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Our registration	Your registration	Date
BEL/GF/fvd/12.012		March 19, 2012

Subject
Consultation 'The Internal Market: factual examples of double non-taxation cases'

Dear Sir/Madam,

In respect of your request for contributions on factual examples and possible ways to tackle double non-taxation cases, please be informed as follows.

In paragraph 4 of the Staff working paper 'The Internal Market: factual examples of double non-taxation cases', the first issue addresses mismatches of entities between Member States. In this respect the following three questions are raised:

- Question A: Do you find such mismatches of entities relevant in the future discussions on double non-taxation?
- Question B: Are you aware of mismatches of entities between Member States or towards third countries?
- Question C: Please provide any suggestions you might have for ways in which these mismatches of entities could be tackled.

Regarding these three questions, I would like to inform you as follows. In 2009, I published my PhD that specifically discussed this topic. The title of this book was 'EC Law aspects of hybrid entities' and dealt particularly with the question how mismatches of entities between Member States should be solved. As contribution to your consultation, I kindly provide you with a copy of this book (see enclosed).

In this book, I have discussed numerous factual examples of mismatches of entities between Member States. Also, I have addressed that these mismatches should be taken into account in discussions about double non-taxation in the internal market to avoid that market participants may be confronted with negative effects on cross-border activities.

The core of the problem of mismatches between Member States, is due to the fact that Member States currently autonomous determine how an entity should be treated for their domestic tax purposes without taken the tax treatment in another Member State into account. As a solution to these mismatches (better known as 'hybrid entities'), I have included a general EU solution to these problems by introducing the principle of mutual recognition of entities for tax purposes

in the internal market. Under this principle, Member States would for their own domestic tax purposes have to take into account the way a certain entity is treated for tax purposes in the other Member State. Under this approach, by following the tax treatment (either as transparent or as a company) of the Member State where the entity is situated, Member States no longer autonomously determine how an entity should be treated. As a consequence, mismatches are avoided and intra-Community double taxation and double non-taxation is avoided. In addition, also several ways are suggested how these problems should be addressed under the existing EU tax Directives and the tax treaties concluded between Member States.

This is in a nutshell what the suggested solutions contain. For a more extensive elaboration on the factual examples, negative tax consequences as well as the way these should be solved, I kindly refer you to the enclosed copy of this book.

I trust to have informed you sufficiently. In case you have any questions or would appreciate a more extensive explanation on the above, I would be happy to be of assistance.

Kind regards,

mr. dr. G.K. Fibbe

Attachment 1: G.K. Fibbe, EC Law Aspects of Hybrid Entities, IBFD, 2009, Doctoral Series, no. 15, pp. 1-444.