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ISSUE

05

# Brussels International

An Update on Legal Developments for the International Organizations in Brussels

December 2012

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## **Tax Exemptions and “Official Use” of International Organizations**

An increasing number of headquarters agreements negotiated by the Belgian State and international organizations refer to the concept of “official use” of the international organization with a view to delineating tax exemptions accorded to the latter.

This tendency concerns exemptions of both direct taxes (such as the real estate tax – “précompte immobilier” – on immovable property belonging to the organization) and

indirect taxes (such as the VAT on purchases of goods or services):

- As regards direct taxes, headquarters agreements provide that the exemption is granted only to the organization's assets, income and other property "which are assigned to the official use of the organization";
- turning to indirect taxes, according to headquarters agreements the exemption is limited to important purchases of goods or services "which are strictly necessary for the official use of the organization".

It is true that such a reference to the concept of "official use" has long been made – yet only as far as indirect taxes are concerned – in famous multilateral instruments on privileges and immunities of international organizations (see, e.g., Section 8 of the Convention on the Privileges and Immunities of the United Nations; Section 10 of the Convention on the Privileges and Immunities of the Specialized Agencies; Article 3(2) of the Protocol on the Privileges and Immunities of the European Union).

However, it should be kept in mind that every international organization is, in any event, supposed to exercise its activities within the limits of its particular object and purpose, as defined by its members (see the 1996 advisory opinion of the International Court of Justice on the Legality of the Use by a State of Nuclear Weapons in Armed Conflict). As a result, an international organization cannot, in principle, assign property to non-official use, or purchase goods or services for non-official use. The concept of official use is, to that extent, probably useless in legal provisions on privileges and immunities of international organizations, especially in tax exemptions.

At any rate, should Belgian authorities (e.g. the Belgian tax

administration) wish to reserve the right to assess the “official use” of an international organization, then they would have to make a careful analysis of the rules of the organization (constituent treaty, acts adopted by the organs, etc.) setting forth the specific functions entrusted to that organization. The scope of the “official use” of each international organization is indeed not a matter for domestic law: it must be determined based on the rules of the organization concerned, and possible implied powers of the organization must be taken into account.

Against this backdrop, there is little sense in a priori excluding “industrial and commercial activities” from tax exemptions, as recent headquarters agreements concluded by Belgium also tend to do. Whether or not such activities actually fall within the ambit of the organization’s “official use”, has to be decided on a case-by-case basis, in light of the object and purpose of the organization.



## Les bureaux de liaison auprès de l’Union européenne

Un certain nombre d’organisations internationales ont établi une représentation auprès de l’Union européenne à Bruxelles. Quelques brèves observations peuvent être faites à ce sujet :

- L’appellation peut varier : représentation, mission, délégation, bureau de liaison, etc.
- La représentation est régulièrement établie à la fois auprès de l’Union européenne et auprès du Royaume de Belgique.
- Vu qu’il ne s’agit pas de missions d’États tiers, l’article 16 du Protocole sur les privilèges et immunités de l’Union européenne n’est, formellement, pas applicable à ces représentations. Cet article prévoit

que « l'État membre sur le territoire duquel est situé le siège de l'Union accorde aux missions des États tiers accréditées auprès de l'Union les immunités et privilèges diplomatiques d'usage ».

- En réalité, le statut ainsi que les privilèges et immunités accordés à la représentation (et aux agents y travaillant) dépendent, pour l'essentiel, de l'Accord de siège que l'État belge aura conclu avec l'organisation internationale concernée. Les privilèges et immunités prévus dans ces Accords de siège sont globalement similaires à ceux que l'État belge accorde aux organisations internationales ayant leur siège principal en Belgique.
- La représentation étant un organe de l'organisation internationale, elle ne bénéficie pas d'une personnalité juridique internationale distincte de celle de l'organisation. Ses actes sont ceux de l'organisation.
- L'Accord de siège conclu entre l'État belge et l'organisation prévoit habituellement que l'organisation, et donc sa représentation auprès de l'Union européenne, dispose de « la capacité la plus large reconnue aux personnes morales ». Ce qui signifie que la Belgique s'engage à assimiler l'organisation à une personne morale dotée de capacités juridiques dans son droit interne, à tout le moins la capacité de contracter, la capacité d'acquérir et d'aliéner des biens meubles et immeubles, et la capacité d'agir ou de se défendre en justice.

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