



## Forum on Tax Administration

Istanbul, 15-16 September 2010



# Sixth meeting of the OECD Forum on Tax Administration

Istanbul, 15-16 September 2010

## Joint Audit Report



September 2010



## *Foreword*

As multinational companies operate more and more in a global context, it is incumbent on governments to innovate to keep up with this trend. This is difficult work, as a government's jurisdiction often ends at its border, while companies operate across borders. In the tax arena, the dramatic increase in cross-border activities and investments of both business entities and individuals has presented tax administrations with difficult and unique challenges. In response, revenue bodies around the world, in pursuit of stronger international tax compliance, will likely move beyond cooperation to various forms of coordinated action.

Joint audits represent a new form of coordinated action between and among tax administrations. In a joint audit, two or more countries would join to form a single audit team to conduct a taxpayer examination. Joint audits should result in quicker issue resolution, more streamlined fact finding and more effective compliance. Joint audits would also have the potential to shorten examination processes and reduce costs, both for revenue authorities and for taxpayers.

This report was commissioned by the Forum on Tax Administration (FTA) in October 2009. The report reflects the wealth of experiences held by the thirteen countries on the OECD Study Team: Australia, Canada, Denmark, France, Japan, Korea, Mexico, Netherlands, South Africa, Spain, Turkey, the United Kingdom and the United States. In the past, many of these countries have successfully pursued cooperative activities: simultaneous examinations, bilateral advanced pricing agreements, mutual assistance agreements, etc. The joint audit has the potential to take this cooperation to a new level.

Country experiences with other cooperative activities suggest that a joint audit could achieve efficient and effective results if proper planning occurs and processes are well-defined. To that end, the Study Team has prepared a practical, how-to Guide that provides a roadmap for conducting a joint audit process. The joint audit outlined in the Guide is intended not only to boost international tax compliance but also to reduce the administrative burden of conducting audits in multiple jurisdictions.

I would like to thank all of those who assisted the Study Team with this report - it was completed in less than one year from the date it was commissioned. I hope the report is quickly distributed and serves as a strong catalyst for productive coordinated action among tax administrations.

**Douglas H. Shulman**  
**Chairperson, Forum on Tax Administration**

## TABLE OF CONTENTS

EXECUTIVE SUMMARY .....	5
CHAPTER 1 INTRODUCTION.....	7
Description of joint tax audit .....	7
Joint audit objectives.....	8
CHAPTER 2 LEGAL FRAMEWORKS.....	10
Part 1 Frameworks for Exchange of Information .....	10
1. Bilateral treaties.....	10
2. Information Exchange Agreements .....	11
3. Multilateral treaties .....	12
4. Domestic law.....	14
Part 2 Other Frameworks for Mutual Assistance.....	15
1. Assistance in person .....	15
2. Tax examinations abroad.....	15
3. Simultaneous examinations.....	15
4. International tax audits .....	16
5. Exchange of information and international tax audits.....	17
6. Substantive cooperation .....	19
CHAPTER 3 COUNTRY EXPERIENCES AND OPPORTUNITIES AND CHALLENGES .....	21
Part 1 Survey of Country Experiences.....	21
Part 2 Opportunities for Conducting Joint Audits .....	23
1. Facilitating cooperation between revenue bodies.....	23
2. Issues suitable for a joint audit approach .....	24
Part 3 Challenges for Conducting Joint Audits.....	26
1. Issues deriving from domestic legal structures .....	26
2. Issues arising from differences in revenue bodies' administrative procedures .....	30
3. Practical issues .....	31
Conclusion .....	31
CHAPTER 4 ORGANISATION AND MANAGEMENT OF THE JOINT AUDIT FUNCTION .....	31
Part 1 Mechanisms for Case Selection in a Joint Audit.....	32
Part 2 Case selection .....	33
1. National Case selection .....	33
2. How to initiate a joint audit.....	34
Conclusion .....	34
ANNEX 1 OVERVIEW OF TERMINOLOGY IN INTERNATIONAL LEGAL FRAMEWORKS.....	34
ANNEX 1 OVERVIEW OF TERMINOLOGY IN INTERNATIONAL LEGAL FRAMEWORKS.....	35
ANNEX 2 FTA JOINT AUDIT PROJECT QUESTIONNAIRE/SURVEY AND RESULTS .....	37
Part 1 Joint Audit Experiences Survey .....	37
Part 2 Country Responses to the Joint Audit Experiences Survey.....	39
Table 1 Experiences with Simultaneous Examinations –Bilaterally Under Tax Treaty .....	39
Table 2 Experiences with Simultaneous Examinations – bilaterally under a treaty other than a Tax Treaty .....	42
Table 3 Experiences with Simultaneous Examinations - bilaterally or multilaterally under the Nordic Convention on Mutual Administrative Assistance in Tax Matters .....	42

Table 4 Experiences with Multilateral Controls under the EU Mutual Assistance Directive .....	43
<b>ANNEX 3 CHALLENGES FOR CONDUCTING JOINT AUDITS – ADDITIONAL ISSUES IDENTIFIED .....</b>	<b>49</b>
A. Other issues arising from domestic law .....	49
1) Time Limits in Domestic Legislation .....	49
2) Differences in the legal framework for obtaining information from the taxpayer and third parties ..	49
3) Varying record keeping requirements .....	49
B. Practical Problems .....	50
a) Agreement on the extent of the audit .....	50
b) Agreement on the audit plan .....	50
c) Timing of the audit (mismatching time frames).....	50
d) Different administrative processes for finalising audits.....	50
e) Effective procedures for exchanging information during the joint audit process .....	50
f) Differences of opinion/interpretation of legislative provisions .....	50
g) The lack of sufficient qualified/experienced staff in revenue bodies.....	51
h) Involvement of additional staff to the joint audit process .....	51
i) Logistical issues .....	51
j) Cost sharing problems/resource constraints.....	51
k) Language Barriers .....	51
<b>ANNEX 4 STRATEGIC MANAGEMENT OF A MULTI-LATERAL PROJECT .....</b>	<b>52</b>
Purpose.....	52
History and Context .....	52
Working Arrangements & Best Practices .....	53
Introduction .....	53
Governance and “The Protocol” .....	53
Structure/Roles and Responsibilities.....	54
How the Steering Group Operated .....	56
Other Tools/Approaches used by the Group .....	60
Conclusion.....	63

## EXECUTIVE SUMMARY

This report was commissioned by the Forum on Tax Administration (FTA) and sets out the findings and recommendations based on a project to examine how international cooperation could be advanced through the use of joint audits among Participating Countries.

The project was carried out by a group consisting of 13 countries: Australia, Canada, Denmark, France, Japan, Korea, Mexico, Netherlands, South Africa, Spain, Turkey, the United Kingdom, and the United States of America.

All FTA members were surveyed on their experiences with working under the various types of international frameworks for audits or examinations. Thirty countries provided responses to the survey as summarised in this report (Chapter 3 Annex 2). Whilst countries had experience with simultaneous audits or multilateral controls under the existing relevant frameworks, no countries had any experience with joint audits.

In chapter 1, a joint audit is defined and its objectives are outlined. A joint audit is where:

- two or more countries join together to form a single audit team to examine an issue(s) / transaction(s) of one or more related taxable persons (both legal entities and individuals) with cross-border business activities, perhaps including cross-border transactions involving related affiliated companies organized in the participating countries and in which the countries have a common or complementary interest;
- the taxpayer jointly makes presentations and shares information with the countries; and
- the joint audit team will include Competent Authority representatives, joint audit team leaders and examiners from each country.

In chapter 2, the report examines the current legal frameworks for exchanging information and conducting joint audits.

Chapter 3 describes the country experiences, opportunities and challenges in conducting a joint audit. They are grouped as follows: issues deriving from the domestic legal structure; issues deriving from differences in revenue bodies' administrative procedures; different audit standards; possible expanded role of Competent Authority; and practical problems.

A challenge identified by a number of countries is whether the current legal frameworks support joint audits. To address this challenge, the report recommends that the first joint audits be undertaken by countries that consider their legal frameworks support joint audits and that the audits be carried out with taxpayers who are willing participants in the audit.

The report concludes that joint audits should provide participating countries with streamlined audit efforts, reduced incidences of double taxation, and accelerated mutual agreement procedure (MAP). Joint audits also have the potential to shorten examination processes and reduce costs, both for revenue authorities and for taxpayers.

In chapter 4, the organisation and management of a joint audit are discussed. This includes the steps taken to initiate a joint audit, and the case selection process, and the initiation of joint audit.

Annexes are included to further supplement the report.

The report makes a number of recommendations about the manner in which joint audits may be pursued under the current legal framework that exists in many FTA member countries, primarily to address the challenges identified by countries in their response to the survey.<sup>1</sup> There are also a number of very practical examples of how to identify cases appropriate for a Joint Audit as well as a *Joint Audit Participant's Guide* that will function as a handbook for revenue body personnel considering whether to participate in a Joint Audit; planning and conducting a Joint Audit; and completing a Joint Audit. The Participant's Guide was prepared with the auditor in mind – to provide a series of steps that should be taken along with practical suggestions as to how those steps would be completed.

---

<sup>1</sup> See Chapter 3 pages 20-30 and Annex 3 pages 48 - 50 for the challenges identified and the recommendations.

## CHAPTER 1 INTRODUCTION

1. As a consequence of today's increasingly borderless world and the growth in international transactions by entities (corporations, trusts and other enterprises) and individuals, revenue bodies need to plan for the challenges of a vastly increasing number of taxpayers with international issues. This increasing internationalisation will also mean revenue bodies will need to cooperate and collaborate more closely in order to optimise compliance with international and national tax rules.
2. The types of cooperation between revenue bodies may vary from the traditional exchange of information under tax treaties to the rendering of assistance by tax officers in different ways, including jointly examining the affairs of taxpayers. Revenue bodies' recent focus in international cooperation has been on the intensification, streamlining and optimising of the impact of exchange of information. The Forum on Tax Administration (FTA) commissioned a study to examine how international cooperation could be advanced through more extensive use of joint audits.
3. This report sets out what a joint audit is; examines the legal frameworks for exchanging information and conducting joint audits; reviews current FTA member practices; examines the opportunities and challenges for joint audits identified by FTA countries and makes recommendations for addressing these challenges; and considers the organisation and management of a joint audit function.
4. In order to enhance the practicality of the report, and to provide a useful guide to those responsible for leading and participating in a joint audit, a separate *Joint Audit Participants Guide* has been developed. The guide is a stand-alone product providing instruction for the preparation, planning, conduct and completion of a joint audit. The guide will assist those interested in a joint audit by answering many of the questions an auditor will have when participating. It is recommended that it be adopted by countries considering participating in joint audits and that it is kept as a ready reference while participating in a joint audit.
5. In conducting a joint audit it will be imperative to consult with the taxpayer and their advisers to seek their consent to and cooperation during the audit. It will also be important to keep open channels of communication with the taxpayer throughout the joint audit process. As with any audit, the cooperation of the taxpayer and their advisers will be a key factor in obtaining a satisfactory outcome.
6. It is recognised that each FTA participating country is faced with a different environment in respect of policy, legislation, administration and culture, which will have shaped their taxation systems. It is therefore up to each country to decide on the approach to the issues addressed in this paper and on what constitutes the most appropriate response.

### **Description of joint tax audit**

7. A *joint audit* can be described as two or more countries joining together to form a single audit team to examine an issue(s) / transaction(s) of one or more related taxable persons (both legal entities and individuals) with cross-border business activities, perhaps including cross-border transactions involving related affiliated companies organized in the participating countries, and in which the countries have a common or complementary interest; where the taxpayer jointly makes presentations and shares information with the countries, and the team includes Competent Authority representatives from each country. A joint audit can be activated for all compliance activities that can be accommodated through (1) the competent

authority process outlined in the tax treaties between the participating revenue bodies and (2) the legal framework that guides the limits of collaboration between the participating parties.

8. The term ‘joint audit’ as such is not a *legal* term. In tax matters the term “joint audit” has been used *in practice* to express the idea that two or more tax administrations work together. If countries want to carry out a joint audit, it is first necessary to determine the legal framework on which they can cooperate. The basis for cooperation can be found in a network of bilateral and multilateral tax treaties which provide for varying degrees of mutual assistance. The currently available frameworks for conducting tax audits cooperatively are described in Chapter 2.

### **Joint audit objectives**

9. A joint audit should be *considered*:

- when there is an added value compared to the procedures of exchange of information;
- when the countries have a common or complementary interest in the fiscal affairs of one or more related taxpayers, and
- in order to obtain a complete picture of a taxpayer's tax liability in reference to some portion of its operations or to a specific transaction, where a domestic audit is not sufficient.

10. The main *objectives* of joint audits are:

- to reduce taxpayer burden of multiple countries conducting audits of similar interests and/or transactions;
- to improve the case-selection of tax audits by mutual risk identification and analyses;
- to provide as much evidence as possible that the correct and complete income, expense and tax are reported in accordance with national legislation, through efficient and effective administrative cooperation;
- to enhance the awareness of tax officers of the opportunities available in dealing with international tax risks;
- to gain understanding of the differences in legislation and procedures and if necessary to accelerate the Mutual Agreement procedure by early involvement of the Competent Authority, where double taxation is involved;
- to recognise and learn from the different audit methodologies in participating countries;
- to harness the particular strengths and expertise of team members (for example, valuation experts, economists or industry experts) from different administrations for the benefit of the joint audit;
- to identify and improve further areas of collaboration; and
- for all participating countries to reach a joint/mutual agreement on the audit results to avoid double taxation, as applicable.



11. A joint audit can also *contribute* to:

- the development of enhanced relationships between revenue bodies and taxpayers;<sup>2</sup>
- enhancing the compliance of multinational companies;
- providing certainty for taxpayers;
- a reduction in compliance costs for taxpayers through the resolution of tax issues in a timely and cost effective manner;
- more effective management of tax issues in ‘real time’;
- increasing the efficiency and effectiveness of revenue bodies; and
- more effective challenges to those taxpayers who push legal boundaries and who rely on lack of transparency in cross-border transactions.

---

<sup>2</sup> See OECD (2008) *Study into the Role of Tax Intermediaries* OECD Paris for an explanation of the enhanced relationship between a revenue body and large taxpayers and their advisers.

## CHAPTER 2 LEGAL FRAMEWORKS<sup>3</sup>

12. Part 1 of this chapter examines the legal frameworks that support the exchange of information. Part 2 examines the legal frameworks that also support various other types of mutual assistance in tax matters that go beyond mere exchange of information and which may provide a legal framework for joint audits.

### Part 1 Frameworks for Exchange of Information

#### 1. *Bilateral treaties*

13. The OECD *Model Tax Convention on Income and on Capital*<sup>4</sup> (Model Tax Convention) has provided the model for bilateral treaties between countries aimed at the prevention of double taxation. The model convention contains an article, Article 26, which is also known as the “*international standard on information exchange for tax purposes*” and provides the most widely accepted legal basis for bilateral exchange of information for tax purposes. Article 26 applies to both direct and indirect taxes.<sup>5</sup>

14. In its first paragraph, Article 26 imposes the obligation on the treaty partners to exchange information that is foreseeably relevant for the implementation of both the Model Tax Convention and the domestic fiscal legislation of a state. Within this framework a state must firstly have exhausted its own internal possibilities to gather the relevant information before appealing to a treaty partner for its assistance. Exchanges of data are not restricted to data that revenue bodies already possess (‘available to them in an orderly fashion’) and treaty partners are obliged, if necessary, to institute special investigations or special examinations in order to be able to provide the requested information.<sup>6</sup> Similarly the obligation to exchange information exists even in circumstances where the requested state has no interest in the information.<sup>7</sup>

15. The Commentary on Article 26 of the Model Tax Convention describes three of the main methods for the exchange of information, which can be used either solely or in combination.<sup>8</sup>

---

<sup>3</sup> The assistance of Dr. Mr. E.C.J.M. (Lisette) van der Hel – van Dijk RA in preparing this chapter is gratefully acknowledged. The information in this chapter is based upon chapter 1 of E.C.J.M. van der Hel – van Dijk (2009) *European Co-Operation and Legal Guidelines for an Intra-Community Tax Audit*, (2009). [www.lisettevanderhel.eu](http://www.lisettevanderhel.eu)

<sup>4</sup> OECD (2010) Update on the Model Tax Convention on Income and on Capital OECD Paris, [www.oecd.org/dataoecd/23/43/45689328.pdf](http://www.oecd.org/dataoecd/23/43/45689328.pdf)

<sup>5</sup> In October 2008, the United Nations also introduced the standard in the UN Model Tax Convention. <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan002458.pdf>

<sup>6</sup> Note 16 of Article 26, Paragraph 2 Commentary of the Model Tax Convention, version 1977. ‘.....or can be obtained by them in the normal procedure of tax determination, which may include special investigations or special examination of the business accounts kept by the taxpayer or other persons.....’.

<sup>7</sup> OECD (2010) Model Tax Convention on Income and on Capital, Article 26, paragraph 3.

<sup>8</sup> OECD Commentary Note 9, article 26 paragraph 1.

- *on request*: With a particular case in mind, it being understood that the regular sources of information available under international taxation procedures should be relied on in the first place before a request for information is made to the other State. So-called ‘fishing expeditions’ are outside the scope of Article 26;<sup>9</sup>
- *automatically*: The contracting states periodically exchange information on one or more categories of income, which is transmitted systematically on the basis of pre-existing arrangements; and
- *spontaneously*: Without having received a request, one contracting state provides on its own initiative information that has emerged, for example, during its investigations, and which it supposes to be of interest to the levying of taxes by the other contracting state.

16. Article 26 also sets out when countries may refuse to exchange information.<sup>10</sup> This is where:

- administrative measures must be taken that contravene the legislation or the administrative practice of the state;
- the information cannot be obtained under the law, or according to current practice of both states; or
- the information would disclose trade, business, industry, or professional secrets, would reveal industry or trade recipes or formulas, or providing the information would violate or be in contravention of public order.

17. Additionally, the Commentary on Article 26 stresses that the Article does not restrict the possibilities of exchanging information to these methods and that the contracting states may use other techniques to obtain information which may be relevant to both States such as simultaneous examinations and tax examinations abroad.<sup>11</sup> Simultaneous examinations and tax examinations are described in further detail in Part 2 of this Chapter.

18. Importantly however, Article 26 provides that the information being in the possession of a bank or similar institution must not prevent its exchange, thereby removing ‘bank secrecy’ as basis for a refusal to provide information.<sup>12</sup>

## **2. Information Exchange Agreements**

19. With rapidly increasing frequency, mutual assistance between countries in tax matters can be based on, and be facilitated by bilateral information exchange agreements, known as Tax Information Exchange Agreements (TIEA). The general purpose of these bilateral agreements is to enable the exchange of information between countries where there has previously been no existing legal basis to do so, though in some cases the effect has been to intensify and streamline the application of provisions regarding

---

<sup>9</sup> Paragraph 1 provides that the exchange of information should be ‘foreseeable relevant’. The wording points to the exchange of information in tax matters to the widest possible extent but at the same time clarifies that states are not at liberty to engage in fishing expeditions or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer.’

<sup>10</sup> OECD (2010) Model Tax Convention on Income and on Capital, Article 26, paragraph 3.

<sup>11</sup> OECD Commentary Note 9, article 26 paragraph 1.

<sup>12</sup> OECD (2010) Model Tax Convention on Income and on Capital, Article 26, paragraph 5.

exchange of information in already existing international conventions and treaties. In many cases, the basis for such agreements is the *Model Agreement on Exchange of Information on Tax Matters* (Model Agreement) developed by the OECD Global Forum Working Group on Effective Exchange of Information.<sup>13</sup>

20. The development of these agreements makes it clear that the possibilities for mutual assistance, particularly in the field of tax audits or examinations, have been extended in recent years, though unlike the Model Tax Convention, only exchanges of information on request are provided for in most TIEAs.

### **3. Multilateral treaties**

21. In addition to bilateral treaties, multilateral treaties and conventions in the field of administrative cooperation exist and provide the framework for the joint examination of taxpayers' tax affairs.

22. The *Convention on Mutual Administrative Assistance in Tax Matters* (Convention on Mutual Administrative Assistance)<sup>14</sup> is a multilateral agreement drawn up under the aegis of the OECD and the Council of Europe. It provides a solid legal framework to facilitate international cooperation through inter-country exchanges of tax information and assistance. Its objective is to enable each Party to the Convention to combat international tax evasion and better enforce its national tax laws, while at the same time respecting the rights of taxpayers.

23. The Convention on Mutual Administrative Assistance was opened for signature in 1988 and entered into force in 1995. The 54 countries that are members of either the Council of Europe or the OECD or both may accede to it.

24. The scope of the Convention on Mutual Administrative Assistance is broad as it covers a wide range of taxes and goes beyond exchange of information on request. It also provides for other forms of assistance including spontaneous exchanges of information, simultaneous examinations, performance of tax examinations abroad, service of documents, assistance in recovery of tax claims and measures of conservancy.

25. The Convention on Mutual Administrative Assistance also provides for automatic exchanges of information, but this form of assistance requires a preliminary agreement between the Competent Authorities of the Parties willing to provide each other information automatically. The Convention on Mutual Administrative Assistance was in many ways ahead of its time when it was drafted, and its value to effective tax administration has been recognised recently.<sup>15</sup> However, as it was drafted before the adoption of the internationally agreed standard on transparency and exchange of information, the assistance covered by the Convention on Mutual Administrative Assistance is subject to limitations existing in domestic laws. In particular, it does not require the exchange of bank information on request nor does it override any domestic tax interest requirement.

---

<sup>13</sup> OECD (2002) Agreement on Exchange of Information on Tax Matters. [www.oecd.org/dataoecd/15/43/2082215.pdf](http://www.oecd.org/dataoecd/15/43/2082215.pdf)

<sup>14</sup> OECD & Council of Europe (2008) The Convention on Mutual Administrative Assistance in Tax Matters 20<sup>th</sup> Anniversary Edition, OECD Paris.

<sup>15</sup> For example, the commentary contained in the Explanatory Report on the Convention recognised the possibility for joint audits, where the domestic laws of the country permitted them: OECD (1988) Convention on Mutual Administrative Assistance in Tax Matters Commentary Paragraph 53. [www.oecd.org/dataoecd/11/29/2499078.pdf](http://www.oecd.org/dataoecd/11/29/2499078.pdf)

26. The recent increased political attention on international tax evasion has led to a universal acceptance of the internationally agreed standard, and all jurisdictions surveyed by the Global Forum on Transparency and Exchange of Information for Tax Purposes<sup>16</sup> are now committed to implement it. The G20, at its 2009 London Summit, stressed the importance of quickly implementing these commitments. It also requested proposals to make it easier for developing countries to secure the benefits of the new cooperative tax environment, including a multilateral approach for the exchange of information. In line with the requests from the G20, an amending Protocol<sup>17</sup> was opened for signature as from 27 May 2010. On that date it was signed by 11 countries already Parties to the Convention (Denmark, Finland, Iceland, Italy, France, Netherlands, Norway, Sweden, Ukraine, the United Kingdom and the United States). In addition, Korea, Mexico, Portugal and Slovenia signed both the Convention and the amending Protocol and Poland subsequently signed on 9 July 2010. A number of other countries are completing the internal procedures to permit them to become parties to the amended convention.

27. The amending Protocol makes several important changes. Firstly it aligns the Convention on Mutual Administrative Assistance to the internationally agreed standard on exchange of information for tax purposes in that it provides that bank secrecy and a domestic tax interest requirement should not prevent a country from exchanging information for tax purposes. In addition, the Convention on Mutual Administrative Assistance presently contains several provisions which restrict the use of information exchanged under it. The protocol lifts these restrictions and the Convention on Mutual Administrative Assistance is now fully in line with the internationally agreed standard. The amending Protocol also provides for the opening of the Convention on Mutual Administrative Assistance to non-OECD and non-Council of Europe member States, including all FTA members not already signatories to the Convention.

28. The amendments to the Convention on Mutual Administrative Assistance will encourage more countries to accede to it and transform the Convention into a very powerful instrument in the fight against offshore tax evasion and the prime instrument for multilateral joint audits.

### *Regional Frameworks*

#### European Union Mutual Assistance Directive

29. In the European Union (EU), exchanges of information between member states are principally governed by Council Directive 77/799/EEC of December 19th, 1977 (Mutual Assistance Directive). This Directive regulates mutual assistance by Competent Authorities in the member states in the areas of direct and indirect taxes.<sup>18</sup> At its inception the Mutual Assistance Directive contained provisions that went further than those of bilateral treaties that had been concluded following the Model Tax Convention, as it provides for cooperation with officials of the state requesting information.<sup>19</sup>

---

<sup>16</sup> The Global Forum on Transparency and Exchange of Information for Tax Purposes has been the multilateral framework within which work in the area transparency and exchange of information has been carried out by both OECD and non-OECD economies since 2000. [www.oecd.org/document/5/0,3343,en\\_21571361\\_43854757\\_43857093\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/5/0,3343,en_21571361_43854757_43857093_1_1_1_1,00.html)

<sup>17</sup> OECD & Council of Europe (2010) Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters OECD Paris. [www.oecd.org/dataoecd/48/11/45037332.pdf](http://www.oecd.org/dataoecd/48/11/45037332.pdf)

<sup>18</sup> The scope of this Directive initially covered direct taxation only, but in 1979 was extended to cover Value Added Tax, in 1992 excises, and in 2003 insurance premiums. Nowadays the scope is direct taxation.

<sup>19</sup> Article 6 Collaboration by officials of the State concerned. 'For the purpose of applying the preceding provisions, the Competent Authority of the Member State providing the information and the Competent Authority of the Member State for which the information is intended may agree, under the consultation procedure laid down in Article 9, to authorize the presence in the first Member State of officials of the tax

30. To a large degree the Mutual Assistance Directive contains similar provisions on the exchange of information as the Convention on Mutual Administrative Assistance, prior to the introduction of the amending Protocol. It is important to note that the Convention on Mutual Administrative Assistance cannot be invoked for the relationships between the member states of the EU, unless its provisions have a broader effect than the provisions laid down in EU regulations.<sup>20</sup>

31. The *EU Regulation No. 1798/2003* sets out rules and procedures enabling member states to cooperate and to exchange all information relevant to levying VAT correctly, both en masse and in individual cases. A major part the regulation consists of rules and procedures for the electronic exchange of VAT information.<sup>21</sup> Another important element of the regulation is that it provides for the appointment of individual tax officers to exchange information directly with tax officers in other member states.<sup>22</sup>

#### Nordic Convention on Mutual Administrative Assistance in Tax Matters

32. The Nordic Convention on Mutual Administrative Assistance in Tax Matters (The Nordic Assistance Convention) of 7 December 1989 between Finland, Iceland, Norway, Sweden, Denmark, the Faroe Islands and Greenland, provides for simultaneous examination by the signatory States. According to the convention, a “simultaneous tax examination” means an arrangement where two or more countries agree to examine simultaneously and independently, each on its own territory, the tax affairs of one or more companies.

33. Under the Nordic Assistance Convention agreements can be made between the participating states so that auditors from one country can participate in investigations in other countries.<sup>23</sup> The intention of the Nordic Assistance convention is that cooperation on a simultaneous tax examination should be arranged when it is considered that the participating countries will achieve better and quicker results through joint efforts, than through the use of solely domestic investigations.

#### **4. Domestic law**

34. Exchanging information and other forms of international mutual assistance in principle may also require a legal foundation in the national law of a country as without it there may be no legal basis upon which information can be exchanged. Generally specific national legislation that regulates the international mutual assistance of that country will be in place. This type of legislation will contain the purpose and scope of the mutual assistance that will be provided by that country. An exception would be the EU Regulations that are directly applicable in each member state.

---

administration of the other Member State. The details for applying this provision shall be determined under the same procedure.’

<sup>20</sup> Article 27, Paragraph 2 of the Convention on Mutual Administrative Assistance in Tax Matters as modified by Article VII of the Protocol the Convention on Mutual Administrative Assistance in Tax Matters. [www.oecd.org/dataoecd/48/11/45037332.pdf](http://www.oecd.org/dataoecd/48/11/45037332.pdf)

<sup>21</sup> Council Regulation (EC) No. 1798/2003 of 7 October 7th, 2003 on administrative cooperation in the field of value added tax and repealing Regulation (EEC) No. 218/92 (OJ L 264, 15.10.2003, p. 1).

<sup>22</sup> Article 3, Paragraphs 4 and 5 of Council Regulation (EC) No. 1798/2003.

<sup>23</sup> Article 13 of the Nordic Assistance Convention

## **Part 2 Other Frameworks for Mutual Assistance**

### ***1. Assistance in person***

35. A type of mutual assistance that reaches further than exchanging information is providing assistance in person. Article 6 of the Mutual Assistance Directive provides that officials of the revenue body requesting information are ‘allowed to be present’ at an examination of the business accountants in the member state providing information.<sup>24</sup> This ability is provided to tax officers instead of the competent authorities of the state.

36. The opportunity to be present in another member state is linked to the request for information. This limits the scope of the examination to gathering the information requested. The role of the tax officer of the requesting member state is a passive one, as is evident from the wording of the Mutual Assistance Directive, ‘allowed to be present’.

37. Reciprocity<sup>25</sup> is generally a requirement for this type of cooperation. Requests for permission to be present abroad can only be made if a legal basis for it is in place. If not, officers can be present provided the taxpayer (or interested party) has given their explicit consent.

### ***2. Tax examinations abroad***

38. Article 6 of the Model Agreement on Exchange of Information in Tax Matters contains the concept of ‘tax examination abroad’. In a tax examination abroad, representatives of the competent authority from one state are allowed to be present in the territory of the other state.<sup>26</sup> Reciprocity is also generally a requirement for this type of cooperation.

39. In a tax examination abroad procedures are performed in another country. The representative of the competent authority A performs his own examination at a company of State A using his own legal competences for tax auditing, but does so in the territory of State B. Occasionally such an examination is made at the request of the taxpayer and in all cases the consent of the taxpayer involved is required.<sup>27</sup>

40. Article 9 of the Convention on Mutual Administrative Assistance also provides for one variant of ‘tax examinations abroad’ - officials being present within the context of a request for information (“to be present at the appropriate part of a tax examination in the requested State”), and is similar to the concept in the second paragraph of Article 6 of the Model Agreement.

### ***3. Simultaneous examinations***

41. Article 8 of the Convention on Mutual Administrative Assistance provides a legal foundation for conducting simultaneous tax examinations. Paragraph 2 of this Article provides:

---

<sup>24</sup> Council Directive 77/799/EEC, article 6.

<sup>25</sup> Reciprocity is a legal concept meaning that both countries are prepared and able to provide similar information to each other. Reciprocity also applies to assistance in person.

<sup>26</sup> The Commentary on this paragraph explains that this Article allows officials of the requesting (‘applicant’) party to directly participate in gathering information in the requested party. This requires, though, permission of the requested party and the consent of the persons concerned. The Commentary also states that officials of the requesting party do not have the authority to enforce disclosure of information.

<sup>27</sup> See Article 6 paragraph 1.

‘For the purposes of this Convention, a simultaneous tax examination means an arrangement between two or more Parties to examine simultaneously, each in its own territory, the tax affairs of a person or persons in which they have a common or related interest, with a view to exchanging any relevant information which they so obtain.’

42. Paragraph 1 of Article 8 outlines the general conditions for simultaneous tax examinations. These relate to consulting, determining cases and establishing procedures. In addition, fiscal sovereignty is stressed again in that each of the parties involved decides in each case whether it will, or will not participate in a simultaneous tax examination.

43. The Commentary to Article 8 also recognises that parties to the Convention on Mutual Administrative Assistance may, when their domestic laws so permit, make use of joint auditing. It recognises however, that some countries might at present for a number of reasons be unable, or be able only under certain conditions, to participate in the forms of cooperation described in Articles 8 and 9.<sup>28</sup>

44. EC Regulation 1798/2003 regulates some specific issues with respect to tax examinations in the field of indirect taxes.<sup>29</sup> Article 12 provides a legal basis for ‘simultaneous controls’:

‘With a view to exchanging the information referred to in Article 1, two or more Member States may agree to conduct simultaneous controls, in their own territory, of the tax situation of one or more taxable persons who are of common or complementary interest, whenever such controls would appear to be more effective than controls carried out by only one Member State.’<sup>30</sup>

45. The term ‘*multilateral control*’ is principally used in the cooperation programme of the EU in the area of indirect taxation, known as the Fiscalis programme.<sup>31</sup> This programme provides no legal foundation for the execution of international tax audits and the auditors who take part in such examinations are permitted to perform international tax audits and exchange information only if a legal basis exists, such as Council Regulation 1798/2003 EEC. In the Fiscalis programme a ‘multilateral control’ is defined as

‘the co-ordinated control of the tax liability of one or more related taxable persons organised by two or more participating countries with common or complementary interests, which include at least one Member State’.<sup>32</sup>

#### **4. International tax audits**

46. In the current laws and regulations and in the administrative practice (including those of the individual states, the EU, Nordic countries and the OECD) various terms are used to denote an

---

<sup>28</sup> Paragraph 53 of the Commentary on the Convention on Mutual Assistance in Tax Matters, page 75.

<sup>29</sup> Council Regulation (EC) No 1798/2003.

<sup>30</sup> The text of Articles 12 and 13 of the Council Regulation (EC) 1798/2003 and Article 8b in Directive 77/799 EEC amended by Directive 2004/56 EEC) both on simultaneous controls) show minor differences in wording, but they do not deviate in substance. Both legal foundations lay down the description, the procedure, the decision making process and the direction and coordination of simultaneous controls on indirect taxes and direct taxes respectively.

<sup>31</sup> In practice the more appropriate term ‘multilateral audit’ is used.

<sup>32</sup> Article 2, Paragraph 4 of Decision No. 1482/2007/EC of the European Parliament and of the Council of December 11th, 2007 establishing a Community programme to improve the operation of taxation systems in the internal market (Fiscalis 2013) and repealing Decision No 2235/2002/EC.



‘examination’ made to address cross-border fiscal risks presented by internationally operating entities and individuals. Terms used are:

- bilateral tax audits or examinations;
- multilateral tax audits, examinations or controls;
- simultaneous tax audits, examinations or controls; and
- joint tax audits or examinations and administrative enquiries.

47. The overarching term ‘*international audit or examination*’ will be used to refer to these types of ‘tax audits’ and the many forms they may take. An international tax audit or examination can be conducted both *bilaterally* and *multilaterally*.

#### *Forms of international tax audits*

48. At a practical level, an international tax audit or examination can have many forms. Irrespective of the form and of the terms used, all international tax audits or examinations have several characteristics in common:

- The instrument is linked to the exchange of information between states;
- A simultaneous tax examination can be instituted while each state carries out the procedures in its own territory;
- Officers of the requesting state are allowed to be present with varying levels of ‘activity’ in the territory of the state that provides information;<sup>33</sup>
- The purpose of such tax audits is to examine the fiscal affairs of a taxpayer or group of taxpayers in whom the participating states have an interest;
- States are required to consult each other in advance, but are not obliged to participate;
- Procedures need to be established on the way in which the cooperation between states is shaped; and
- A flexible approach can be applied on a case-by-case basis, subject to the relevant treaties, domestic laws and administrative practices.

#### ***5. Exchange of information and international tax audits***

49. International exchange of information, being at the heart of an international tax audit, implies that the rules that apply to the exchange of information equally apply to an international tax audit or examination. During such an audit or examination, a revenue body is bound by the limits in the rules for exchanging information.

50. As stated previously, the traditional exchange of information is governed by bilateral or multilateral treaties. In practice, a request for information is made by the Competent Authority of the first

---

<sup>33</sup> However, simultaneous examinations or controls may be separately carried out in each country’s territory.

country to the Competent Authority of the other country. The reason for the request emerges at the operational level in a revenue body. In the context of compliance checking<sup>34</sup> the reply to the request is also given by officers at the level of the execution of audits. In some cases, due to the need to undertake investigations to gather the requested information, such requests can be time consuming and take time to be replied to.

51. In an international tax audit, the parties involved consult on the audit strategy, including the risk analysis, the goals of the tax audit, the audit objects, and the audit approach. Procedures are established for various practical matters, such as the time schedule, communication methods, and evaluation. The tax auditors involved are in direct contact with each other during the initial and concluding stages of an international tax audit and, where they are designated Competent Authorities, they will be in a position to exchange information in a less time consuming way compared to a traditional exchange of information. Importantly the execution of the audit provides opportunities for exchanging views and experiences.

52. The most important difference between exchanging information and an international tax audit though is the *structured framework* within which two or more revenue bodies work together. The Convention on Mutual Administrative Assistance explicitly provides the building blocks for this framework.<sup>35, 36</sup> These building blocks are no new form of mutual assistance but together constitute the framework within which actual mutual assistance takes place. Figure 1 sets out an example of a structured framework for an international tax audit.

Figure 1 Structured Framework for an International Tax Audit

<b>Stages</b>	<b>Activities</b>	
<b>1. Planning</b>	a. <b>Invitation</b>	- <b>Audit strategy</b>
	b. <b>Initial meeting</b>	- <b>Risk analysis</b>
		- <b>Insight into auditing competences of other states</b>
		- <b>Whether the taxpayer may be willing to cooperate with an international tax audit</b>
<b>2. Execution</b>	a. <b>Presence of officials</b>	- <b>Direct contacts</b>
	b. <b>Exchange of information</b>	- <b>Direct exchange of information</b>
		- <b>Applying own competences</b>
	c. <b>The examination</b>	
<b>3. Forming a judgement</b>	a. <b>Concluding meeting</b>	- <b>Distortions in laws and regulations</b>
	b. <b>Joint report</b>	- <b>Bottlenecks in the exchange of information</b>
		- <b>Bottlenecks in the administrative practice</b>

<sup>34</sup> Not all exchange of information requests arise in an audit context. They may also occur in the context of tax debt matters.

<sup>35</sup> The *Convention on Mutual Administrative Assistance in Tax Matters* Article 8, paragraph 1.

<sup>36</sup> These building blocks are: consultation, the selection of the possible object and establishing procedures.

- **Results of the examination**
- **Agreements for the future**

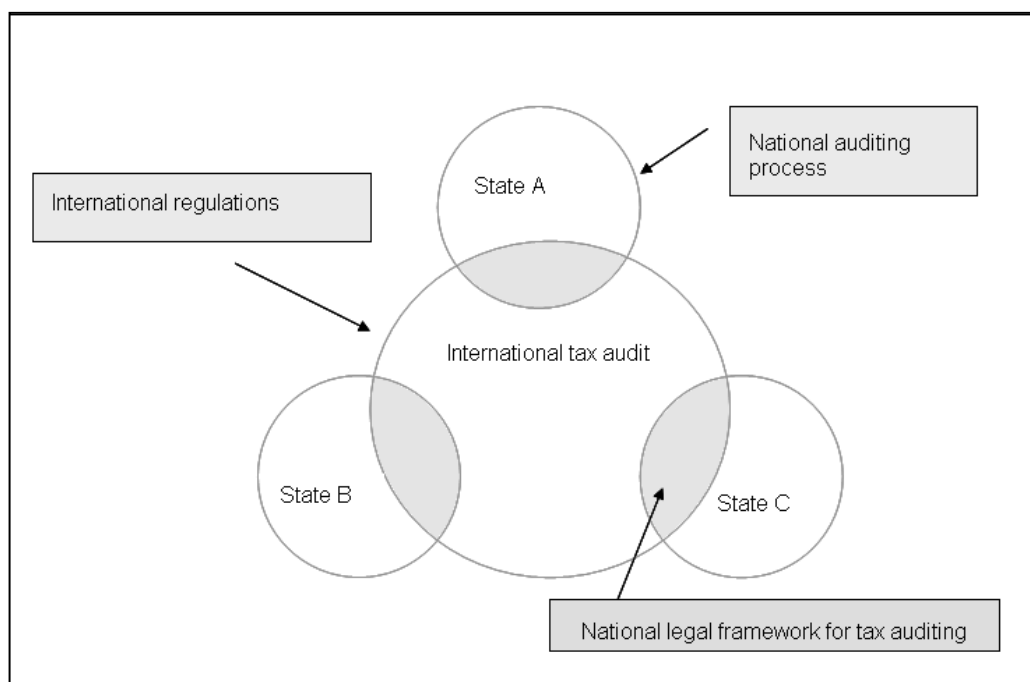
## 6. Substantive cooperation

53. An international tax audit or examination requires revenue bodies to cooperate at the practical level, that is, the tax auditors participating in such a tax audit work together as if they were performing one domestic tax audit. This requires following a similar auditing approach, undertaking a joint risk analysis; performing unambiguous auditing procedures; being familiar with each other's auditing processes; having direct contacts with colleagues of foreign revenue bodies during all stages of the tax audit; and exchanging information via competent authorities.

54. Domestic legislation may have an impact on a revenue body's ability to work cooperatively with other revenue bodies. For example, a revenue body may legitimately refuse to provide mutual assistance where, under its domestic laws, it does not have a right to access the type of information requested. This will be the case even where the domestic law of the country whose revenue body has made the request permits access to that type of information. These circumstances are recognised in the OECD Model Tax Convention (principle of reciprocity).<sup>37</sup>

55. In addition to legal constraints, differing administrative cultures and strategies for engaging with taxpayers may limit the extent of cooperation that can be achieved. Figure 2 demonstrates the interaction between an international tax audit and the domestic frameworks.

*Figure 2 Interaction between an international tax audit and domestic frameworks*



<sup>37</sup> OECD Model Tax Convention Article 26, Paragraph 2.

*Figure 2 Explanation*

56. In an *international tax audit or examination* two frameworks meet: the domestic and the international. In the international context international regulations (treaties, conventions, directives and regulations) on the exchange of information between states, the presence of officials, and the international agreements on the execution of an international tax audit are relevant.

57. To the individual revenue body (in Figure 3 States A, B, and C) domestic auditing processes are relevant, including the domestic legal framework for tax auditing (for example, the statutory review period and confidentiality of data) and the internal revenue body auditing practice.

58. From the perspective of individual states taking part in an international tax audit or examination the shaded parts of Figure 3 are likely to be “black boxes” as these are in the realm of (parts of) domestic rules for the execution of a tax audit in the state concerned.

59. In the international audit or examination the transactions to be audited in a bi-lateral or multi-lateral environment will be those agreed to by the participating countries. The focus of the international audit or examination is narrower than may otherwise be undertaken domestically, and it should be expected that each participating country will individually audit items outside of the scope of the international audit.

60. The international cooperation framework (including the legal foundation) as well as the structure of the underlying domestic auditing processes of the states determine to a large extent the intensity, effectiveness, and efficiency of an international tax audit.

61. Any (legal) obstacles to the administrative cooperation or the lack of harmony in the domestic auditing systems of the participating revenue bodies could impact upon the execution of such an audit. However, the very structured framework that is characteristic for a *joint tax audit* may assist in overcoming possible limitations or impediments.

62. Possible legal constraints may also be addressed by an agreement between the revenue bodies and the taxpayer, which provides taxpayer consent to the international audit.

## CHAPTER 3 COUNTRY EXPERIENCES AND OPPORTUNITIES AND CHALLENGES

### Part 1 Survey of Country Experiences

63. All FTA countries were surveyed on their experiences with working cooperatively with other jurisdictions on audits. Twenty-nine FTA countries responded setting out their experiences with one or more of the types of international audits or examinations:

- No experience
- Simultaneous Examinations – bilaterally under tax treaty
- Simultaneous Examinations – bilaterally under a treaty other than a tax treaty
- Simultaneous Examinations – bilaterally or multilaterally under the *Nordic Convention on Mutual Administrative Assistance in Tax Matters*
- Simultaneous Examinations – Multilateral Controls (MLC) under the *EU Mutual Assistance Directive*
- Joint audits as described in this paper.

64. Responses are summarised in Table 1. The survey and the detailed country responses can be found at Annex 2.

**Table 1 Country Responses: Experiences with international audits or examinations**

Country	Nil	Simultaneous Examinations				Joint Audit
		Under Bilateral Treaty <sup>38</sup>	Other	Nordic Treaty	Multilateral Controls (MLC) <sup>39</sup>	
Australia		√				
Belgium		√			√	
Brazil	√					
Canada		√				
Chile			√			
Denmark		√		√		

<sup>38</sup> Includes those conducted under a bilateral Tax Treaty or a Tax Information Exchange Agreement

<sup>39</sup> Simultaneous controls under EU Regulation 1798/2003.

<b>Finland</b>				√	√	
<b>France</b>					√	
<b>Hong Kong China</b>	√					
<b>Hungary</b>					√	
<b>Iceland</b>	√					
<b>Ireland</b>		√			√	
<b>Korea</b>	√					
<b>Luxembourg</b>					√	
<b>Mexico</b>		√				
<b>Netherlands</b>		√			√	
<b>New Zealand</b>		√				
<b>People's Republic of China</b>	√					
<b>Poland</b>		√			√	
<b>Singapore</b>	√					
<b>Slovak Republic</b>					√	
<b>Slovenia</b>					√	
<b>South Africa</b>			√			
<b>Spain</b>					√	
<b>Sweden</b>				√	√	
<b>Switzerland</b>	√					
<b>Turkey</b>	√					
<b>United Kingdom</b>		√			√	
<b>United States</b>		√				
<b>TOTAL</b>	<b>8</b>	<b>11</b>	<b>2</b>	<b>3</b>	<b>13</b>	<b>0</b>

65. The following are the key points emerge from Table 1.

- **Eight countries** advised that that they had no experience with simultaneous examinations of any kind.
- **Eleven countries** advised that they had experience with simultaneous examinations carried out under a bilateral tax treaty (based on the Article 26 exchange of information model).
- **Two countries** indicated that they had entered into specific treaties which provide for simultaneous examinations.
- **Three countries** advised that they had experience with simultaneous examinations under the *Nordic Convention on Mutual Administrative Assistance in Tax Matters*.
- **Thirteen EU member countries** advised that they have had an experience with MLCs audits under the *EU Mutual Assistance Directive*.
- No countries had undertaken joint audits as described in chapter one.

## **Part 2 Opportunities for Conducting Joint Audits**

66. In the survey, countries were asked to identify opportunities for joint audits, including the types of issues that would be best suited to being examined by joint audits.

### ***1. Facilitating cooperation between revenue bodies***

67. Six countries identified facilitating cooperation between revenue bodies as an opportunity to derive wider benefits from conducting joint audits. This work could improve the cooperation between revenue bodies in several ways:

- Joint audits increase the leveraging of knowledge and expertise from each revenue body on complex tax issues. In specific tax matters or economic sectors where one revenue body has more expertise than the other revenue bodies' officers they would be able to share their "*know how*" and contribute to a better and more complete analysis of the issues. This sharing of knowledge and experiences facilitates revenue bodies in increasing taxpayers' compliance in their own jurisdictions by applying good practices (including new audit techniques) learned in the joint audit process.
- Joint audits encourage revenue bodies to approach problems cooperatively and to reach an agreement on the auditing process at the very beginning of the process.
- Tax-related communication, information exchange (including in relation to tax loopholes and misuses of tax havens), experience sharing, and effective and structured cooperation amongst the members of joint audit teams can help to combat international tax evasion and avoidance in the increasingly integrated global business environment. The members of joint audit teams could share their wider experience of aggressive tax planning, risk profiling, compliance practices and industry specific information. This could substantially enhance the impact of individual revenue body's programs and their capability. The Swedish Tax Administration commented that joint audits may be used as a preparatory step to identify double taxation issues before negotiations between countries concerned are commenced.

- Joint audits offer particular advantages in investigations of cross border transactions. Both countries obtain the same information and are in a position to agree on the facts and the interpretation of those facts.
- Joint audits would permit taxpayers to share the same information with multiple revenue bodies at the same time through the presence of the appropriate competent authorities thus reducing their overall compliance costs.
- Early involvement of the Competent Authorities from both jurisdictions may provide an opportunity to streamline the audit, objection and multilateral agreement procedure (MAP) process by identifying the issues to be resolved in advance and ensuring that the investigation stage is focused on resolving these issues, thus saving resources.

68. In summary, successfully designed and structured joint audits performed cooperatively by revenue bodies with the right team spirit may effectively reduce international tax evasion and avoidance across frontiers.

## ***2. Issues suitable for a joint audit approach***

69. Tax administrations are implementing strategies on real-time dialogue with taxpayers, raising commercial awareness and cooperation with businesses. A joint approach of tax administrations can contribute to the development of enhanced relationships with businesses in an international context, and accelerate certainty for revenue bodies and taxpayers. These relationships will contribute to identifying the opportunities for the use of a joint audit approach. In their responses, countries considered that the following issues are particularly amenable to a joint audit approach.

### *a) Transfer Pricing Issues*

70. Fifteen countries identified transfer pricing<sup>40</sup> as an opportunity for conducting joint audits, particularly the information/fact gathering stage of the audit. They also identified potential subsequent synergies, particularly where Competent Authorities examining claims to double tax relief could draw on facts gathered jointly by revenue bodies during a transfer pricing audit. The process of finalising the transfer pricing case at this point could be facilitated by a statement of facts agreed to by the taxpayers in each country in discussion with joint audit teams.

### *b) Taxpayer residency or Permanent Establishment determinations*

71. Nine countries identified that the data or information gathering activities required to determine the residency of taxpayers or the permanent establishment status of taxpayers would lend themselves to a joint audit approach.

### *c) Analysis of complex tax structures and entities operating in tax havens and aggressive tax planning schemes*

72. Eleven countries considered that adopting a joint audit approach would facilitate the analysis of complex tax structures and aggressive tax planning schemes involving entities operating in non-transparent jurisdictions. Moreover, joint audits may be useful for verifying income and costs records, contracts or

---

<sup>40</sup> Transfer pricing audits are related with the determination of the appropriate value to be used to record the transfer of goods or services between related parties across jurisdictional borders.



agreements made in no or nominal tax jurisdictions and any other matters involving the operation of entities situated in these jurisdictions.

73. The following list provides issues that may be suitable for joint audit, but this list should not be considered restrictive; countries should decide where they see risks and work with their partners to explore whether a joint audit is the appropriate approach to deal with the risk(s) identified:

- Complex business restructuring processes
- Split benefit agreements (including royalty payments)
- Cost allocation agreements
- Hybrid financial instruments<sup>41</sup>
- Back-to-back loans
- Structured transactions<sup>42</sup>
- Double-dip leases
- Service agreements and cost sharing agreements
- Private equity funds<sup>43</sup>
- Dealings with source issues.<sup>44</sup>

---

<sup>41</sup> Note that not all hybrid transactions are susceptible to a joint audit, particularly when the transactions comply with the domestic laws of each of the countries involved. The mere fact that a transaction results in a "mismatch" based on application of different countries' laws would not, in and of itself, be sufficient reason for an audit."

<sup>42</sup> A **structured transaction** is a series of related transactions that could have been conducted as one transaction, but which has been broken into several transactions by the financial institution and/or the parties to the transaction intentionally. The purpose for structuring the transaction may be for purposes of circumventing transaction reporting requirements. Collateralized debt obligations (CDO), asset backed securities (ABS), complex assurance contracts and special purpose entities (SPE) are examples of this type of structured transaction.

<sup>43</sup> A **private equity fund** is a pooled investment vehicle used for making investments in various equity (and to a lesser extent debt) securities according to one of the investment strategies associated with private equity. Private equity funds are typically limited partnerships with a fixed term of 10 years. Institutional investors make an unfunded commitment to the limited partnership, which is then drawn down over the term of the fund. A private equity fund is raised and managed by investment professionals of a specific private equity firm (the general partner and investment advisor). It is often very difficult to get information about the transactions between the target entity and the different levels in the owner chain. Therefore, the joint audit approach could be beneficial to examine the fundamental transactions of private equity funds.

<sup>44</sup> Jurisdictions might benefit from the findings of joint audits in preventing the abuse of double exemptions and dealing effectively with foreign tax credit generators.

*d) Particular tax frauds in Value Added Tax (VAT)*

74. Seven countries identified cases of VAT frauds such as carousel fraud, fraud related to cars and fraud related to e-commerce as instances where a joint audit approach might accelerate the audit process, facilitate the early detection of widely abused tax loopholes and increase the effectiveness of the tax audits. Moreover, the joint audit mechanism could be an efficient tool to check those companies which have a VAT registration number in several countries.

*(f) Using joint audits for criminal investigations*

75. Three countries indicated that joint audits would be appropriate where it becomes evident during any criminal investigation that two or more revenue bodies have a common investigative interest and where it can be shown that a joint investigative process would benefit both parties in the furtherance of their criminal investigations of financial crimes.

### **Part 3 Challenges for Conducting Joint Audits**

76. All FTA countries that responded to the survey identified challenges inherent in a joint audit based upon either their experience with simultaneous audits, or multilateral controls, or where they did not have any experience.

77. These challenges have been grouped into the following broad categories.

1. Issues deriving from the domestic legal structure.
2. Issues deriving from differences in revenue bodies' administrative procedures.
3. Different audit standards.
4. Possible expanded role of Competent Authority.
5. Practical problems.

#### ***1. Issues deriving from domestic legal structures***

##### *National Sovereignty and Extraterritoriality Issues*

78. Nine countries considered that jurisdictional issues and issues of national sovereignty would be major obstacles to their carrying out joint audits. Apart from audits conducted under the EU *Mutual Assistance Directive*, the legal frameworks provide for tax auditors to carry out their functions only within their own jurisdiction and do not permit tax auditors from another jurisdiction to undertake audits within that jurisdiction.<sup>45</sup> The survey responses which indicate that there are particular challenges in relation to how joint audits could be conducted within existing legal frameworks can be summarised as follows:

- Using existing tax treaty rules, including exchange of information under Article 26, will broadly allow bilateral exchange of information which can be enhanced through the granting of

---

<sup>45</sup> The overview of what each legal framework offers for joint audits is dealt with more fully in Chapter 2.

Competent Authority powers to appropriate members of a joint team on the lines of the model currently operating in the Joint International Tax Shelter Information Centre (JITSIC).<sup>46</sup>

- For countries which are signatories to the *Convention on Mutual Administrative Assistance in Tax Matters* or members of the EU operating under the *Mutual Assistance Directive* the facility for Competent Authority representatives to discuss multilaterally the affairs of particular taxpayers and to engage multilaterally with that taxpayer offers greater options than the model which relies strictly on the provisions of tax treaties. However, at present the treaty model is the only model available to *all* FTA countries though the effect of the 2010 protocol to the *Convention on Mutual Administrative Assistance in Tax Matters* is to open up the Convention to all countries who may wish to become signatories.

79. Box 1 sets out an example of a challenge to using joint audits, based on sovereignty issues.

#### **Box 1. Box1 France**

##### **1. Obstacles to Foreign Audits in France:**

According to the French tax code and the French tax proceedings code, auditing a business within the territory of France is limited to auditors from the French tax administration. Legislation, either domestic or EU, does not authorise the audit of a company in France by a foreign auditor.

Under article 6 of the EU *Mutual Assistance Directive* (77/799/CEE) for direct tax and article 11 of the EU *Regulation n°1798/2003 for VAT*, foreign auditors can attend an audit that takes place in France under a bilateral agreement with another Member State. Auditors can be present in the offices of the French tax administration or be present during administrative enquiries carried out in France. Foreign auditors cannot lead an enquiry in France; they only have the right to be present during an enquiry or audit being carried out by French auditors. This is the case even where the enquiry has been requested by the other Member State.

Article 9 of the *Convention on Mutual Administrative Assistance in Tax Matters*, authorises a requesting Member State to ask for the attendance (i.e. passive presence) of its auditors during an audit conducted by the other Member State, subject to the agreement of this other Member State

##### **2. Obstacles for French Audits abroad:**

As the French tax code limits the auditors' jurisdiction to the territory of France, they cannot carry out an audit abroad. French auditors may only be present in other member states offices or be present during administrative enquiries under the *Mutual Assistance Directive*, *Regulation n°1798/2003 for VAT* or the *Convention on Mutual Administrative Assistance in Tax Matters* and subject to a specific signed agreement."

#### Recommendation

80. Revenue bodies considering joint audits, as well as other international tax audits, can apply a flexible approach subject to the relevant treaties and domestic laws and administrative practices, and explore establishing joint audit procedures in order to avoid or resolve their domestic concerns. A way of rapidly moving towards a legal framework to support joint audits is for FTA countries to become signatories to the *Convention on Mutual Administrative Assistance in Tax Matters*, or to consider enacting domestic legislation to allow an active participation in audits.

<sup>46</sup> In 2004 Australia, Canada, the United Kingdom and USA created JITSIC in Washington DC to supplement the ongoing work of revenue bodies in identifying and curbing abusive tax avoidance transactions, arrangements and schemes. In 2007 Japan joined the project and a new office opened in London.

81. One other recommendation was supplied by an FTA member to resolve the legal constraints impacting a joint audit. The recommendation, actually in practice by the FTA member, is to enter into an agreement between the revenue bodies and the taxpayer(s) to provide a framework that eliminates concerns posed. This recommendation is especially effective at dealing with many issues that arise in the preparation, planning, conducting and completing a joint audit.

*Establishing a sound legal basis for the use the findings of joint audits*

82. Six countries identified as an issue establishing a sound legal basis to use the findings of joint audits within their own tax system and enabling the broad recognition and acceptance of the joint audit framework by their own taxpayers. The following issues would need to be satisfactorily addressed under the countries' legal system before these countries could participate in joint audits:

- a legal basis to undertake joint audits, including specification of the taxes covered and clarification in relation to the usability of information gathered during joint audits for taxes not covered in the joint audits or the legal provision;
- the consequences for taxpayers of non cooperation with a visiting auditor from the joint audit team;
- data protection and security of information to be exchanged;
- reconciliation of divergent regulatory frameworks which impact on the ability to enforce collections emanating from the joint audit conducted;
- reconciliation of divergent legal frameworks which impact on the successful criminal prosecution and/or the extradition of taxpayers who are reasonably suspected of having been involved in tax evasion; and
- ensuring that joint audit participants have the requisite familiarity with each other's legal and administrative practice: with differences in the interpretation of tax law and with binding international provisions such as the *Mutual Assistance Directive*, and the *Convention on Mutual Administrative Assistance in Tax Matters*.

Recommendation

83. These legal challenges should be resolved during the Preparation Stage, Chapter 2 of the Joint Audit Participants Guide, and during the Planning Stage, Chapter 4 of the Joint Audit Participants Guide. Participating revenue bodies will need to fully understand and communicate these challenges to their partner(s) to ensure an effective plan is developed and agreed to for the joint audit engagement.

*Confidentiality Issues:*

84. Five countries identified legal risks with unauthorized disclosure of information as an issue to be managed in the conduct of joint audits. Box 2 sets out examples of challenges posed by confidentiality issues.

**Box 2. Box 2**

**Box 3. United States of America**

Our domestic laws are very strict with regard to disclosure of taxpayer information, so that we would need to ensure that we have the proper authority to disclose taxpayer information, such as pursuant to a treaty or in accordance with a disclosure waiver signed by the taxpayer.

**Box 4. Hong Kong China**

Hong Kong has amended its law to adopt OECD 2004 version of Exchange of Information (“EOI”). Simultaneously, Hong Kong has enacted Rules, in the form of subsidiary legislation, which provide prudent safeguards to protect an individual’s rights to privacy and confidentiality of information exchanged. They include: case-specific exchange on legitimate requests; no automatic or wholesale exchange; no “fishing expeditions”; a prior-notification system whereby the subject person is given the rights to review and amend the information to be exchanged, subject to the Commissioner’s decision which will be reviewed by the Financial Secretary on request by the subject person.

Recommendation

85. The revenue bodies participating in the joint audit should fully discuss, in advance of the joint audit, ways to prevent improper disclosures and the legal impact of improper disclosures should they occur. The existing tax treaty framework provides for confidentiality and for formal exchange of information through the competent authorities. The existence and application of administrative protocols regarding the confidentiality of taxpayer information may need to be reviewed and/or revised during the establishment of a particular joint audit.

*Taxpayers acceptance of the joint audit framework (The Notification Procedure)*

86. Two countries indicated that taxpayers may challenge a joint approach based on confidentiality issues.

87. Countries advocating this approach suggested that the confidentiality risks could be overcome by obtaining the agreement of the taxpayer to the joint audit. This agreement may be forthcoming if the taxpayer is advised of the possible benefits of the joint audit approach (e.g. a lower overall compliance burden, an effective process for mitigating double taxation issues, or expediting the overall audit process.)

Recommendation

88. Countries may wish to consider an agreement with the taxpayer being audited that sets forth the scope and terms of the joint audit, although such an agreement is not required.

*Other Issues arising regarding domestic laws*

89. Countries identified several other potential challenges resulting from domestic legal structures and they are set out in Annex 3, together with recommendations for overcoming these challenges. A thorough review of the comments received suggests that if a country is willing to participate in a joint audit the challenges posed by legal structures may be overcome.

## ***2. Issues arising from differences in revenue bodies' administrative procedures***

### *Differing Risk Assessment*

90. Eight countries identified that there may be difficulties for revenue administrations in agreeing on which taxpayers should be subject to joint audit due to differences in countries' risk perception of transactions undertaken by taxpayers. For instance, the trading entity of a multinational enterprise in one country may be considered to be engaging in high risk transactions by one treaty partner while the trading entity of the same multinational in another country may be considered to be engaging in low risk transactions by the other treaty partner. Box 3 sets out an example of the challenges arising from the differences in risk assessment.

#### **Box 5. Box 3 Sweden**

Concerning simultaneous audits in the Nordic countries there is at the moment a proposal to extend the work to project-oriented audits. The aim is to have joint cooperation about the analysis of an existing or new tax avoidance/evasion risk. The cooperation will normally lead to one or more audits.

### Recommendation

91. This challenge may be resolved during the Preparation Stage, Chapter 2 of the Joint Audit Participants Guide, and during the Planning Stage, Chapter 4 of the Joint Audit Participants Guide. Under this proposal, members of a joint audit team would discuss particular types of tax risk being experienced by different revenue bodies e.g. tax avoidance schemes. They would then decide to do a number of joint audits on taxpayers exhibiting indications of the presence of this risk. By agreeing initially on the risk to be targeted countries reduce the risk of disagreement on the priority of particular risks and particular joint audits.

### *Differing Audit/Quality Standards*

92. Two countries suggested that the different standards in terms of audit and quality required by each revenue body could hamper the utilisation of joint audits. This is due to it being more difficult and burdensome to carry out a quality assurance process due to the varying standards of the revenue bodies participating in the joint audit.

### Recommendation

93. This challenge should be resolved during the Preparation Stage, Chapter 2 of the Joint Audit Participants Guide, and during the Planning Stage, Chapter 4 of the Joint Audit Participants Guide. Participating revenue bodies will need to fully understand and communicate these challenges to their partner(s) to ensure an effective plan is developed and agreed to for the joint audit engagement.

### *Double tax resolution or Competent Authority (MAP) involvement in joint audits*

94. Six countries indicated that there could be some issues arising from a joint audit concerning the resolution of conflicts about the taxation rights amongst the countries participating in the audit.

### Recommendation

95. Apart from the systemic risks arising from differences in exemption and/or credit mechanisms for relieving double taxation, any such disagreement could be resolved by discussions between the Competent

Authorities in the usual way. However, the revenue bodies may want to consider having staff with mutual agreement responsibilities being part of the joint audit team from the outset, where this is possible.<sup>47</sup> This will allow for MAP resolution earlier in the process.

*Potential need for exchange of information outside Competent Authority (EOI) procedures and timeframes for exchanging information*

96. Two countries identified concern with the need to potentially authorise and require an exchange of information outside of the ordinary Competent Authority procedures while three countries identified challenges with effective and timely procedures for exchange of information in joint audits.

Recommendation

97. This issue may be resolved by having Competent Authorities as part of the team. The availability of authorised personnel as participants in the audit team will greatly enhance the exchange of information, and lead to improved collaboration and coordination.

**3. Practical issues**

98. A number of countries identified practical issues that may arise in the conduct of joint audits. These are set out in Annex 3, together with a recommendation for overcoming the challenges they pose.

**Conclusion**

99. As survey results and the body of this chapter suggest, countries do have experience working together to conduct simultaneous examinations, multilateral controls and jointly to address cross-border challenges within existing legal frameworks. A number of opportunities for further work have been identified and challenges noted. Where issues exist, solutions should be developed. None of the challenges identified are insurmountable and can be addressed through open communication and careful planning.

100. To maximise the potential for successful outcomes with the first joint audits it is recommended that initially joint audits be undertaken by countries that consider their legal frameworks support joint audits and that the audits be carried out with taxpayers who are willing participants in the audit.

101. Annex 4 is a report on a recent example of several revenue bodies working together submitted by an FTA country. The report is intended to provide an example of a collaborative working arrangement adopted by several tax administrations working together to combat a common cross-border tax avoidance and evasion scheme.

**CHAPTER 4 ORGANISATION AND MANAGEMENT OF THE JOINT AUDIT FUNCTION**

102. Prior to describing the mechanism for case selection in a joint audit, the revenue body intending to participate in a joint audit needs to ensure familiarity and support for the process. This needs to begin at the Commissioner (or delegated representative) level, run through all relevant offices and levels of management, and continue to the auditors who will carry on the actual audit activities. A holistic approach

---

<sup>47</sup> In some countries the MAP responsibility is part of the Finance Ministry portfolio, and not of the tax or revenue administration.

to the joint audit is required of the revenue body to ensure timely and proper resolution of the audit. Three steps that should be considered are:

1) Where a revenue body is receptive to conducting joint audits this should be communicated to field examination staff. This communication should come with the requisite authority so that the all staff are properly and actively engaged.

2) Revenue Authorities should name and publicise Joint Audit Points of Contact in their administration to coordinate internally with Competent Authority staff, field staff and other revenue bodies. Due to the necessity of tax treaty provisions to authorise cross-border exchanges of information, it is recommended that the points of contact be members of the Competent Authority staff (or be authorized to carry on Competent Authority powers) to ensure appropriate consideration of relevant treaty provisions, in particular, that staff are alert to the legal aspects of confidentiality of taxpayer information and to whom any protective restrictions are applicable.

3) Ongoing publicity of the joint audit activity should be made via normal internal communication channels and a web site devoted to the process would be helpful to ensure up-to-date information is available.

103. The *Joint Audit Participant's Guide* is intended to provide good practice for joint audit procedures and the roles of each participant involved. It is recommended that it be used as a handbook for Revenue body personnel considering whether to participate in a Joint Audit; planning and conducting a Joint Audit; and completing a Joint Audit.

#### **Part 1 Mechanisms for Case Selection in a Joint Audit**

104. When examining issues with cross-border implications during its internal risk assessments a revenue body should consider collaborating with other revenue bodies. In addition to considering whether information should be specifically requested from a treaty partner, the revenue body may wish to consider whether a joint audit may improve issue development and resolution.

105. When, during its risk assessment and audit planning processes, the revenue body determines that a joint audit may improve issue development and resolution, it should work through its Joint Audit Points of Contact to discuss with another revenue body(ies) whether there is a shared interest in conducting, or common concerns that might support engaging in a joint audit.

106. The revenue body of a requested state should promptly consult with its field management and auditors to determine whether a joint audit is in its best interest. Consideration of whether a joint audit is in its best interest should include whether similar tax periods are undergoing risk assessment or are under audit, whether both countries share concerns with specific cross-border transaction(s), and whether other logistical & resource challenges may be overcome (e.g. language; personnel availability; and travel budget availability).

107. If both revenue bodies are in agreement that a joint audit is a proper way forward, then planning for the audit ahead should commence as soon as possible to ensure that timely issue development and resolution are achieved.



## Part 2 Case selection

### 1. National Case selection

108. Basic selection of cases for a potential joint audit takes place within each participating revenue body during the normal domestic audit process. However, countries intending to conduct a joint audit may coordinate with each other at any point during the process of selecting an appropriate case. Participating revenue bodies will typically have tools and selection systems in place for case selection. These programs use a wide range of internal and external information regarding taxpayers in order to establish the domestic audit plan.

109. The following indicators may be taken into consideration when selecting potential joint audit cases.

- Information available in two or more jurisdictions provides a better basis for risk analysis than independent risk analysis.
- Two or more jurisdictions are auditing similar or related transactions of their respective taxpayers.
- Two or more jurisdictions have difficulty understanding similar or related transactions of a multinational enterprise that uses complex structured transactions and multiple entities with unnecessary complexity.
- A multinational wants greater certainty and an enhanced relationship with revenue bodies on a global basis.
- A taxpayer has a non-compliance history.
- There are transactions in low tax/no tax jurisdictions.
- There are risks connected to specific business sectors (industry).
- A taxpayer shifts profits from one country to another by use of aggressive transfer pricing methods.
- Substance of a transaction is not consistent with the transaction's legal form.
- There are cross-border transactions reflected in loans, accounts payable/receivables, inventory, etc.
- Two or more jurisdictions agree that a joint audit would expedite factual development and issue resolution.
- There are losses in withholding taxes in connection with cross-border transactions.
- There is no activity for many years followed by a sudden start of business operations.
- There is fraudulent behaviour of the owners or managers of the company.

- There are indications that companies do not record all profits or turnovers realized in other participating countries.
- The residence of the taxpayer is not clear.

## **2. How to initiate a joint audit**

110. Each revenue body should designate an official, a Joint Audit Coordinator, (JAC) to coordinate its joint audit activities. The JAC is the first contact point for joint audit activities. The selection of a potential joint audit case may be initiated within any participating revenue body. When a participating revenue body, during their internal risk assessment and/or examination of a domestic audit, identifies a need to further examine issues with complex or questionable cross-border transactions, an *informal* (draft) joint audit proposal should be completed and provided to the JAC.

111. The JAC will then appoint a prospective Joint Audit Team Leader and conduct a risk assessment with the Joint Audit Team Leader and auditors to determine whether a joint audit will improve issue development and resolution. If it is determined that a joint audit would be an effective resolution, a *formal* Joint Audit proposal will be prepared for submission to the JAC of another participating revenue body.

112. In general, the internal procedures in each participating revenue body for proposing and initiating a case for a joint audit should be made as clear and simple as possible, in order to avoid delays.

113. The *Joint Audit Participants Guide* provides a template for a joint audit proposal.

### ***Joint Audit Coordinator Case Selection meeting***

114. A case selection meeting will be convened by the Initiating JAC with the JAC(s) of other revenue bodies to determine if there is shared interest in conducting a joint audit based on the formal proposal. An agenda for this meeting will be prepared by the Initiating JAC in consultation with the JACs from the other participating countries. There may be preliminary discussions about the proposal with each participating revenue body before the meeting takes place.

115. The *formal* Joint Audit Proposal will be presented and discussed by the initiating JAC. Consideration of whether a joint audit is in each participating revenue body's best interest will include whether similar cycles are undergoing risk assessment or are under audit, whether both countries share concerns with specific cross-border transaction(s), and whether other logistical & resource challenges may be overcome (language; personnel availability; travel budget availability; etc).

116. If the JACs decide to conduct a joint audit, each JAC will jointly coordinate and be responsible for commencing the examination as soon as possible to insure timely issue development and resolution. A date will be scheduled for the Joint Audit Planning Meeting.

### **Conclusion**

117. In conclusion, the increase in cross-border activities amongst related entities (individuals) and the desire to improve international tax compliance requires a new form of coordinated action – the joint audit. The joint audit should provide Participating Countries with streamlined audit efforts, reduced incidences of double taxation, and accelerated mutual agreement procedure (MAP). Joint audits also have the potential to shorten examination processes and reduce costs, both for revenue authorities and for taxpayers.

## ANNEX 1 OVERVIEW OF TERMINOLOGY IN INTERNATIONAL LEGAL FRAMEWORKS

Organisation	(Legal) framework	Exchange of information	Tax auditing
<b>OECD</b>	Model Convention with respect to taxes on income and capital (including the Commentary)	- Information gathering measures (art. 26)	- Simultaneous examinations (art. 26.9) - Tax examinations abroad (art. 26.9)
	Model Agreement on Exchange of Information on Tax Matters	- Information gathering measures (art. 5)	- Tax examinations abroad (art. 6)
	Convention on Mutual Administrative Assistance in Tax Matters	- All relevant measures (art. 5)	- Simultaneous tax examinations (art. 8) - Tax examinations abroad (art. 9)
	Manual on the implementation of the exchange of information provisions on tax purposes	- N/A (not applicable)	- Simultaneous tax examinations (module 5) - Tax examinations abroad (module 6)
<b>EU</b>	Council Regulation (EC) No 1798/2003 on administrative cooperation in the field of value added tax	- Administrative enquiries (art. 5, 7 and 11)	- Simultaneous controls (art. 12)
	Council Directive 77/799/EEC and Council Directive 2004/56/EC amending Directive 77/799/EEC concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation	- Any enquiry (art. 2.2)	- Simultaneous controls (art. 8b)
	Decision No 1482/2007/EC of the European Parliament and of the Council of 11 December 2007 establishing a Community programme to improve the operation of taxation systems in the internal market (Fiscalis 2013) and repealing Decision No 2235/2002/EC.	- N/A	- Multilateral controls (art. 2.4)
	Multilateral Control	- N/A	- Multilateral controls

	Management Guide		
<b>Other</b>	Nordic Mutual Assistance Convention on Mutual Administrative Assistance in Tax Matters	- N/A	- Simultaneous tax examinations (art. 12)
	Practice and bilateral arrangements	- N/A	<ul style="list-style-type: none"> <li>- Bilateral tax audits or examinations</li> <li>- Multilateral tax audits, examinations or controls</li> <li>- Simultaneous tax audits, examinations or controls</li> <li>- Joint tax audits or examinations</li> </ul>

## ANNEX 2 FTA JOINT AUDIT PROJECT QUESTIONNAIRE/SURVEY AND RESULTS

### Part 1 Joint Audit Experiences Survey

The purpose of this survey is to obtain country experiences with various types of audits/examinations, to understand the particular legal regimes in which your country may or may not conduct these audits/examinations, and finally to understand the obstacles for your country to participate in these particular audits/examinations. This information will be used to describe experiences, legal regimes and challenges in an FTA Paper on Joint Audits.

The specific types of audits that we are interested in gaining more understanding are the following:

**Simultaneous examination (OECD definition in the commentary on article 26 and in the manual on the implementation of EOI provisions for tax purposes):** is an arrangement by two or more countries to examine simultaneously and independently, each on its territory, the tax affairs of (a) taxpayer(s) in which they have common or related interests with a view of exchanging any relevant information which they so obtain.

**Multilateral control – MLC (EU definition in article 2 of the Fiscalis 2013 Decision n°1482/2007/EC of the European Parliament and of the Council of 11 December 2007):** means an arrangement where Member States agree to carry out a coordinated control of one or more related taxable persons (both legal entities and individuals) where the control has a common or complementary interest. MLC shall include at least two countries, at least one of them being a Member State. Each of the participating Member States will carry out the audits in its own territory. MLCs may also be carried out simultaneously (at the same time) in each participating Member State, but this is not obligatory. An MLC may relate to indirect taxes, direct taxes or taxes on insurance premiums.

**Joint audits** - two or more countries join together to carry on one audit of a company with cross-border business activities, perhaps including cross-border transactions involving related affiliated companies organized in the participating countries, where the taxpayer jointly makes presentations and shares information with the countries, including where Competent Authority representatives from each country could potentially be involved to resolve differences/stalemates.

1. Have you had any experience with either a), b) or c) below, and if so, please describe your experience(s):
---

a. Simultaneous examinations
------------------------------

b. Multilateral controls
--------------------------

c. Joint audits
-----------------

2. What would you consider to be the critical obstacles for your country to surmount in order to
--

participate in a joint audit, bearing in mind the potential legal, administrative, practical, and resource constraints imposed on the tax administration of your country?

3. What type of issues do you consider appropriate for the 3 different types of activities described in this survey?

a. Simultaneous examinations

b. Multilateral controls

c. Joint audits

**Part 2 Country Responses to the Joint Audit Experiences Survey**

**Table 1 Experiences with Simultaneous Examinations –Bilaterally Under Tax Treaty**

Table 1 sets out the experiences of 10 FTA countries (Australia, Belgium, Canada, Denmark, Ireland, Mexico, New Zealand, Poland, United Kingdom, and USA) with simultaneous examinations conducted under a bilateral treaty.

Country	Issues Covered	Comments
<p><b>Australia</b></p>	<ol style="list-style-type: none"> <li>1. For detection, deterrence and dealing with the abusive use of tax havens. (Project Wickenby)</li> <li>2. Novel approach to research and cross border risk work led to an international co-operative approach.</li> <li>3. Collaboration with eight countries concerning Liechtenstein accounts being used for tax avoidance and evasion.</li> <li>4. Potential simultaneous examinations on transfer pricing or contrived cross border financing with a foreign revenue jurisdiction is being considered.</li> </ol>	<p>Australian Taxation Office (ATO) has some limited experience with simultaneous audits with its most advanced EOI treaty partners.</p> <p>Highly effective results could be directly attributed to the individuals from both countries involved who are highly motivated in building the case/s on a collaborative basis for the benefit of both countries. This collaboration has led to a stronger relationship developing between our two countries and has assisted in engaging both revenue agencies in other areas of interest to both countries.</p> <p>An international co-operative approach met with mixed success but achieved a significant audit result for the ATO involving a taxpayer in the media industry largely because the foreign revenue body convened a specialist field/audit team to review the issues and we had very good commitment from another foreign revenue body. To commence the project, we entered into a broad Memorandum of Understanding (MOU) that was adopted by all countries as the governing framework. The ATO also exchanged background papers with each of the participating jurisdictions with respect to functions and powers of each country, the business structures under examination as well the types of specific industries we intended to review for international risks and eventual case selection. Australia has currently two MOUs in place with foreign revenue authorities governing the conduct of simultaneous audits.</p> <p><b>JITSIC</b></p> <p>JITSIC was established in 2004 by the tax administrations of Australia, Canada, the United Kingdom (UK) and the United States (US) to supplement their ongoing work in identifying and curbing tax avoidance and shelters and those who promote and invest in them.</p> <p>Delegates from each of the four countries exchange information in real time on abusive tax schemes, their promoters and investors, consistent with the provisions of bilateral tax conventions. The countries share best practice on risk assessment and other key areas of interest and increasing the transparency of cross-border transactions in order to create a level playing field for taxpayers who voluntarily comply with their tax obligations.</p>

		<p>JITSIC's current members are Australia, Canada, UK, US and Japan</p> <p>The Memorandum of Understanding (MOU) approach was adopted by ATO when the initial four JITSIC countries agreed to co-locate Competent Authority operatives in Washington, DC.</p>
<b>Belgium</b>	Certain cases where there is a suspicion of fraud since you don't give the taxpayer enough time to prepare the 'second' audit	Limited experience
<b>Canada</b>	International money-laundering setups, complex multinational transactions, allocation of costs and profits between corporate branches in different jurisdictions	<p>The Canadian Revenue Administration (CRA) has had positive experiences with simultaneous audits.</p> <p>CRA has signed Memoranda of Understanding (MOUs) with six countries (Australia, Czech Republic, Denmark, Lithuania, Netherlands and the United States) to conduct simultaneous examinations and investigations.</p> <p>CRA has MOUs under negotiation with Austria, Belgium, Chile, Finland, Italy, Malta, Poland, Portugal, Spain, and Ukraine.</p>
<b>Ireland</b>		Minimal experience of simultaneous examinations but there was a positive outcome.
<b>Mexico</b>		<p>The Mexican Tax Administration has had a very limited experience in simultaneous examinations. The cases opened under this context have not been more than five in the last years.</p> <p>From those experiences, it has been clear that it is very important to coordinate the participation of the two (or more) countries in order to better align timing and objectives of the examinations.</p>
<b>New Zealand</b>	<ol style="list-style-type: none"> <li>1. Audits of multinational taxpayers that have participated in high risk international transactions, especially aggressive tax planning and tax haven activities.</li> <li>2. Audits of promoters of aggressive tax planning arrangements that impact on more than one jurisdiction - these have largely been with Australia - see the attached case study presented to the Tax Inspectors Meeting in 2004 which may be of interest.</li> <li>3. Multilateral audit projects involving the sharing of tax</li> </ol>	



	haven information (and subsequent investigation thereof) amongst several treaty partners such as the recent focus on Liechtenstein.	
<b>Poland</b>		Only 3 cases in early 2000's. Positive results.
<b>South Africa</b>	Tax audits focusing on HNWI	We are in the process of initiating an audit with HMRC into the affairs of a HNWI whose business interests transcend the borders of South Africa. Distinct possibility that the joint audit will extend to a MLC as the taxpayers business interests extend to the USA. The joint audit is in an embryonic stage but will proceed in accordance with the bilateral treaty.
<b>United Kingdom</b>	Tax Avoidance Issues	<p>UK is a founder member of JITSIC (Joint International Tax Shelter Information Centre), the main aim of which is to supplement the ongoing work of tax administrations in identifying and curbing abusive tax avoidance arrangements, transactions and schemes in the direct tax field. We give this a wide definition and include anything that could be exploiting the differences between tax laws in different jurisdictions or is just not comprehensible.</p> <p>Help is available for:</p> <ul style="list-style-type: none"> <li>• Caseworkers,</li> <li>• technical and policy specialists,</li> <li>• organisational units such as High Net Worth Unit ,</li> </ul> <p>We do this by;</p> <ul style="list-style-type: none"> <li>• Sharing expertise, best practice and experience in tax administration to combat abusive tax schemes,</li> <li>• Exchanging information on abusive tax schemes in general,</li> <li>• Exchanging information, and much more, on specific case work.</li> <li>• Using, where needed, the Exchange of Information provisions in the appropriate Double Taxation Conventions.</li> </ul>
<b>USA</b>		<p>The USA has engaged in simultaneous examinations with a number of countries over many years. At present, the U.S. has working arrangements to carry on simultaneous examinations with fourteen countries, nearly all of which are members of the Forum on Tax Administration (FTA) and with which the USA has actually carried on such examinations.</p> <p>While the USA has found the simultaneous examination program to be beneficial both in identifying audit adjustments as well as in clarifying or confirming the appropriateness of particular taxpayers' conduct and tax</p>

		reporting, the program also carries a level of sensitivity that demands prudent and careful staff. As an example of the need for such carefulness, the U.S. notes that it has been the defendant in lengthy litigation over allegations of unauthorized disclosure of tax information by a taxpayer that was the subject of a simultaneous examination.
--	--	---

***Table 2 Experiences with Simultaneous Examinations – bilaterally under a treaty other than a Tax Treaty***

Table 2 provides details on the experiences of the Chile with other simultaneous examinations.

<b>Country</b>	<b>Basis for Simultaneous Examinations</b>	<b>Issues Covered</b>	<b>Comments</b>
<b>Chile</b>	A Bilateral Treaty on Mining Activities	Tax Audits of Mining Companies	The application of a bilateral treaty on mining activities signed with Argentina will require coordinated tax controls of companies carrying out mining projects in both countries (in the border area between Chile and Argentina).  We do not have experience as to the application of these controls (the mining projects are not yet operative), but we are working on a draft agreement on how to implement such controls.

***Table 3 Experiences with Simultaneous Examinations - bilaterally or multilaterally under the Nordic Convention on Mutual Administrative Assistance in Tax Matters***

Table 3 provides details the experiences of three FTA countries (Denmark, Finland and Sweden) who are signatories to the “Nordic Convention on Mutual Administrative Assistance in Tax Matters” of December 7 1989 (The Nordic Assistance convention).

Country	Issues Covered	Comments
<b>Denmark</b>	Transfer Pricing Issues	<p>4 -10 audits are commenced each year. Generally examinations have taken about six months, but due to complexity, some have taken more time.</p> <p>The effect of the simultaneous examinations are as follows:</p> <ul style="list-style-type: none"> <li>• Development of the skills of participating auditors</li> <li>• The audits are easier because of the access to more information</li> <li>• Development of working relationships with colleagues from the other tax administrations leads to better and easier communication</li> <li>• Companies have not disputed the procedure</li> </ul> <p>Some of the problems are related to:</p> <p>a) identifying the best cases to audit.</p> <p>b) the “meeting-system” - auditors are expected to have meetings for planning purpose, and to exchange information on the different subjects.</p> <p>The tax rates in Scandinavia are very similar – meaning that the use of non-arm’s-length prices or conditions or other avoidance methods is rare within the scope of a Nordic simultaneous audit. Instead the focus will often be on transactions with low tax countries or even tax havens.</p>
<b>Finland</b>	Transfer Pricing Issues in MNEs	<p>Finland has participated for years in the Nordic simultaneous examinations. The cases examined simultaneously are selected in advance for coming years. New Guidelines for Nordic simultaneous controls will soon be published in Danish.</p>
<b>Sweden</b>	Issues related with direct taxation	<p>The Swedish Tax Agency (STA) has conducted simultaneous audits since the end of the 1980s. The tool has been used for audits on direct taxes for company groups situated in the Nordic countries.</p> <p>The experiences are positive but the audits have a tendency to take too long to complete.</p>

**Table 4 Experiences with Multilateral Controls under the EU Mutual Assistance Directive**

Table 4 in Annex 2 sets out the details of the experiences of 13 European Union member countries who are also FTA members in using multilateral controls provided for under the EU Mutual Assistance Directive.

Country	Issues Covered	Comments
<b>Belgium</b>	Until a few years ago, the cases dealt with were mainly VAT	For several years, Belgium has been participating in multilateral controls and has had very positive results from

	cases but in recent years, they have had cases on VAT and direct taxes.	MLCs.
<b>Finland</b>	MLCs have been used especially for tax avoidance or tax fraud cases, transfer-pricing questions, cross border workers of large taxpayers.	The results of the MLCs have been very good. Finland has had several bilateral MLCs especially with Sweden and Estonia. Currently, a two-year bi-lateral MLC project with Estonia concerning the construction sector cross-border workers has been commenced. This project is closely linked to both countries' own national projects. In Finland this bi-lateral project supports the national Construction Control Project lasting several years.
<b>France</b>	MLC control is appropriate where a sector of activity is identified as risky and where multiple entities are involved in different countries. In particular in cases of VAT fraud observed between many countries (Carrousel fraud, VAT fraud related to cars and e-commerce), transfer pricing, permanent establishment issues are appropriate for MLCs.	<p>Between 2003 and 2009, France participated in 27 MLCs and initiated 11 of them. France had experience in multilateral controls concerning different issues. However, the majority concern VAT fraud.</p> <p>In France, MLCs are divided in two categories:</p> <p><b>a) Classical MLC:</b> participation of other countries is requested once the audit is already started and when problems that can't be solved by EOI, come up.</p> <p><b>b) Planned MLC:</b> launched before audits and after a risk analysis that identifies cross border issues. France signed agreements with neighbouring countries to describe the framework. These mention the terms of reference, the use of common forms, the authorisation of an auditor to stay in another Member State. Businesses which would be of common interest for audit by Member States are identified. This kind of MLC is appropriate to a sector of activity that presents risks.</p>
<b>Hungary</b>	<p>1) For auditing high risky taxpayers for example those who fail to fulfil their tax liabilities (especially their tax declaration and tax payment liabilities) and those under liquidation and operate with the aim of 'phantomising'.</p> <p>2) Companies, which start their business activity suddenly, although their business characteristic showed inactivity for several years,</p> <p>3) Trade chain created for tax-avoidance, carousel transactions, abuse in the field of distance-selling, triangle transactions, and supply-chains,</p> <p>4) High risk economic sectors,</p> <p>5) Detection of VAT tax frauds,</p> <p>6) Auditing multinational</p>	<p>The Hungarian Tax and Financial Control Administration has participated in 20 MLCs since 2006. Out of these 20 MLCs, one case was co-organised and five cases were self-initiated.</p> <p>The MLCs gave us a significant help in the detection and stopping of tax frauds. The direct and quick information-exchange brings the auditors participating in the MLC to a very advantageous position. In most of the cases this means obtaining additional evidence.</p> <p>By using MLCs the following results are assured:</p> <p>1) The assessment of the payable tax in accordance with the EU laws or the laws of different Member States</p> <p>2) Joint protection of the Member States' tax revenue</p> <p>3) MLCs support tax officials to handle MLCs as part of their own national audits.</p> <p>4) MLCs help participants to share audit methods and practical experiences with each other.</p> <p>MLCs also have their own limitations. For example, the Hungarian Tax Administration is now taking part in an MLC, in which more than 10 Member States are involved because of the huge range of chain businesses. This MLC is very</p>

	<p>companies,</p> <p>7) Checking those companies which have a VAT number in several countries.</p>	<p>awkward, and basically this is because of the huge number of business relations between the taxpayers in several Member States. It is very hard to organise and understand such a huge investigation and the participants didn't always get the appropriate information on the purpose of their own investigation. We think that smaller working groups can work much more effectively.</p>
<b>Ireland</b>	<p>Ireland selects the majority of cases for audit based on Risk Assessment. All risky cases that have a cross-border trading aspect would be suitable for selection in a MLC. The specific issues, identified in the MLC Guide for Auditors published by the European Commission, are suitable for selection.</p>	<p>Ireland has participated in a small number of Multilateral Controls (MLCs) over the past few years. All MLCs were initiated by other Member States so the selection of the taxpayer or business to be audited was made by the other Member State. Ireland has agreed to all requests for MLC participation. It is planned that Ireland will initiate a small number of MLCs in 2010.</p> <p>The experience of participating in MLCs has highlighted the issues and best practice that leads to a successful outcome for all participants. These factors include:</p> <ol style="list-style-type: none"> <li>1) The objectives of the MLC must be specific and clearly stated in the letter of invitation to the MLC Planning Meeting. Further detailed information can be provided by all participants at the first meeting.</li> <li>2) The country initiating the MLC should put an experienced MLC Project Manager in place to explain the issues and prepare an audit plan to which all participants agree.</li> <li>3) All countries participating should send an auditor with knowledge and experience of the case and the issues to be discussed.</li> <li>4) A participant from each country must be authorised for "exchange of information" and produce this authorisation at the start of the first meeting.</li> <li>5) All authorised participants should be given direct access to CCN Mail (secure encrypted electronic mail system) for the duration of the MLC.</li> <li>6) The MLC Project Manager must communicate regularly with all participants (or their representative) so that everybody is kept aware of progress in the case. Minutes of meetings distributed etc.</li> <li>7) A Final Meeting must be held to summarise conclusions after the audit so that each participant Member State can benefit from the lessons learned.</li> <li>8) Ideally the case selected for an MLC should not be too complicated and should involve a small number of Member States (ideally 2 or 3). Bilateral MLCs can be more successful. Large complicated cases that involved many Member States, although necessary at times, can take a long time to investigate and resolve.</li> </ol>
<b>Luxembourg</b>	<p>MLCs are an efficient instrument to tackle cross border tax fraud.</p>	<p>The Administration de l'Enregistrement et des Domaines Luxembourg – (AED) is the Competent Authority for</p>

		<p>administrative cooperation between Member States of the European Union in the fields of value added tax and of taxation of insurance premiums.</p> <p>Where participation in a multilateral control is required concerning national taxpayers that have already been under investigation and where there is no particular suspicion of fraud, the participation is generally limited to the provision of information pursuant to regular requests for administrative assistance.</p> <p>In the case of participation in a multilateral control, AED authorises one or more tax auditors, having background information on the Luxembourg taxpayers involved, to share information directly with authorized competent officials and authorities of other Member States participating in the control. In exceptional cases, and whenever it is deemed useful, AED allows foreign officials to be present in the offices of AED to exchange information or documentation.</p> <p>Participation of officials in an enquiry is referred to in Council Regulation 1798/2003/EC and Directive 77/799/EEC. Officials are present by agreement between the requesting and the requested authorities. The participation may be restricted to the presence of these officials in the offices of the requested country or to their presence during the inquiry.</p> <p>The experiences of AED in relation with this arrangement are rather positive because it allows tax auditors to judge directly what is useful information and what is not and to contribute, by the way, to speed up the exchange of information.</p> <p>The officials of the requesting authority are required to be able to produce a written authority at all times.</p> <p>AED believes that in the field of VAT and in the field of taxation of insurance premiums, national tax auditors and specialized tax fraud auditors are adequately trained and able to exercise the power of control over its national territory without the assistance or presence of officials from other Member States. For this reason, the presence of officials from other Member States on national territory during administrative investigations is not considered indispensable.</p>
<p><b>Netherlands</b></p>	<ol style="list-style-type: none"> <li>1) Large corporations with a lot of subsidiaries could be audited “jointly” by more member states.</li> <li>2) An example of a (partial) enquiry or audit is the examination of transfer pricing issues, permanent establishment, cost allocation, place of service (VAT), e-commerce etc.</li> <li>3) VAT constructions in the yacht, car, and aircraft business.</li> <li>4) An example of VAT</li> </ol>	<p>Within the EU the Netherlands is a significant initiator of multilateral controls. Multilateral controls have been carried out since 1999. Over the years the number of audits initiated and/or participated in, is gradually increasing. Since 1999, the Netherlands has participated in 78 MLCs, 46 of which it initiated. The different types of MLC’s can be categorised as follows:</p> <ol style="list-style-type: none"> <li>1) The audit of internationally operating corporations (46 in total, 18 only covering VAT, 4 covering excise duties and 24 covering direct and indirect taxes);</li> <li>2) A (partial) enquiry or audit, examining specific issues such as Transfer Pricing (6 in total mainly focused on TP issues);</li> </ol>

	(carousel) fraud is the intra-community acquisition of goods such as CPUs, mobile phones, electronic devices, etc.	3) The investigation of VAT (avoidance) schemes (7 in total); 4) The investigation of VAT carousel fraud (19 in total)
<b>Poland</b>	Complicated cases mostly involving financial crime, e.g. carousel fraud.	Poland coordinates around 4 MLCs per year and participates in some of them. Positive results and experience with cooperation are noted
<b>Slovak Republic</b>	VAT Frauds	The Slovak Tax Administration performs on average six MLCs a year.
<b>Slovenia</b>	VAT frauds and direct tax related issues.	Since 2007, the Slovenian Tax Administration has taken part in 6 MLCs, with mostly positive experiences. The use of the MLC tool has led to a faster and more comprehensive cooperation between administrations. Therefore, the results of the cooperation have been quite encouraging. The cooperation has showed that a multilateral control is good and effective method for detecting tax fraud in the European Community.  The effective flow of information is vital for a successful multilateral control. Therefore it is important that auditors of the multilateral control keep in regular contact about the development of the audit. An effective monitoring of the progress of multilateral control is also necessary. Sometimes it is difficult to organize combined multilateral controls (VAT and direct taxes) due to different administrative organization and different interpretation of certain legal provisions.
<b>Spain</b>	1. Transfer pricing 2. Cross-border transactions 3. International tax evasion 4. VAT frauds.	Spain has participated in more than 15 MLCs.
<b>Sweden</b>	VAT, Direct taxes and Excises.	Since 2003 the Swedish Tax Agency (STA) has been involved in 29 different MLCs. The experiences are very positive and the goals are usually fulfilled. The number of nil result is rather low, less than 20%, which is significantly better than the “national” results. Regarding the MLC’s, there is also a tendency for too much time until completion but the aim is that the audits should be finished within a year.
<b>United Kingdom</b>	<ul style="list-style-type: none"> <li>• Transfer Pricing</li> <li>• VAT – MLCs have been used in the following areas: <ul style="list-style-type: none"> <li>○ Combat VAT MTIC Fraud.</li> <li>○ Tax-avoidance matters.</li> <li>○ Assure VAT compliance.</li> <li>○ Address risks connected to specific</li> </ul> </li> </ul>	<p>HMRC’s recent experience comes from participation in simultaneous examination of two transfer pricing cases: multi-national corporations that had restructured their European business to transfer some risk and functionality from in-market entities to co-ordinating entities located in low-tax territories outside the EU.</p> <p>HMRC is participating along with a number of other member states in a Multilateral Control.</p> <p>In each case before the MNC started, HMRC had opened enquiries into Corporation Tax returns for the UK companies to determine whether the UK's transfer pricing rules had been</p>

	<p>business sectors.</p> <ul style="list-style-type: none"> <li>○ Trader facilitation.</li> </ul>	<p>complied with. HMRC's initial assessment was that this was unlikely to be the case. The main purpose of the enquiry, and by extension the MLC, is to gather information to ascertain the extent of any non-compliance and to assemble sufficient evidence to obtain the appropriate adjustment whether by agreement or by litigation.</p> <p>HMRC is participating in these MLCs as a pilot exercise.</p> <p>Since 2004 HMRC has participated in 24 indirect tax MLCs, acting as lead country on 8 occasions. In respect of the MLCs that have been completed there have been a number of very positive outcomes including the collection of additional revenue, identifying and challenging avoidance schemes, obtaining assurance that businesses are dealing correctly with their tax liabilities and an increased understanding of other countries tax administrations and the legal frameworks in which they operate. In view of these benefits we are actively publicising the availability of this tool and encouraging our auditors to use it.</p>
--	---	---



## ANNEX 3 CHALLENGES FOR CONDUCTING JOINT AUDITS – ADDITIONAL ISSUES IDENTIFIED

### A. Other issues arising from domestic law

#### 1) *Time Limits in Domestic Legislation*

1. Two countries indicated that some jurisdictions have restrictions on the years or periods that can be audited. For that reason, there would be a limited time for conducting joint audits.

#### Recommendation

2. Time limits under domestic tax law and under some tax treaties could hamper the synchronisation of the joint audit activity. Discussion between countries participating in joint audits, at the audit planning phase, in relation to the possibilities and constraints of each others' legal frameworks and codes of practice will help to clarify the issues. Any solution to this problem requiring amendments to domestic law may only be possible in the longer term.

#### 2) *Differences in the legal framework for obtaining information from the taxpayer and third parties*

3. Two countries identified differences in the legal frameworks between countries, particularly in relation to obtaining information from taxpayers or third parties as a potential issue in the context of a joint audit. Box 1 sets out an example of this type of challenge.

#### **Box 6. Box 1 Ireland**

In Ireland, audits are conducted in accordance with principles set out in the "Code of Practice for Revenue Auditors". This Code includes fair procedure principles such as qualifying disclosures, innocent error, self-correction, no loss of revenue, etc. These concepts may be new or unacceptable to a visiting auditor.

#### Recommendation

4. Discussion between countries participating in joint audits, at the audit planning phase, in relation to the possibilities and constraints of each others' legal frameworks and codes of practice will help to clarify the issues and reduce the potential for disagreement.

#### 3) *Varying record keeping requirements*

5. Two countries identified the varying record keeping requirements of the tax laws of participating countries as a potential issue which could delay the securing of the necessary information from taxpayers during the audit process and could reduce the overall efficiency of the joint audit.

#### Recommendation

6. This item would need to be fully discussed and understood by both partners in the preparatory stage, and the partners would need to resolve the challenge before engaging in the joint audit.

## **B. Practical Problems**

7. A number of countries identified practical issues in conducting joint audits. The problems were in the following areas:

### ***a) Agreement on the extent of the audit***

8. Five countries indicated that it is essential to agree at the outset on the extent of the audit and the necessary tools to be used by joint audit team members. Moreover, agreement on the extent of audit testing and the feasibility of different audit techniques and materiality might cause a problem for the coordination of the joint audit team. Lastly, too much information may be disclosed to the members of the joint audit team if the extent of the audit is still vague after initiating the inquiry and this could result in a waste of time for the joint audit team.

### ***b) Agreement on the audit plan***

9. Three countries identified the importance of agreeing on the audit plan in advance. As each tax administration might have different priorities and action plans for dealing with the selected taxpayer's risks, failure to reach agreement at the outset on the issues to be audited may lead to later confusion and inefficiency in the audit.

### ***c) Timing of the audit (mismatching time frames)***

10. Four countries indicated that there could be timing issues affecting joint audits. The coordination of separate audit teams operating under the same authority is often difficult enough for revenue bodies to ensure a smooth audit process. Achieving this in a joint audit could be much more demanding. This problem of synchronization can arise if one treaty partner has an interest in auditing the current year, but the other treaty partner has no interest in that year, no administrative capability for extending a statute of limitation, or may not be in a position to conduct the audit for several years.

### ***d) Different administrative processes for finalising audits***

11. Two countries identified the fact that jurisdictions participating in joint audits may have differing administrative processes for finalising the audits (e.g. reassessment or settlement) may cause a potential problem for conducting joint audits. These differing processes may cause a problem if one jurisdiction cannot finalise the audit until the process is completed in the other jurisdiction.

### ***e) Effective procedures for exchanging information during the joint audit process***

12. Three countries identified that there need to be effective and timely procedures for exchange of information in joint audits. Current experience in exchanging of information suggests that the amount of time taken to respond to information requests will pose a challenge for some countries in conducting joint audits. If there are delays in responding to a request, the risk is that the adjustment period for the assessment to which the information request is related may have elapsed by the time the information is provided.

### ***f) Differences of opinion/interpretation of legislative provisions***

13. Two countries indicated potential problems if the members of the audit team have a difference of opinion/interpretation of a legislative provision, with the members of the audit not agreeing on the results of the joint audit. This would have a direct impact on the success of the joint audit.

***g) The lack of sufficient qualified/experienced staff in revenue bodies***

14. Five countries identified this issue as a problem for conducting joint audits particularly for developing countries. Each tax administration has to guarantee that their staff selected for joint audits have the relevant training and understanding of both the domestic tax law and the international tax law (i.e., the relevant tax treaties) that frame the relationship between various jurisdictions, and have sufficient audit experience and interpersonal skills to make for a productive relationship. Since developing countries only have limited number of qualified and experienced tax auditors, developing countries' revenue bodies in particular, may not be in a position to assign their staff to joint audit teams, thereby limiting the pool of countries that are likely to participate in joint audits.

***h) Involvement of additional staff to the joint audit process***

15. Two countries identified that additional coordination issues might arise from the need to engage experts (e.g. industry or legal) to address particular audit issues.

***i) Logistical issues***

16. Five countries identified logistical issues such as selecting the official place of audit, where audit meetings and taxpayer visits should be conducted, for both taxpayers and revenue bodies which will need to be dealt with in the planning process for a joint audit.

***j) Cost sharing problems/resource constraints***

17. Seven countries identified costs and resourcing constraints as possible obstacles for joint audits. Nearly all revenue bodies would prefer to take a conservative approach to additional costs which may be incurred in conducting joint audits.<sup>48</sup>

***k) Language Barriers***

18. Five countries raised the issue of language difficulties between the members of the audit team and between the audit team and local taxpayers.

**Recommendation**

19. These practical challenges should be resolved during the Preparation Stage, Chapter 2 of the Joint Audit Participants Guide, and during the Planning Stage, Chapter 4 of the Joint Audit Participants Guide. Participating revenue bodies will need to fully understand and communicate these challenges to their partner(s) to ensure an effective plan is developed and agreed for the joint audit engagement.

---

<sup>48</sup> The European Community has put in place arrangements for the funding of multilateral controls under the Mutual Assistance Directive. Decision No: 1482/2007/EC of the European Parliament and of the Council of 11 December 2007 establishing a Community programme to improve the operation of taxation systems in the internal market (Fiscalis 2013)  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:330:0001:0007:en:PDF>,

## ANNEX 4 STRATEGIC MANAGEMENT OF A MULTI-LATERAL PROJECT

### Purpose

1. This report examines a recent instance of a multilateral project involving several revenue bodies working collaboratively to combat a common cross-border tax avoidance and evasion scheme. It has been included to provide a real life example of a collaborative multilateral working arrangement.
2. This was the first time an international coordinated approach of this type had been attempted and so the experience has been a new one for all concerned. A number of the arrangements and practices used by the participating administrations (and described in this document) are not particularly original. However, the application and use of them by the participants given the prevailing circumstances at the time were considered to be unique.
3. It should be noted that document content has been compiled by the operation's cross-jurisdictional "Steering Group" and records the collective views of the members of that group. In the Steering Group members' opinion, their working arrangements have proved particularly effective over a sustained period of time, despite the challenges and difficulties which working in this environment have inevitably posed. They feel it is important, therefore, to share details of their experiences more widely as they may be of benefit to other administrations who are (or may in the future) look to work in a collaborative manner with partners across international boundaries.
4. This document should not be seen as providing the definitive approach or one which will provide guaranteed success. Nor should it be regarded as forming any legal precedent or indicative of the view of any tax administration. It is a menu of options based on a real life experience which can be considered by others in the context of their own aims and objectives.

### History and Context

5. Tax administrators in several countries became aware of common cross-border tax avoidance and evasion scheme.
6. Representatives from these tax administrations came together following a detailed analysis of data and some case operations to:
  - enhance understanding of the data, the types of structures/schemes and possible tax consequences,
  - develop common techniques and strategies, and
  - determine governance and timeframes for enhanced collaboration and coordination.
7. The objectives of this multi-jurisdictional collaboration were determined to be:
  - reduction in international tax avoidance/evasion,
  - enhancing community confidence in the revenue systems, and
  - developing strategies and capabilities.

## **Working Arrangements & Best Practices**

### ***Introduction***

8. Representatives from several tax administrations held a series of meetings to discuss how their “multi-jurisdictional collaboration” might practically be achieved. The representatives recognized this was untested territory for all – a collaborative venture of this nature (both in terms of the number of participants involved and the working level at which it would be carried out) had never been attempted before. However, they also appreciated the exceptional opportunity presented by discovering the cross-border scheme and the need to explore innovative ways of working together to deliver tangible shared goals.

9. There were obvious concerns about how this could be achieved, who would be involved, how co-ordination would occur, what would be discussed, etc. There was also a need to define clear objectives as these would drive views on the management arrangements required and operational activity planning. These considerations and the solutions subsequently agreed and implemented by participants are addressed in the paragraphs which follow.

### ***Governance and “The Protocol”***

10. At the outset, the representatives felt it important to establish and agree to a comprehensive operating framework for the collaboration. This would ensure all participants had a clear understanding of what they were aiming to achieve as well as the governance structures, management arrangements and manner within which they were expected to operate.

11. Representatives identified three key objectives which they felt could be achieved through the proposed collaboration. These were to:

- reduce international tax avoidance and evasion;
- enhance community confidence in the revenue systems; and
- enhance strategies and capabilities.

12. Representatives were also clear that each tax administration had to respect the bilateral requirements of the relevant Income Tax Treaties as well as their domestic disclosure/privacy laws. Accordingly, it was concluded that participants in the collaboration should operate a multi-lateral approach, facilitated by bilateral exchange where appropriate.

13. Having agreed upon the key objectives, the representatives developed a “protocol document” to articulate the proposed operating framework. It described the collaboration’s aspirations, the activities to be undertaken and the manner in which the members was expected to operate.

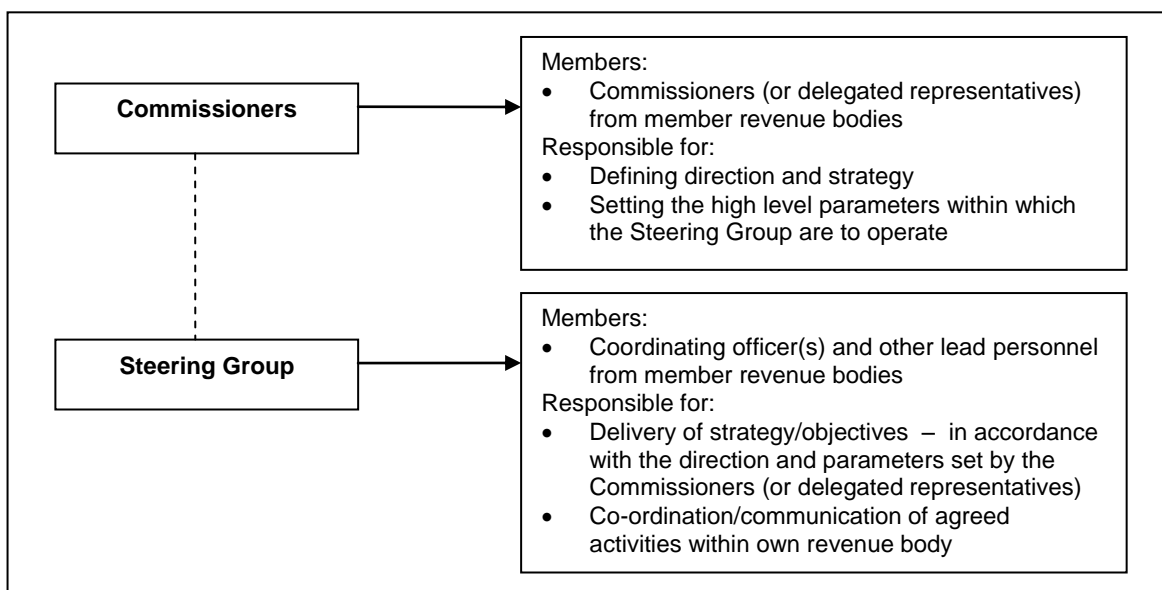
14. The protocol document content was subsequently endorsed by Commissioners (or delegated representatives) from the participating tax administrations. As an additional demonstration of the commitment to the guiding principles of the protocol the document was formally signed by each Commissioner (or delegated representative) and copies showing the complete signatory set provided to the participating tax administrations.

15. The protocol document is considered one of the most important approaches utilized by the collaboration. While representatives had recognized at the outset the value it could bring through provision of a clear and unambiguous statement of intentions, it also served as a practical assurance tool. Respective Commissioners (or delegated representatives) were regularly briefed as to the collaboration’s plans and progress and as such could ensure at any time that these actions were in line with the protocol. It also provided them with assurance that members – either individually or collectively – had not exceeded their authority. Collaboration members used the protocol for the same purpose and found it a useful reference point against which their approach and plans could be cross-checked to ensure consistency and “fit” – again, both at individual tax administration and overall collaboration level.

16. More fundamentally, however, the protocol document fostered a sense of community, shared ownership and trust for all parties involved. This came through its joint creation and formal sign-off by all participants and its active use throughout the activity lifecycle. More importantly, the protocol served to demonstrate that each tax administration was willing to accept and embrace their role via a mutual “commitment to act”.

***Structure/Roles and Responsibilities***

17. The Commissioners (or delegated representatives) for each tax administration subsequently appointed a group of Coordinating Officers. This group became known informally as the “Steering Group” and in simple terms, operated as the Commissioners’ working group. The diagram below gives a simple illustration of this structure:



18. Commissioners (or delegated representatives) were responsible for articulating the high level direction and strategy, as well as setting the parameters within which the Steering Group was required to operate. In turn, the Steering Group was responsible for delivery of that strategy (and its underpinning objectives) within the parameters set. In essence, the group’s objective was to deliver the requirements set out in the Protocol – within the limits established by that document, and in accordance with the relevant tax treaties, domestic laws, etc applicable to the participating tax administrations. The authority of the Steering Group was established within that Protocol, and all tasks/activities proposed and undertaken by them had to be aligned with it.

19. Individual Steering Group members were responsible for acting as the focal point for their own revenue body, ensuring that:

- activities carried out by operational teams within their jurisdiction were coordinated and aligned (where required) with those of the wider group;
- appropriate communication channels were in place with relevant personnel so that all such parties were suitably briefed and could provide input/feedback when necessary.

20. Additional information on how this functioned in practice is provided in “How the Group Operated”.

21. It was important for each tax administration to appoint individuals with the proper skill-set and authority to the Coordinating Officer role due to the nature of the work being undertaken, unknown and uncontrollable environmental variables, and ground-breaking nature of the activities.

22. Experience has shown the following attributes to be of particular importance/ benefit:

- strong understanding of the relevant domestic laws and Exchange of Information rules;
- authority to make commitments on behalf of their tax administration (or to quickly gain access to those who can);
- able to think and act flexibly, responding and adapting quickly to the dynamic circumstances of an untested and unpredictable environment;
- able to consider risks/problems and make balanced judgments on required action(s); and
- strong communication and interpersonal skills given the need to work collaboratively with counterparts in a multi-national environment.

23. Each administration nominated additional named members to the Steering Group to ensure coverage and continuity. However, given the sensitive nature of the work, and Exchange of Information and domestic disclosure/privacy rules, there had to be limits on the number of persons “in the know”. The group also had to be a manageable size to operate effectively. Each administration agreed to limit such nominations with generally only a further 2-3 members per country being named.

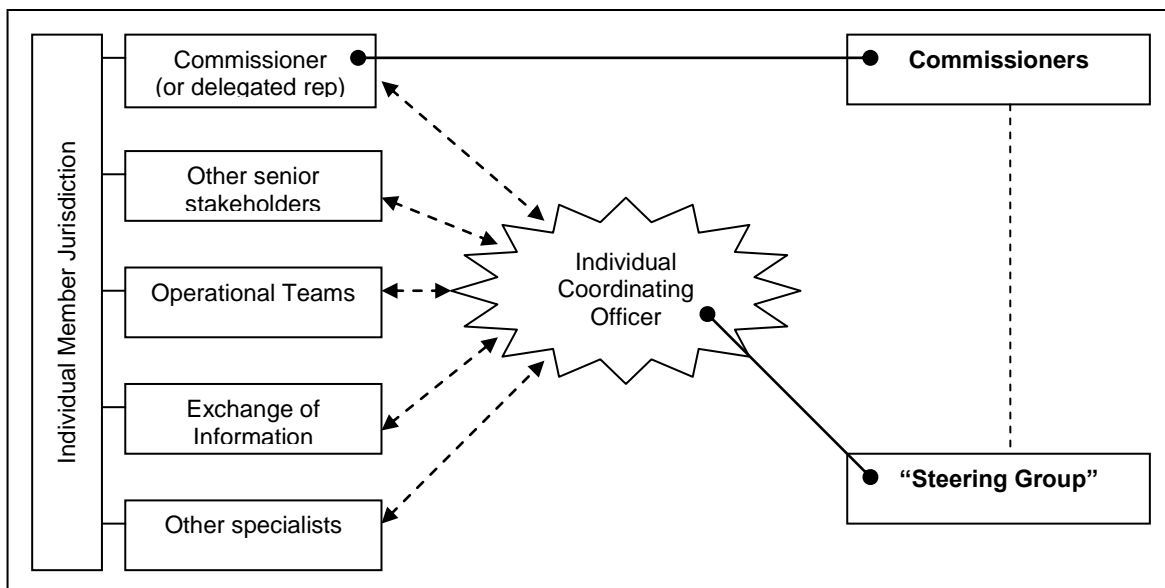
24. Without exception, these additional members were key personnel directly involved in the management or delivery of relevant activities within their jurisdiction and so had the requisite knowledge of context and working environment. It was not considered necessary for them to have all the attributes suggested for Coordinating Officers (though some did) but it is certainly considered valuable for them to possess similar skills. An additional benefit was that these individuals often brought specific expertise or skills in a particular discipline to the group. Through their participation and involvement in the group’s activities and working arrangements, these additional members supported Coordinating Officers and were able to learn from the experience. Accordingly, each administration has been able to field fully briefed personnel whenever required, ensuring consistent presence and representation for their administration throughout the operation’s lifecycle.

## *How the Steering Group Operated*

### *a) The Role of Coordinating Officers*

25. In practical terms, Coordinating Officers acted as the member country's operational "hub of the wheel", being the central connection between representatives within their own jurisdiction and the Steering Group. It was each Coordinating Officer's responsibility to ensure suitable two way communication links existed between themselves and all personnel within their jurisdiction (as determined by their own internal structures/"need to know" considerations) so that:

- Their Commissioner (or delegated representative), as a member of the wider Commissioners group, was properly briefed and so able to ensure direction and strategy considerations were fully informed;
- Activities were carried out in accordance with required procedures and laws (e.g. Exchange of Information);
- Relevant teams were fully aware of their contribution to the higher level objectives;
- The sharing of best practice could take place as relevant; and
- Delivery of the overall strategy and objectives was not compromised.



26. With each coordinating Officer fulfilling their role in this way, it was possible for them to in turn work as part of the Steering Group to ensure the same considerations were addressed and delivered at that level. The coordination challenges were reduced due to the venture's limited size.

### *b) Practical Considerations - Security*

27. The Steering Group had to consider security requirements when determining how their collaborative approach would operate in practice. Whilst the group's particular venture involved certain



unique circumstances and features, there was still the need to ensure “regular” security (personal and/or procedural) was not compromised by any aspect of their proposed operating procedures. For example, group communication (written and verbal) presented risks to security but the solutions which participants’ would generally implement in their own administration could not be used across international boundaries for practical reasons (e.g. different IT operating and/or utility systems etc).

28. Clearly, each member country had to work within the security requirements of their own jurisdiction. However, there were still a number of common sense techniques which were employed to mitigate risks in this area and which could easily be considered by others facing similar issues. For example:

- Restrict language in telephone conversations or inter-group documents to “general” references/descriptions unidentifiable to non-group personnel;
- Ensure any reference to progress on important/wider impact cases is on a strict “no names/identifying features” basis;
- Restrict sensitive or “in-depth” discussions about strategy, best practice, etc to face-to-face sessions;
- Use passwords (known only to group members) when exchanging electronic documents;
- Consider acquisition of secure telephone equipment (between countries where compatible technology is available) for more detailed two-way conversations; and
- Only sharing knowledge of group existence, membership, strategy, activities, etc on a strict “need to know” basis.

29. The list above is not exhaustive – nor are the techniques suggested meant to address requirements arising from Tax Treaty or similar laws. Other countries embarking on their own collaborative venture would be well advised to assess security risks and solutions based on the context, environment and circumstances relevant to their situation.

#### *c) Escalation Routes/Emergency Contact*

30. When working across international boundaries and time zones, the ability to access others in the event of emergency is vitally important. This ability ensures that any event in the world which might impact personal safety, affect the reputation of a tax administration or create a substantial risk to a national tax base can be quickly shared so that appropriate decision makers may assess the situation and promptly respond.

31. The Steering Group considered it essential for their working arrangements to include a suitable escalation mechanism which could quickly and easily be invoked should critical/unexpected issues arise that required communication/co-ordination across group members. To facilitate this, a “24 hour emergency contact list” was established. Each member country provided the name, work/mobile/home telephone numbers and e-mail address of two individuals (the first one being their coordinating Officer) who could be contacted at any time should an emergency arise. Those individuals would take responsibility within their tax administration for alerting relevant personnel, instigating action and/or ensuring participation at any ad hoc conference call as required by the situation. They would also take responsibility for notifying their emergency contact counterparts on the Steering Group should the problem

arise within their own jurisdiction. One member country took responsibility for collation, distribution and ongoing maintenance of the list.

32. The Steering Group did not formally define specific circumstances in which the emergency contact arrangements should be invoked. Instead, it was agreed each coordinating Officer would decide this at the point they became aware of the critical/unexpected issue and its circumstances. While this may appear unstructured, it indicates a high level of trust by coordinating Officers in their counterpart's judgment. There was always the option to specify parameters if this approach was not considered to be working. Group relationships strengthened as it became clear appropriate judgments were being made in such situations.

33. The Steering Group recommend creation of such a contact list for any cross-jurisdictional working arrangement although the level of information provided clearly has to be determined by reference to the circumstances of the work being undertaken and the willingness of those involved to disclose such details. In this venture, the provision of such detail was seen as another example of participant commitment and a tangible demonstration of trust in group counterparts.

#### *d) Telephone Conference Calls*

34. The Steering Group established a regular schedule of "checkpoint" meetings at the outset. These were conducted via conference call and were joined by the coordinating officers and named personnel from each of the member countries. All available members would participate in these calls wherever possible although it was clearly impractical for this to happen on every occasion. However, because each country had a number of agreed representatives, it was always possible for them to ensure a minimum presence at each one. For the most part, calls took place fortnightly with any changes to frequency being agreed or instigated by members as required by the particular circumstances at the time. For example, calls took place weekly (at some points even daily) at various points within the operation's lifecycle when members felt there was a specific need to communicate and take stock more regularly.

35. Conference calls were used to discuss emerging issues, high level operational progress and plans, and to share observations, experiences and any necessary logistical information. It is important to note that call discussions were restricted to matters relevant to the multi-lateral approach. They were not used to discuss the detail of specific cases or bilateral matters as required by the relevant tax treaties. A short agenda covering regular and "of the moment" topics would be distributed in advance. The time commitment to these calls was made practical because of the venture's size.

36. While this may seem a simple and well used technique, it can also be an easy one to dismiss. In the Steering Group's experience, the agenda provided structure, ensured the time available was used to best effect and allowed participants to prepare for calls in advance – this is critical when calls are being conducted with multiple participants across international time zones.

37. The group found there were a number of practical issues to consider when implementing a schedule of such calls. Attendees needed to be provided with a suitable dial-in number, someone had to take responsibility for "opening" the call to those dialling in, an agenda had to be produced and distributed. For this reason, the Group decided to operate a rotating ownership principle. Basically, one member country took responsibility for coordinating the calls/schedule for a specific period of time and at the end of that period, the responsibility would be handed over to one of the other member countries.

38. On occasions when there has been a need to discuss particular topics in more detail or depth the Steering Group has also invoked ad hoc conference calls. For example, the need to understand how each member country approaches a particular taxation issue, the differences arising and the implications that

might have on group objectives. This means “regular” conference call business continues to receive the attention it deserves as well as providing the topic of interest with a dedicated timeslot free of other distractions. It also allows each country to field non-Steering Group members (they could be specialists in the particular topic) without compromising security and/or governance requirements.

39. The Steering Group’s view is that conference call schedules should be set, understood and adhered to even if there is likely to be little to be discussed. It was certainly far more practical and productive for participants to carry on with the scheduled call, even if it only took 20 minutes to cover all business, rather than carrying it forward to the next time and 40 minutes being required (or even longer if other urgent business needed discussion). This consideration was particularly important to this group as the time at which calls had to be conducted due to time zone differences meant that a number of members were dialling in outside normal working hours. It is also sensible to put suitable escalation arrangements in place so spontaneous calls can be convened outside the schedule should an urgent need to communicate arise.

40. Most importantly, however, the regularity and discipline of the call schedule helped to maintain the group’s focus as well as building strong relationships, trust and understanding between members. For individual attendees, it was an excellent opportunity to maintain and/or increase their knowledge and awareness of the work being undertaken; in turn ensuring they were consistently able to fully represent their country’s interests.

#### *e) Face-to-Face Meetings*

41. In addition to the regular conference calls, the Steering Group have also found it necessary to hold periodic face-to-face working meetings. Such events enable members to discuss matters not suited to the conference call as well as the opportunity to work together as a group to develop particular items of shared interest in a more extensive way. They have also permitted each member country the opportunity to conduct bilateral business with a relevant partner given their mutual presence at the event. The logistics of such meetings were simplified by the group's small size.

42. However, the Steering Group recognize that a number of important considerations have to be balanced by members when deciding to conduct such events – the cost of attending (both money and resources); the value – both in terms of to their own administration and that of the group; ensuring meeting duration is sufficient (and justifiably so) to warrant the distance attendees have to travel; and the need to maximize the business which can be conducted within the time available. Accordingly, decisions about the need for a meeting, determination of agenda content and likely duration have always been taken by the group well in advance. This has given attendees sufficient time to agree attendance within their jurisdiction (and obtain any specific approvals required) as well as allowing the necessary organizational arrangements to be made.

43. The Steering Group has found these working meetings to be of particular value – both in terms of the outputs which can be produced and the actions initiated which continue to be of benefit long after the event. It would not have been possible, for example, for the group to conduct the session that resulted in the creation of the risk register – and which subsequently proved to be of particular importance in a conference call environment (see “Other Tools/Approaches used by the Group” and “Examples of Success” for further detail). The same can be said of the intensive session that took place to formulate proposals for the group’s future strategy and action plans.

44. But again, it is in the less quantifiable area of relationships and trust where particular results are felt to have been achieved. Face-to-face meetings permitted attendees to develop relationships – often created and managed to that point over international telephone lines – at a more personal level. This can

most effectively be achieved through the physical participation as a group to produce a particular piece of work and the many personalities and behaviours that encompasses.

45. Examples of this could be seen in the commitments to deliver certain elements; recognizing and balancing different views, opinions, etc; putting trust in others to deliver or lead on certain items; and achieving compromise if difficult decisions are required but which ultimately benefit the group and its objectives. The result being members have participated in the production of a truly collaborative output. But it can also be through the simple act of physically being together in a dedicated environment for an agreed period of time which allows dialogue and interaction to extend beyond the usual matters of immediate work driven priority. While physical proximity is no longer present when the event concludes, the energy created can continue when the next telephone contact is made through the simple act of being able to “put a face to the name” on the other end of the phone line.

#### *f) Exchange of Information & Related Requirements*

46. Member countries were fully aware of the need to respect bilateral requirements as set out in the relevant Income Tax Treaties as well as laws relating to domestic disclosure/privacy. They were also aware that the ability to share relevant information with partners would be an important benefit of the group’s operation.

47. Within the multi-lateral approach, Steering Group members have worked together to ensure the operation of bilateral exchange procedures wherever the opportunity arises and specific bilateral teleconferences have been conducted between a number of member countries to share information and effect case progression. The group’s face-to-face meetings included dedicated sessions where individual member countries met bilaterally with partners to conduct relevant business. Specific member countries have also participated in formal simultaneous case enquiries where such opportunities have arisen. Individual Coordinating Officers have also worked closely with their own administration’s Exchange of Information specialists to ensure relevant requirements are met and to facilitate exchange opportunities with non-member tax administrations where these have arisen.

48. The need to conduct elements of business through bilateral exchange has never been considered by members to have hindered the Steering Group’s multi-lateral approach. The key is in Coordinating Officers being sufficiently knowledgeable of requirements in this respect, establishing robust links with their administration’s exchange of information counterparts and specifying at the outset how such business will be conducted when discussing wider group protocols and operating arrangements.

#### ***Other Tools/Approaches used by the Group***

##### *a) Strategic/Tactical Options*

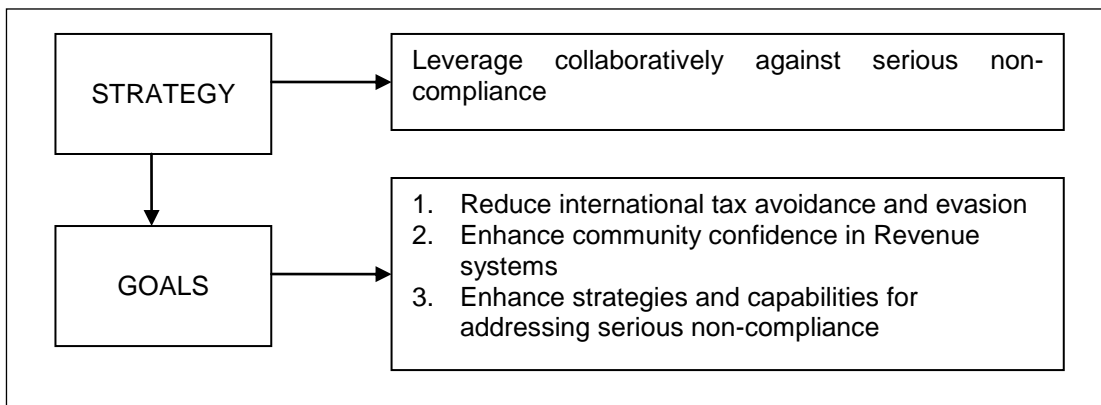
49. Collaborations of this nature should also consider the use of tactical options when devising operational plans or responding to particular events. These approaches can increase the effectiveness and/or impact of a particular course of action through maximization of the power of the group’s numbers. While specific examples of strategies/tactics employed by the Steering Group have not been reproduced in this document, some generic options which could be considered include:

- Releasing individual administration news releases (or similar communications) simultaneously with other group members;
- Ensuring an agreed start date across all member countries for a particular course of action (e.g. the first formal contact/notification that tax enquiries will be conducted); and

- Using the public’s knowledge of activities being carried out by a member jurisdiction to another member’s advantage (e.g. by targeting its own population and reminding them of the stated rules and their obligations).

*b) Risk Management*

50. The coordination of a multi-lateral project poses a number of challenges and potential risks. The Steering Group recognized this and decided to create a risk register to support their plans during the early stages of the working arrangement. The group took a systematic approach to risk register creation and used the opportunity presented by a scheduled face to face meeting to complete the initial work. Initially, the following schematic was agreed upon which set the context for all planned activities:



51. Participants then drew up a list of over 30 tactical and strategic options which were being (or could be) employed by the group to assist in achieving their goals and objectives. They then considered the potential and actual problems (i.e. risks) associated with each option. 15 key risk items were identified in total although this figure was subsequently reduced to 13 because several of the items were merged as the impact/actions required were so similar.

52. Finally, the group plotted each risk in terms of its “likelihood” and “consequence” (see example grid below) to ensure that those requiring the most attention (i.e. those in the red or amber areas) could be more easily identified. All risk ratings were based on the position at that time – i.e. prior to any mitigation activity taking place.

LIKELIHOOD	Almost Certain					
	Likely					
	Possible					
	Unlikely					
	Rare					
		Negligible	Low	Moderate	High	Extreme
CONSEQUENCE						

53. Members decided that each administration would take responsibility on behalf of the group for specific key risks, including the development of ideas on how to prepare for/mitigate the impact of each one. Each administration then shared their proposals with the group to ensure any country specific requirements were reflected and to seek endorsement from all parties to the suggested approach. One member country volunteered to collate and maintain the overall risk register content.

54. The risk register was subject to formal review during the group’s next face-to-face meeting. No new risks were identified, one risk was closed and a further six were re-worded to reflect changes to the environment and operational context. The group continues to manage the 12 risks that remain on the register.

55. Risk identification and management is a standard feature of most project management methodologies. It is used to help those involved to plan for and manage threats – the aim being to ensure delivery of a project’s objectives is not compromised. Risks can range from the personal security of staff to the impact of individual member country’s actions on other countries within a group.

56. The key is to consider and recognize potential and actual risks at an early stage so that suitable mitigation plans/activities can be put in place to manage likely impact. The Steering Group felt this methodology was of critical importance to their operation and accordingly devoted a substantial amount of time to making sure they “got it right” – a decision which was later justified when several risks materialized simultaneously (see “Examples of Success”).

57. The Steering Group is also of the view that it is a critical tool for any such working arrangement. It is effective in assisting in the determination of areas which might endanger persons, reputation or tax-base, and demonstrates to Commissioners (or delegated representatives) that a group has considered actions, outcomes and responses. Although a high level of discipline and effort are required to both assemble and maintain a register, failing to do so will waste time and may result in catastrophic failure. The Steering Group’s experience was that there were other important benefits. The fact that participants

were willing to take ownership of specific risks in the register was another way in which they demonstrated their commitment to the group and its objectives, so further extending the trust and sense of unity between members.

58. The Steering Group's risk register has not been reproduced in this document for confidentiality/security reasons. However, several generic risk examples have been listed below as they are likely to feature in any future working arrangement of a similar nature:

- Legal injunction
- Leaks – about data and/or knowledge of planned activities
- Risk international relationships [with others] due to non-inclusion in the group
- Media management
- High level disagreement on group's future direction/plans

### ***Conclusion***

59. If Steering Group members were asked to identify the single most important feature of their multi-jurisdictional collaboration it would undoubtedly be the protocol document. This one product set out the group's aspirations and operating framework and as such was the "reference point" for everything else that followed. It provided its members with tangible evidence of the commitment all participating administrations had made and through its continued use helped foster a collaborative and mutually supportive working environment.

60. Without a well conceived structure, the likelihood of a venture's success is diminished. A collaborative product such as the protocol sets out the agreed requirements and parameters and so mitigates this particular risk. However, the key is in ensuring that such protocols are actively used and the obligations (stated or implicit) contained therein adhered to at both group and individual administration level throughout the life of the venture. Visible support from senior management within participant administrations is also important. Steering Group members were able to operate knowing that their Commissioners (or delegated representatives) believed in the venture's viability and likely benefits (not to be underestimated given the untested nature of what was being attempted); were prepared to formalise their commitment to it by signing up to the protocol document; and demonstrated their ongoing support through the appointment of Coordinating Officers and other resources.

61. However, the actual success of any venture is very much based on its strategy and objectives. While clear outcomes should be stated, aspirations for "broad" successes are also necessary to empower Coordinating Officers to press for change/responses/etc. The work involved in any collaborative venture is likely to be ground-breaking and to challenge member administrations to reach further than was previously thought possible requires a clear vision of the future.

62. The strong relationships built within the group's personnel also proved fundamental to its success. This was achieved through a combination of factors:

- ensuring personnel (Coordinating Officers and others) had the necessary attributes and skills;
- continuity of personnel which allowed the relationships to properly develop over the course of activities and time;

- use of a regular schedule of conference calls and group meetings which inspired a sense of “community”; and
- pursuit of particular approaches and techniques which facilitated the sharing or assignment of ownership across members to generate trust and which enabled the collaborative environment to flourish.

63. As stated previously, it is imperative to an operation’s success to have continuity as the process works well (and is enhanced) through mutual trust and understanding and this can only grow over time. All Steering Group members committed to the continuity principle but it was inevitable that changes would unavoidably occur as the operation lifecycle extended. Changes were avoided wherever possible, and because members adhered to appointing new members with the requisite skills/attributes, this was not an issue. The fact that it was possible for new members to quickly assimilate into the group without adverse impact on either its operation or the relationships established is testament to the group’s strength and durability. Evidence of the group’s mutual respect is demonstrated by the ability by members to discuss and accept compromise where that is of benefit to the venture’s overall aims and objectives.

64. The venture embarked on by these tax administrations contained a number of unique features and so it is fair to say the exact circumstances of their particular collaboration are unlikely to be repeated in the future. However, the concept of collaboration across a number of international partners certainly can be repeated - as demonstrated by the experiences in this document. The Steering Group endorse the use of such arrangements and would suggest that the information provided here outlines a viable model for other administrations considering a similar venture.

65. In due course, each member country will produce final statistics/measures of success for the venture in accordance with the requirements of their own tax administration. Members may also consider if it is possible to quantify the extent to which the collaboration added to those achievements. However, it would not be unreasonable to suggest that a number of the wider (and less quantifiable) “benefits” will be seen for some time to come by virtue of the enduring relationships created and developed between the participants. Such relationships will support the pursuit of new ventures and help make the most of information exchange opportunities; with either the same group of members or through individual members forming other groups with new partners. The most significant result being that the group’s legacy lives on and inspires tax administrations across the world to work collaboratively to reduce international tax avoidance and evasion.