



EUROPEAN COMMISSION  
RESEARCH DIRECTORATE-GENERAL

Directorate R - Resources  
**External audits**  
The Acting Head of Unit

Brussels,

**REGISTERED MAIL**

**Subject: Eligibility of airport tax in FP6 contracts**

Dear Mr.....,

We refer to your letter of 08/12/2004 addressed to ..... and regret to inform you that the treatment of airport taxes is somewhat more complicated than that described in your letter.

Our position on 'airport taxes' is as follows:

Under the text of the FP6 model contract 'any **identifiable** indirect taxes, including VAT or duties' are non-eligible costs.

The first part of our approach is to see if the tax is identifiable. If the tax is not identifiable it will be eligible. However, auditors of the External Audits Unit in their audit practice are not in particular examining cost claims or invoices (e.g. airplane tickets) with the specific aim of 'finding' the 'tax' element. Nonetheless, if the indirect tax is identified, it is generally disallowed. (*unless you want to extend this notion to FP5 contracts too in which case you might say: The same principle applies to FP5 contracts although the notion of "identifiable" was not specifically mentioned in the model contract for those projects.*)

If the tax is identifiable, then the nature of this 'tax' has to be examined. In general, airport taxes are not real taxes in the sense of tax law but a fee for a service delivered by public or semi public body in charge of a (public) service, such as airports. The fact that some airports might have a private legal form is not relevant to this analysis. Therefore, although many airport "taxes" imposed by these authorities may be considered a fee and therefore eligible because not a duty or indirect tax, it is also possible that a particular airport 'tax' may well be considered to be a 'duty' applied to the cost of the airline ticket in which case it would be non eligible.

For the reasons above, the External Audits Unit cannot confirm the sentence in your letter stating that we “are now happy to accept these charges [airport taxes] as legitimate costs on an EU project”. As mentioned above, 'airport taxes' will be allowed when not identifiable. Where they are identifiable, they will be disallowed if they can be considered as 'duties' in the sense of Article II.19.2. a of the FP6 model contract.

Yours sincerely,