The EU framework for international tax recovery assistance

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Reasons for international arrangements on cross-border enforcement of taxes

- Territorial limitation of tax authorities' competence to recover taxes


- Recovery assistance: essentially based on reciprocity → presupposes sufficient confidence in the other State.

EU Legislation

Recovery assistance between EU Member States for all taxes and duties

  - Basic legislation
  
  Commentary: EU & Intern. Tax Coll. News 2020-2, p. 31

  - Implementing provisions


- Legislation on cross-border notification and enforcement of civil claims
  - May be applied in specific situations
EU Legislation (2)

Recovery assistance between EU Member States and other countries

Agreement EU-United Kingdom
- 2021
- Recovery assistance for VAT, customs and excise duties

Agreement EU-Norway
- 2018
- Recovery assistance for VAT

Agreement EU-Andorra
- 2003
- Recovery assistance for customs duties

Agreement EU(MS)-Switzerland
- 2004
- Recovery assistance for VAT and excise duties

Case law

CJEU case law see EU & Intern. Tax Coll. News 2021-2, p. 140

<table>
<thead>
<tr>
<th>Mutual tax recovery assistance (EU Directive)</th>
<th>Date</th>
<th>Case</th>
<th>Details</th>
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<tbody>
<tr>
<td>C-361/02 &amp; C-362/02 01.07.2004 Tsapalos and Diamantakis</td>
<td>Directive applies to claims existing before the entry into force of the Directive</td>
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<tr>
<td>C-233/08 14.01.2010 Kyrian</td>
<td>Notification by requested State: in its own language (language that can be understood by the person concerned)</td>
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<tr>
<td>C-34/17 26.04.2018 Donnellan</td>
<td>Notification: notification must reach the addressee - competence of court in requested State to check the validity of notification by applicant State</td>
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<tr>
<td>C-695/17 14.03.2019 Metirato</td>
<td>Restitution of recovered claims to the insolvency estate</td>
<td></td>
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<td>C-19/19 11.06.2020 Pantochim</td>
<td>Preferences</td>
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<tr>
<td>C-95/19 24.02.2021 Silcompa</td>
<td>Competence of court in requested State to determine where tax is due</td>
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<tr>
<td>C-420/19 20.01.2021 Heavyinstall</td>
<td>No competence of court in requested State to review the need for precautionary measures if decided by court in applicant State</td>
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Case law (2)

<table>
<thead>
<tr>
<th>Freedom of movement</th>
<th>Cross-border enforcement of civil claims</th>
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<tbody>
<tr>
<td>C-69/88 07.03.1990 Krantz</td>
<td>C-266/01 15.05.2003 Tiard</td>
</tr>
<tr>
<td>Power of tax authority to seize goods, even if they are owned by a supplier in another Member State</td>
<td>Action based on a guarantee contract</td>
</tr>
<tr>
<td>C-434/10 17.11.2011 Aladzhov</td>
<td>C-49/12 12.09.2013 Sunico</td>
</tr>
<tr>
<td>Prohibition to leave the country because of tax debts</td>
<td>Claim for damages relating to the loss resulting from VAT fraud</td>
</tr>
<tr>
<td>C-788/19 27.01.2022 Commission v Spain</td>
<td></td>
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<tr>
<td>Penalties for failure to provide information about assets abroad</td>
<td></td>
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Note: other case law (ECtHR; EU Member States and other countries) is also regularly published in *EU & Intern. Tax Coll. News.*

Strengthening recovery assistance: need for a balanced approach

Scope of the EU recovery assistance arrangements:

- Exchange of information
- Notification assistance (service of documents)
- Recovery assistance
- Use of precautionary measures (measures of conservancy)


- Framework must be adapted to increasing need for recovery assistance and to new developments,  
  → need for a balanced approach  
- But with respect for *tax debtors’ rights.*
Strengthening recovery assistance: need for a balanced approach → some principles

**Legal certainty:** legal basis must be clear
- EU: detailed implementing rules are adopted in publicly accessible legislation
  → No ‘secret’ agreement between competent authorities on how to apply recovery assistance

**Data Protection**
- E.g. recent CJEU case law on obligation of operators of electronic platforms to provide info to tax authorities about their transactions
  - 27.4.2022, C-674/20, Airbnb Ireland
  - 24.2.2022, C-175/20, SS

**Right of defence** against unlawful claims / recovery actions
- E.g. EUCJ: “requested State is bound by the assessment made by the authorities of the applicant State of compliance with the conditions of application of precautionary measures”.
  → This raises questions about the adoption of minimum requirements and guarantees for tax debtors
- E.g. case C-752/21 (pending) on appeal right of owner of confiscated assets

**Fairness**
- E.g. Tax authority of a country should not defend opposite views, domestically and cross-border

**Property right**
- E.g. recovery of taxes and additional claims (interest, penalties, costs) must respect proportionality

**Right to property**
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Thank you