



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

ASSEMBLY
16th session
Agenda item 32

FUND/A.16/29
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REFUND OF INDIRECT TAXES

Note by the Director

Introduction

1 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.

2 At its 15th session, the Assembly considered certain difficulties which the IOPC Fund had encountered in the application of Article 34.2 in respect of fees for the services of lawyers and other experts, as set out in a document presented by the Director (document FUND/A.15/20).

Consideration by the Assembly at its 15th Session

3 The Assembly was informed that in one country fees paid by the IOPC Fund to lawyers and other experts had been subject to the payment of VAT and that requests made by the Director for a refund of the amounts thus paid in VAT had not resulted in a refund being granted.

4 The Assembly agreed 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 should 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 were thus under an obligation, pursuant to Article 34.2 of the

Fund Convention, to take appropriate measures for the remission or refund of the amount of indirect taxes or sales taxes included in the cost of such services. The Director was instructed to inform the Governments of States where the IOPC Fund has encountered problems regarding the application of Article 34.2 of the Fund Convention of the position taken by the Assembly and to request a refund of any amounts of indirect taxes or sales taxes paid by the IOPC Fund for services of this kind (document FUND/A.15/28, paragraphs 23.2 and 23.3).

5 In addition, the Assembly invited the Director to examine the possibility of adopting a resolution clarifying the meaning of the notions of "substantial purchases" and "important work" in Article 34.2 of the Fund Convention and to submit this matter to the Assembly for consideration at its 16th session (document FUND/A.15/28, paragraph 23.4).

Developments Since the 15th Session of the Assembly

6 The Director has raised this matter with representatives of the Government of the State in which the problem referred to above has arisen. So far, no detailed discussions on the subject have been held between that Government and the IOPC Fund.

7 Due to the very heavy workload resulting from recent incidents, the Director has not been able to finalise the study of the meaning of the notions of "substantial purchases" and "important work", as requested by the Assembly.

8 The Director proposes that he be instructed to pursue the questions referred to above and to submit a report to the Assembly for consideration at its 17th session.

Action to be Taken by the Assembly

9 The Assembly is invited to take note of the information contained in this document and to give the Director such instructions in respect of the question relating to the refund of indirect taxes as it may deem appropriate.
