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Unless the Context of Mutual Administrative Assistance Otherwise Requires

Specific Issues Relating to the Interpretation of Administrative Assistance Provisions

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From insight to impact.

What is it about?

CH faces EU demands for assistance in the tax collection procedure (cp., 27 OECD/UN-MC)

- Switzerland shows openness to concessions (although negotiation practice does not include it)!
- Preliminary scope: Overdue VAT receivables > EUR 10'000.00
- It will (probably) be written into law in connection with the Agreement between the EU and the Swiss Confederation on the Automatic Exchange of Financial Account Information ("AEOI")

General Rules on Interpretation (VCLT)

Vs.

Specific Rules (e.g., art. 3[2] OECD/UN-MC)

- Recourse to domestic terms and concepts?
- This matters also for provisions dealing with administrative assistance (26 & 27 OECD-MC, Multilateral Convention on Mutual Administrative Assistance in Tax Matters [MAC], TIEAs, Exchange of CbCRs)

E.g., art. 1(2) AEOI:

Any term not otherwise defined in this Agreement or in Annexes I or II will, unless the context otherwise requires or the Competent Authority of a Member State and the Competent Authority of Switzerland agree to a common meaning as provided for in Article 7 (as permitted by domestic law), have the meaning that it has at that time under the law of the jurisdiction concerned applying this Agreement, (i) for Member States under Council Directive 2011/16/EU on administrative

What questions arise?

The usual problem and outcomes of interpreting the interpretation rule:

- Rule: recourse to domestic law | Exception: autonomous interpretation (most prominently: J. AVERY JONES)
- Rule: autonomous interpretation | Exception: recourse to domestic law (most prominently: M. LANG)

Question 1: Do the usual arguments fit other (administrative assistance) treaties?

- Most references in literature and case law are made with double tax treaties in mind (i.e. for allocation rules)!
- Is the Object and Purpose of treaties (i.e. not exclusively DTTs!) only attainable with autonomous interpretation?

Question 2: How to deal with indications derived administrative assistance treaties?

- Explanatory Report on art. 3(2) MAC (in force: 143 countries | dubbed: global standard | no mere model!)

Paragraph 2

47. This paragraph lays down a general rule of interpretation, giving **priority** to the **specific definitions in the Convention itself**, and **then** to the **meaning of the term concerned in the law of the State applying the Convention** in the particular case in question, **except** where the context clearly indicates a different meaning.

- 1.
- 2.
- 3.



Concurrent application (e.g. art. 26 OECD-MC & art. 4 MAC) with different outcomes?

Thank You!

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