area of directors' liability and disqualifications" by 1 January 2016.

The Commission has launched a study on insolvency which looks among others at the area of directors' disqualifications[3] which are linked to their duties in the vicinity of insolvency. In particular, the following questions should be answered:

- What are the national rules on jurisdiction for issuing a disqualification order (State where the company is incorporated/has its seat or other connecting factors)?
- How is the information on professional disqualifications dealt with in the Member States (e.g. made public or not, in a register or otherwise, for how long is it kept)?
- Does national law ensure that professional disqualifications are verified if a former director opens up a new company or is appointed a director in another company? How are (potential) foreign disqualification orders treated in this context?
- Has the absence of European rules ensuring the transparency and/or recognition of disqualification orders created problems in practice?

The final results of the study are expected by the end of January 2016. On the basis of this study, the Commission will assess whether any further action should be taken. DG JUST is responsible for this file; DG GROW as well as DG TAXUD are associated.

3. DG JUST will soon launch a study on economic impacts of insolvency. Obviously, disqualification orders are not the hard core of the study. But they will be dealt with. Firstly to identify barriers and estimate economic and social loss resulting from different rules on directors' duties and disqualifications relating to insolvency and secondly to assess the impact of recognition of disqualifications of directors across-borders, e.g. a EU-wide register or an interconnection of national registers for disqualification orders against directors for (possibly among others) breach of insolvency-related duties.

b) Other

4. For sake of completeness: a more general study on the subject of directors' duties and liability has been conducted in 2013 by DG MARKT (now DG GROW):

> "*Disqualification of directors*:
>
> *Most jurisdictions provide for disqualification of the director as a sanction in the company's insolvency or where the director is convicted of a crime. However, as a substitute for weak private enforcement, disqualification is particularly effective where the sanction is also available outside insolvency and for management mistakes that do not amount to a criminal offence. This is the case in Finland if the director has materially violated legal obligations in relation to the business and in Ireland and the UK, among other reasons, if the conduct of the director 'makes him unfit to be concerned in the management of a company'.[253] In the latter two countries, disqualification of directors is of great practical*

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[1] IRI (Interconnection of National Insolvency Registers) DG JUST https://e-justice.europa.eu/content_interconnected_insolvency_registers_search-246-en.do https://e-justice.europa.eu/sitenewsshow.do?plang=en&newsId=98

[2] Interconnection of national insolvency registers IRI https://e-justice.europa.eu/content_interconnected_insolvency_registers_search-246-EU-maximize-en.do?idSubpage=1&member=1 See revised Regulation on insolvency proceedings (recast) 2015/C 141/01 of 28.4.2015).

[3] One aim of the study is to collect data in order to complete the comparative law information at the disposal of the Commission in respect of: cross-cutting subject-matters which are relevant for both preventive and formal insolvency procedures, such as the regulation, status and powers of insolvency practitioners, the duties and liabilities of directors and the recognition of disqualifications, rules on the ranking of claims/order of priorities and the conditions under which certain detrimental acts can be avoided.

relevance because of the strictness of the rule in Foss v Harbottle and has produced notable case law informing the interpretation of directors' duties not only for purposes of the disqualification procedure, but for directors' liability in general[254].

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253 Irish Companies Act 1990, s. 160(2)(d); UK Company Directors Disqualification Act 1986, ss. 6(1), 8(2). In addition to disqualifications, Irish company law also contains a restrictions regime, i.e. the possibility to apply for a court order prohibitingdirectors of insolvent companies from acting as director of another company for a period of five years, unless the court is satisfied that the director 'has acted honestly and responsibly in relation to the conduct of the affairs of the company' (with the burden of proof resting on the director) or the company meets heightened capital requirements, see Irish Companies Act 1990, s. 150.

254 For a discussion of the relevance of disqualification orders in the UK see Davies and Worthington, n 169 above, para. 10-2. The situation is similar in Ireland. Leading cases include Re Tralee Beef and Lamb Ltd (In Liquidation); Kavanagh v Delaney [2004] IEHC 139, [2005]1 ILRM 34; Re CB Readymix Ltd (In Liquidation); Cahill v Grimes [2002] 1 I.R. 372; Re Lynrowan Enterprises Ltd, unreported, High Court, O'Neill J., July 31, 2002, discussed in the Irish country report.

Gaps relating to director disqualification.

Director disqualification as an administrative law substitute for private enforcement of directors' duties creates similar cross-border frictions due to the unaligned nature of the respective private international law rules as those discussed in the previous section. Director disqualification requires some connection of the director's company with the territory where the disqualification order is issued. Such rules give rise to two concerns. First, in case of foreign companies they may lead to strong selection as outlined above, since they apply in addition to any sanctions that may be applicable under the law of the company's home Member State. In general, they are foreign elements that may disturb the balance of the domestic system of sanctions and liability. Second, and maybe more importantly, disqualification orders do not apply on an EU wide basis, but only capture companies that have the necessary connection to the territory where the disqualification order is issued. Even where a member State extends the applicability of its disqualification statute, this extension will not prevent the valid appointment of a director in another jurisdiction. Partly due to the case law of the European Court of Justice, Member States may find it difficult to enforce their national law rules against disqualified directors who are then appointed by foreign-incorporated companies, even where the relevant foreign-incorporated company operates within its territory."

5. Eventually there is an on-going study in the area of private international law rules in company law which would also touch on the issue of recognition of disqualifications of directors in other Member States.

2. Company law and Disqualification information

a) BRIS (Business registers interconnection system)

6. In the field of company law, Directive 2009/101/EC requires the member States to have a business register where certain information is disclosed in relation to limited liability companies. This information, listed in Article 2, includes names and particulars of legal representatives of the company and members of administration (such as directors).

It is the same directive which, after amendments introduced by Directive 2012/17/EU, establishes the system of interconnection of business registers – known as BRIS (to go live by June 2017).[4]

[4] Background and more information on the Business Registers Interconnection System – BRIS DSI:
The limited cross-border access to business information results in a risky business environment for consumers and for existing or potential business partners, and reduces legal certainty. Efficient cross-border cooperation between the European business registers is therefore essential for a smooth functioning of the EU Single Market. The stakeholders impacted are both the public who wish to access cross-border information on companies, and the companies of the EU when carrying out cross-border activities and when involved in cross-border mergers. Furthermore the business registers themselves are impacted by the problem, as they face challenges in communicating with each other for example in respect to cross-border mergers or foreign branches.
Directive 2012/17/EU of the Parliament and the Council of 13 June 2012 requires the establishment of an information system that interconnects the central, commercial and companies registers (also referred to as business registers) of all Member States. The system - named Business Registers Interconnection System (BRIS) will consist of: a core services platform named European Central Platform (ECP); the Member States business registers; and the e-Justice portal, serving as European electronic access point to information on companies.
The work on the project started in 2013 with an extensive exercise of gathering relevant business requirements. Throughout 2013-2014 Member States have been consulted in the context of the Company Law Expert Group on the proposed high-level architecture for BRIS and other major elements of the system. In parallel, the Commission conducted a reusability study which looked into a number of existing initiatives that could provide reusable building blocks for BRIS. This study concluded with a recommendation for using the e-Delivery solution for the transport infrastructure in BRIS. Concerning the central platform, the study was followed by a more in-depth gap analysis which assessed the possibility for reusing the EBR platform. This second analysis concluded that, despite functional and non-functional overlap between the two platforms, significant technical and operational constraints prevent the Commission from reusing this solution.

7. For the moment, the compulsory disclosure on companies does not cover information on disqualified directors. However this was introduced in the Commission proposal for single-member private limited liability companies (SUP)[5]. This proposal is currently being negotiated in the Council and the EP, so at this stage it is difficult to say what the future will be for this specific article.

b) EBR

8. Until the transposition of Directive 2012/17/EU[6], the EBR was the only network of business registers that operates at European level providing European company on-line information.

https://e-justice.europa.eu/content_business_registers_at_european_level-105-en.do?clang=en

The EBR started off as an informal technical cooperation between business registers. Over time, it became a network of business registers whose objective is to offer reliable information on companies all over Europe. Citizens, businesses and public authorities may subscribe to the services of EBR via the business register of their own country. Subscribers can search for a company name or a person throughout all the registers which are members of EBR by submitting a single query in their own language. As the result of the search, a specific set of company information becomes available, in the language of the query.

Currently, the business registers of 17 Member States of the EU and five other European countries or crown dependencies take part in the EBR network. All these countries are parties to an Information Sharing Agreement (ISA) in which the contracting parties undertook to give each other access to information stored in the business registers. The ISA remains the basis for cooperation between the parties.

Based on the ISA, the parties shall give each other non-exclusive access to the data stored in the business registers and deliver the predefined information in a standardised report. Access is ensured through software provided by the EBR. The minimum service the ISA requires from all parties is to provide for company searches and company profiles. In addition, there is a possibility to deliver standardised reports on person searches, personal appointments and company appointments. Most countries, however, provide for even broader information**.**

13 EBR member countries are also members of the EBR EEIG, a European Economic Interest Group registered in Belgium and owned by its members[7]. The EEIG manages the network of relationships and activities between information distributors, technical partners and national registries in EBR member countries**.**

More information on the EBR web-site. http://www.ebr.org/

At the moment we have not received a feed-back on the additional information contained in this database[8].

c) Fight against crime and disqualification - EBOCS Project: European Beneficial Ownership and Control Structures

9. The ultimate objective of EBOCS is to build and implement a pilot IT service that provides simplified and unified access to data on business ownership and control structures held in business registers across Europe. Counter Crime Agencies (CCAs) will be able to use the service to conduct analysis and investigations using existing software tools that are used to model, analyse and visualize relationships between people and businesses suspected of being involved in financial and other criminal activities.

EBOCS is a follow-up to the BOWNET project[9] in that it aims to implement the recommendations on providing a support tool to improve the access to business ownership data held in business registers. To deliver this project EBOCS has assembled a trans-national team consisting of 1°) a number of Business Registers (BRs), who will implement gateways providing access to the data, 2°) a number of CCAs who will provide requirements input and validation of deliverables and ultimately will use the service, 3°) Enterprise Registry Solutions (ERS), an SME who will provide technology services to build and implement the core service infrastructure, 4°) EBR, the project coordinator, who will manage and administer the project, provide access data through its own existing network and act as conduit to the broader business register audience for dissemination activities, 5°) TRANSCRIME who will similarly provide expert input to the project and support dissemination activities with the wider CCA audience.

2015 will be dedicated to (1) establishing the interfaces between the BRIS DSI and the Member States systems as well as the e-Justice portal; (2) piloting the e-Delivery solution for BRIS (Q2/Q3 2015); and (3) setting up the central platform.

5 See article 22(6) of the proposal concerning the Directive of the European Parliament and of the Council on single –member private limited liability companies 9.1.2014 COM(2014) 212 final, 2014/0120(COD) : *A natural person who is disqualified by either the law or a judicial or administrative decision of the Member State of registration cannot serve as a director. If the director has been disqualified by a judicial or administrative decision taken in another Member State and this decision remains in force, the decision must be disclosed upon registration in accordance with Article 13. A Member State may refuse, as a matter of public policy, the registration of a company if a director is the subject of an outstanding disqualification in another Member State.*

6 7 July 2014.

7 Austria, Denmark, France, Germany, Gibraltar, Italy, Latvia, Luxembourg, Malta, Netherlands, Norway, Spain, Sweden.

8 It seems that this structure presents similarities with the EUCARIS program.

9 http://www.bownet.eu/

http://www.ebocs.eu/

d) Miscellaneous

10. See Green paper "Effective enforcement of judgments in the EU: the transparency of debtors' assets" and European Parliament resolution of 22 April 2009 on the effective enforcement of judgments in the European Union: the transparency of debtors' assets (2010/C 184 E/02)[10]

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009IP0238&from=EN

- EMPACT: European Multidisciplinary Platform against Criminal Threats

11. EMPACT[11], the Europol[12] multi annual policy cycle, was established in 2010. Its aim is to ensure that in the fight against serious international and organised crime there is effective cooperation between Member States law enforcement agencies, EU Institutions, EU Agencies and relevant third parties; delivering coherent and robust operational action targeting the most pressing criminal threats facing the EU.

Excise fraud and VAT Missing Trader Intra Community fraud is one of the nine EMPACT projects.

- CARIN: Cadmen Asset Recovery Inter-agency Network

12. CARIN is an informal network of contacts and a cooperative group concerned with all aspects of confiscating the proceeds of crime. It is a network of practitioners from 53 jurisdictions and 9 international organisations. It is linked to similar asset recovery networks in southern Africa, Latin America and Asia Pacific.

https://www.europol.europa.eu/content/camden-asset-recovery-inter-agency-network-carin-leaflet

13. Recent Europol works on tax crime:

Conference
https://www.europol.europa.eu/latest_news/tax-strategic-perspective-prevention-detection-and-investigation-international-tax-crime

https://www.europol.europa.eu/latest_news/tackling-tax-crime-digitalised-economy

- Recognition of professional qualifications / disqualification, IMI (Internal market information)

14. For the implementation of Directive 2005/36/EC[13] on the recognition of professional qualification a data base was set up and fed with the information from the Member States on their regulated professions.

http://ec.europa.eu/internal_market/qualifications/regprof/index.cfm?fuseaction=home.home.

For certain professions, Article 56 of the Directive provides for an alert mechanism[14] in order to inform competent authorities about national disqualification measures taken against individuals exercising certain regulated professions (medical professions, activities with patient safety implications, education activities..). These exchanges of information are supported by the IMI I[15] IT-tool which provides translation assistance in all EU languages. Also, competent authorities have a secured space where additional information can be exchanged solely between national competent authorities.

[10] Regulation (EU)2015/848 of the European Parliament and of the Council on insolvency proceedings (recast) EU OJ L141,5.6.2015 - Point 3.4 Disqualification and similar sanctions, measures 20 and 21.

[11] https://www.europol.europa.eu/content/eu-policy-cycle-empact

[12] https://www.europol.europa.eu/

[13] Modernised by directive 2013/55/EU of 20 November 2013 on the recognition of professional qualifications and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation')

[19] Article 56a: *"The competent authorities of a Member State shall inform the competent authorities of all other Member States about a professional whose pursuit on the territory of that Member State of the following professional activities in their entirety or parts thereof has been restricted or prohibited, even temporarily, by national authorities or courts:…"*

[15] http://ec.europa.eu/internal_market/imi-net/index_en.htm