

Principle 9 Ensure international co-operation mechanisms are available

Tax crime investigation agencies must have access to criminal legal instruments and an adequate operational framework for effective international co-operation in the investigation and prosecution of tax crimes.

Introduction

127. Tax crimes very frequently have an international dimension, for instance because a foreign jurisdiction was used to hide assets or income, or because the proceeds from illicit transactions are kept abroad, without being declared to tax authorities. Since criminal activity can cross international borders while investigation agencies have powers which are limited by jurisdictional boundaries, co-operation amongst investigation agencies is extremely important.

128. International co-operation can take a number of forms including information sharing; service of documents; obtaining evidence; facilitating the taking of testimony from witnesses; transferring persons for questioning; executing freezing and seizing orders; and joint investigation. In order for such co-operation to take place, there should be a legal agreement setting out the terms and procedural requirements. These agreements can be information sharing agreements, such as tax information exchange agreements (TIEAs), agreements for exchange of information and administrative assistance, bilateral tax treaties and other instruments (such as the multilateral Convention on Mutual Administrative Assistance in Tax Matters)) as well as agreements for co-operation in using investigative and coercive powers (such as MLATs). These agreements should authorise international co-operation for crimes including tax crimes.

129. The use of exchange of information and MLATs amongst survey respondents is set out below. It is noted that in some cases, data was not broken down to exclude non-tax crime requests, and this is noted and shown in italics where relevant.

Table 9.1. Survey responses: Numbers of EOI and MLAT requests in respect of criminal tax matters (2015-18, unless otherwise stated)

| Jurisdiction | EOI requests sent | EOI requests received | MLAT request sent | MLAT requests received |
|----------------|-------------------|-----------------------|-------------------|------------------------|
| Argentina | 162 | 25 | 14 | N/A |
| Australia | 1 | 4 | 736 | 706 |
| Canada | 48 | 8 | 10 | N/A |
| Costa Rica | 6 | N/A | N/A | N/A |
| Czech Republic | N/A | N/A | 9 691 | N/A |
| France | N/A | N/A | 79 | 29 |
| Georgia | 16 | 28 | 19 | 65 |
| Germany | 4 500 | 4 000 | N/A | N/A |
| Hungary | 2 398 | 985 | 528 | 1 204 |
| Iceland | 86 | 4 | 0 | 0 |
| Ireland | N/A | N/A | 23 | 68 |
| Japan | 2 430 | 901 | 27 | N/A |
| Korea | 456 | 380 | N/A | N/A |
| Mexico | N/A | N/A | 30 | 13 |
| Netherlands | 1 | 0 | 91 | 544 |
| Spain | 4 292 | 7 204 | 1 685 | N/A |
| Switzerland | 2 | N/A | 12 | N/A |
| United Kingdom | N/A | N/A | 384 | N/A |
| United States | 55 | N/A | N/A | approximately 15 |

Note: Figures for Australia are for the 2015-16 period. Figures for the Czech Republic are for the 2017-19 period and include all criminal offences. Figures for France are for the 2017-18 period and only concern MLA requests regarding non-EU jurisdictions (requests from within the EU are handled directly by the courts). Figures for Germany are approximate and for the 2011-19 period. Figures for Ireland are for the 2015-19 period on requests sent, and for the 2015-17 period for requests received. Figures for Hungary are for the 2015-19 period and only include requests for international assistance sent or received by NTCA, not HFIU. Figures for Korea are for the 2017-19 period and include both tax and criminal matters. Figures for the Netherlands are for the 2015-17 period. Figures for Spain are for the 2016-18 period. Figures for Switzerland are for the 2015-16 period. Figures for the United Kingdom are for the 2017-19 period and are only valid for England and Wales. Figures for the United States are for the 2015-16 period.

130. With a view to having a successful holistic approach to fighting tax crime, it is important that jurisdictions have a far-reaching and functioning international co-operation network. This network should be characterised by the following features:

- be in place with a wide geographical coverage of other jurisdictions;
- cover a wide range of types of assistance, including exchange of information and other forms of assistance in investigation and enforcement; (OECD, 2012^[11])
- be supported by a domestic legal framework that allows the sharing of information both sent and received under international legal instruments with all relevant domestic criminal investigation, intelligence and enforcement agencies, where appropriate (i.e. tax authorities, criminal investigation authorities, FIUs, AML authorities); and
- be given effect in practice, including having a clear operational framework for international co-operation. This should include having dedicated and identified contact points that foreign agencies can contact in case of a request for assistance, sufficient resources to fulfil requests for assistance, as well as training and awareness for domestic investigation agencies as to the availability of international co-operation and how to make effective requests.

131. Although the legal gateways are in place in many cases, practical obstacles can have a significant impact on effective international co-operation. Surveyed jurisdictions reported obstacles such as: delays caused by a lack of clear communication channels, confusion about the organisational structure or mandate in the counterpart and therefore delays in identifying the correct agency to whom to address the request, and practical communication difficulties including language or lack of clarity in the presentation of the facts of the request. Results from the survey conducted for this guide also showed that jurisdictions may not keep detailed data to monitor the use or impact of the international co-operation tools, which may contribute to a lack of awareness or reduced profile of these tools.

References

OECD (2012), *International Co-operation against Tax Crimes and Other Financial Crimes: A Catalogue of the Main Instruments*, <https://www.oecd.org/ctp/crime/international-co-operation-against-tax-crimes-and-other-financial-crimes-a-catalogue-of-the-main-instruments.htm>. [1]



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