



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

ASSEMBLY
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Agenda item 23

FUND/A.15/20
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REFUND OF INDIRECT TAXES

Note by the Director

1 The IOPC Fund, its assets, income, including contributions, and other property shall enjoy in all Member States exemption from all direct taxation, pursuant to Article 34.1 of the Fund Convention. The IOPC Fund is therefore not generally exempt from indirect taxation.

2 However, Member States have certain obligations also in respect of indirect taxes. Under Article 34.2 of the Fund Convention, the Governments of Member States shall take, whenever possible, appropriate measures for the remission or refund of indirect taxes and sales taxes paid by the IOPC Fund in the exercise of its official activities. This provision reads as follows:

"When the Fund makes substantial purchases of movable or immovable property, or has important work carried out which is necessary for the exercise of its official activities and the cost of which includes indirect taxes or sales taxes, the Governments of Member States shall take, whenever possible, appropriate measures for the remission or refund of the amount of such duties and taxes."

3 In recent years the IOPC Fund has encountered difficulties in the application of this provision. In connection with certain incidents, the IOPC Fund has paid considerable amounts in respect of fees for the services of lawyers and other experts. In one country, these fees have been subject to the payment of VAT. Requests made by the Director for a refund of the amounts thus paid in VAT have not resulted in a refund being granted.

4 In the view of the Director, the use of lawyers and other experts by the IOPC Fund in connection with incidents involving the Fund must clearly fall within the scope of application of Article 34.2 of the Fund Convention; the lawyers and experts carry out important work which is necessary for the exercise of the IOPC Fund's official activities. For this reason, the Director considers

that the Governments of Member States are under an obligation, pursuant to Article 34.2, to take appropriate measures for the remission or refund of the amounts of VAT paid in respect of the fees of such lawyers and experts.

5 It should be noted that under Article 34.3 no exemption should be accorded to the IOPC Fund in the case of duties, taxes or dues which merely constitute payment for public utility services. The Director considers that the work carried out by lawyers and technical experts in connection with incidents involving the IOPC Fund could not be considered as payment for public utility services.

6 In view of the difficulties that the IOPC Fund has encountered in having the amounts paid in VAT refunded, the Director submits for consideration by the Assembly whether it agrees with the Director in his interpretation of Article 34.2 in respect of services referred to in paragraph 4 above.

Action to be Taken by the Assembly

7 The Assembly is invited to:

- (a) take note of the information contained in this document;
 - (b) consider whether it agrees with the Director that work carried out by lawyers and other experts on behalf of the IOPC Fund in connection with incidents involving the Fund must be considered as fulfilling the criterion of "important work which is necessary for the exercise of its official activities", and that the Governments of Member States are thus under an obligation to take appropriate measures for the remission or refund of the amount of indirect taxes or sales taxes included in the costs of such services; and
 - (c) give the Director such instructions as it deems appropriate concerning the recovery of amounts paid in indirect taxes or sales taxes.
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