

Introduction

The Project

“Global transparency requires international co-operation to reach cross border solutions in tax matters.”

Eveline E. Klein Entink
(Coordinator International Co-operation –
Large Business Segment at NTCA)

“TWO audit teams – ONE common solution – ZERO double or non-taxation. That is what joint audits are about!”

Eva Oertel
(Legal Counsel for International Tax Policy,
Federal Ministry of Finance, Berlin)

The Italian Revenue Agency sees joint audits as a terrific opportunity to work together with other tax administrations in real time and to ensure targeted and balanced approaches, providing taxpayers with advanced certainty and enhanced ways to avoid double taxation.”

Chiara Putzolu/Vito Funari
(Agenzia delle Entrate, Roma)

“Unilateral audits of bi- and multilateral tax issues simply do not makes sense. If we are to manage the increasing number of international tax disputes, we need to find better tools to secure timely tax certainty. Correctly designed, joint audits have the potential to be a useful tool in the dispute management toolbox.”

Jesper Barenfeld
(Senior Vice President, Head of Group Tax,
Group Reporting, Tax and Control Volvo AB, Gothenburg)

1. These statements are a powerful testimony to the increasing globalisation of business and the need for tax administrations – that remain confined to national borders – to engage in ever more enhanced forms of international tax co-operation. This report focuses on the most advanced form of audit-related tax co-operation with the highest levels of integration and co-ordination under the heading of “Joint Audits”.

2. It is the second time the FTA has worked on Joint Audits within the last ten years (OECD, 2010).¹ A quick review of the past and the present and a look into the future of tax co-operation gives ample reason to believe that the work is not only timely, but that the FTA may well return to it rather sooner than later. The pace of globalisation, including the rapid digitalisation of the economy, leaves tax administrations with little choice but to engage in ever closer co-operation, including through Joint Audits, to ensure that taxpayers pay the right amount of taxes, to reduce administrative burdens, increase efficiencies,

enhance tax certainty and avoid double taxation to benefit governments and taxpayers alike. While Joint Audits can be used for different types of taxes, this report will focus on the use of Joint Audits in direct tax purposes.

3. The report is derived from a project on “Joint Audits” (the “Project”) that focused on international co-operation in the field of tax audits and collected an overview of experience to date. It examined how collaboration in this field has developed since its first mentioning in the FTA Joint Audit Report, September 2010 (hereafter, the “2010 Report”) and where this instrument can be further developed and improved in the future.

4. Information was collected from the 20 participating jurisdictions² through questionnaires, interviews via conference calls with “Expert Group Members”³ and through discussions in an expert meeting where businesses also participated to share their views on the topic.

Background and context

A brief history of international tax co-operation

5. Exchange of information between tax administrations was already part of international tax co-operation nearly 100 years ago, as witnessed by a 1925 League of Nations report, which identified exchange of information as a necessary measure “to secure the effective suppression of tax evasion” (League of Nations, 1925, in Wöhrer, 2018). The “Draft of a Bilateral Convention on Administrative Assistance in Matters of Taxation” of 1927 (1927 Model) already contained a wide personal scope comprising information regarding all natural and legal persons taxable in one of the contracting states⁴ and regarding all matters required for tax assessment (League of Nations, 1927, in Wöhrer, 2018). However, the exchange was limited to the information already in the possession of the contracting states and information that could be easily obtained in the normal course of administration.

6. Work on the scope and extent of information that could and should be exchanged between tax administrations was continued by the OECD after the League of Nations was replaced by the United Nations (UN). Even though the scope of the first OECD *Model Tax Convention on Income and on Capital* (Model Tax Convention (OECD, 2017)) of 1963 was rather restricted, the OECD proceeded to broaden the personal and material scope in the updated versions that followed.

7. In the 1970s and 80s, important initiatives took place, at regional and global level, which further strengthened the legal framework for international co-operation in tax matters. Notable examples include the Nordic Multilateral Treaty on Mutual Assistance in Tax Matters (Nordic Convention), signed by Denmark, Finland, Sweden, Norway and Iceland in 1972, the Council Directive 77/799/EEC of 19 December 1977⁵ and the Convention on Mutual Administrative Assistance in Tax Matters (the Mutual Assistance Convention, OECD/Council of Europe, 2011), jointly developed by the OECD and the Council of Europe and opened for signature by their respective Member States in 1988.

8. However, wider political momentum only came at the turn of the millennium. The OECD launched its initiative to address harmful tax practices and published a first report on *Harmful Tax Competition* in 1998 (OECD, 1998). The report found that one of the key criteria for harmful tax practices was the lack of effective exchange of information and transparency. In this context, the OECD developed the Model Tax Information Exchange Agreement (TIEA) in 2002 (OECD, 2002) that set the standard for information exchange upon request and subsequently amended Article 26 of the OECD Model Tax Convention

accordingly. In its first years, the model TIEA had a relatively small uptake, with six agreements concluded in 2002 and a total of 44 by 2008. Equally, the number of signatories to the Convention stood at 17 having increased by only five in the five years to 2008. This was also the time where the European Union (EU) moved towards the automatic exchange on certain passive investments, through the introduction of the Savings Directive in 2003.⁶

9. The scene dramatically changed with the financial crisis in 2008, various tax evasion scandals and the advent of the G20. The declaration by the G20 in April 2009 marked the end of bank secrecy. As a reaction, all jurisdictions committed to the new standard for the exchange of information on request.

10. In the wake of these developments, exchange of information expanded with unprecedented speed: whereas the first 30 years of the Mutual Assistance Convention had seen only 17 signatories, the next 10 years brought the total to over 120. At the same time processes became faster, more efficient, more integrated and more electronic with dedicated systems and points of contact such as those within the context of the FTA's JITSIC⁷ network. And jurisdictions did not stop at information exchange upon request. Following in the footsteps of FATCA and building on the EU Savings Directive, the OECD working with the G20 countries developed and agreed the first global standard of automatic exchange of information in the area of financial accounts: the Common Reporting Standard (CRS). By 2018 the CRS had become a reality with over 100 jurisdictions committed, over 4 500 bilateral exchanges of CRS information having taken place and the Global Forum with now 154 members.⁸

11. Concurrently with the momentous changes to tax co-operation in relation to the CRS, the OECD/G20 also made significant progress in addressing transparency issues in the corporate tax space. As part of the Base Erosion and Profit Shifting (BEPS) Project, launched in 2013, the mandatory spontaneous exchange of information on rulings was agreed (Action 5). In addition, the BEPS Project delivered the first automatic exchange of information policy in the multinational corporate tax arena through the introduction of country-by-country (CbC) reporting (Action 13). The latter has resulted in a widespread adoption of the automatic exchange framework for CbC reports, often based on the Mutual Assistance Convention, with almost 2 000 bilateral exchange relationships.

12. While exchange of information form part of all international tax co-operation, the needs of tax administrations, in particular in the audit stage, often go beyond a simple request for information. Already decades ago, tax administrations, and in particular those of the Nordic countries, were acutely aware that mere exchanges of information are not always sufficient to achieve optimal tax compliance outcomes if not accompanied by other forms of enhanced co-operation. The Nordic countries, due to traditionally strong commercial links and high migration figures, already had a long history of very extensive regional co-operation (Valkama, 2013) and therefore recognised the importance of enhanced multilateral co-operation decades ago.

13. These forms of enhanced co-operation, beyond exchanges of information can take a wide variety of forms and differing levels of engagement between tax administrations. In many instances, already today, tax officials accompany the exchange of information request with phone calls or personal meetings to explain the case and the information needed in more detail and to address inquiries of the requested tax administration directly.

14. A next logical steps towards deeper co-operation was to have the foreign tax official present at an examination or even to address the taxpayer directly during the procedures in order to facilitate the information gathering process by explaining the reasons for and the scope of the request for information. The possibility for the presence of foreign tax officials was first reflected in the Council Directive 77/799/EEC of 19 December 1977.⁹

The Mutual Assistance Convention and the Nordic Convention, adopted in the late eighties, includes the possibility to execute simultaneous tax examinations and request permission for representatives of one tax administration to be present at tax examinations carried by the other tax administration.¹⁰

15. Today, Article 26 of the OECD Model Tax Convention, the Nordic Convention, the Council Directive 2011/16/EU of 15 February 2011 on administrative co-operation in the field of taxation and repealing Directive 77/799/EEC (EU-Directive 2011/16) and the Mutual Assistance Convention¹¹ all acknowledge that enhanced international co-operation plays an important part in facilitating the proper determination of tax liabilities and bring benefits to both tax administrations and taxpayers. These instruments explicitly refer to “tax examinations abroad”¹² and “simultaneous tax examinations”¹³ that will be explained further in Chapter 1. More and more use is being made of these possibilities. Within the EU alone, 119 simultaneous tax examinations and 213 tax examinations abroad were initiated in the period between 2013 and 2016.¹⁴

16. Tax administrations have further combined elements of information exchange, simultaneous tax examinations and tax examinations abroad to form a more advanced and integrated approach, in practice often referred to as “Joint Audits” a term first used in the 2010 Report (OECD, 2010).

Looking into the future

17. Contrasting the continued globalisation of the economy including its rapid digitalisation with the territorial limitations faced by tax administrations clearly suggests that Joint Audit activity is only going to increase.¹⁵ Facilitated by digital technologies and the internet, ever smaller companies are able to transact business globally and may become subject to tax in other jurisdictions. Information relevant for tax purposes may be stored centrally on servers located abroad. Global supply chains may require a better understanding of activities, functions and assets abroad. As the current discussion on the taxation of the digitalising economy shows, tax obligations may arise in jurisdictions where a taxpayer does not have a physical presence and thus there may be nothing to audit within that jurisdiction. In the context of the CRS, correct reporting to the residence tax administration of the account holders relies exclusively on financial institutions based abroad.

18. And these are just some examples where tax administrations may well conclude that merely asking questions through traditional exchange of information pathways is neither sufficient nor necessarily the most efficient and effective route to achieve the best compliance outcomes for administrations and taxpayers. Similarly, acting and auditing unilaterally rather than jointly in such areas as transfer pricing, not only risks missing the whole picture, it also carries the risk of increased double taxation for taxpayers, which may then require an additional time-consuming process through the mutual agreement procedures (MAP) with uncertain outcomes. The MAP statistics released in 2018 show that this is not just an academic risk, with a substantial increase in total new MAP cases. Alongside other dispute prevention mechanisms such as APA’s and improved risk assessment strategies, including the current ICAP pilot (OECD, 2018), Joint Audits can therefore play a key role in providing early certainty, reduce cost and accelerate timelines.

19. While most Joint Audits today take place amongst a small group of tax administrations, this is likely to change as the drivers described above become more and more pertinent in an ever larger number of jurisdictions. With the Mutual Assistance Convention now covering over 125 jurisdictions, the basic international legal framework is already in place and ready to be used.

Notes

1. The OECD published a first report on Joint Audit in 2010: OECD (2010).
2. Belgium, Canada, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, the Netherlands, Portugal, South Africa, Spain, Russia, Singapore, the United Kingdom, the United States.
3. Germany, Italy, the Netherlands, Norway, South Africa, the United Kingdom and the United States were selected to serve as a peer group for feedback on different topics.
4. The scope was not limited to residents – Article 2 of 1927 Model.
5. Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation.
6. Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments.
7. JITSIC brings together 38 of the world's national tax administrations that have committed to more effective and efficient ways to deal with tax avoidance. It offers a platform to enable its members to actively collaborate within the legal framework of effective bilateral and multilateral conventions and tax information exchange agreements – sharing their experience, resources and expertise to tackle the issues they face in common.
8. www.oecd.org/tax/transparency/about-the-global-forum/members.
9. Article 6 of Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation, certain excise duties and taxation of insurance premiums.
10. Articles 8 and 9 of the Mutual Assistance Convention and Articles 12 and 13 of the Nordic Convention.
11. Refer to Paragraph 9.1 of the Commentary to Article 26 Model Tax Convention, Articles 11 and 12, as well as Recitals 13 and 14 of EU-Directive 2011/16, Articles 12 and 13 of the Nordic Convention, as well as to Articles 8 and 9 of the Mutual Assistance Convention and the related Commentary.
12. A tax examination abroad – in this report referred to as foreign tax officials abroad – allows for the possibility to obtain information through the presence of representatives of the competent authority of the requesting tax administration. To the extent allowed by its domestic law, a jurisdiction may permit authorised representatives of the other jurisdiction to enter the first jurisdiction to interview individuals or examine a person's books and records – or to be present at such interviews or examinations carried out by the tax authorities of the first jurisdiction – in accordance with procedures mutually agreed upon by the competent authorities.
13. A simultaneous examination is an arrangement between two or more parties to examine simultaneously each in its own territory, the tax affairs of (a) taxpayer(s) in which they have a common or related interest, with a view of exchanging any relevant information which they so obtain.
14. See Commission Staff Working Document dd. 18.12.2017 on the application of EU-Directive 2011/16.
15. The degree of co-operation might be limited by the domestic legal framework as not all jurisdictions allow the presence of foreign tax officials to participate in an audit or to perform audit activities.

References

- League of Nations (1925), *Double Taxation and Tax Evasion – Report and Resolutions submitted by the Technical Experts to the Financial Committee – Document F.212*, quoted in Wöhler (2018), Vol. 10, Chapter 3.2.1.1.
- OECD (2017), *Model Tax Convention on Income and on Capital: Condensed Version 2017*, OECD Publishing, Paris, https://doi.org/10.1787/mtc_cond-2017-en.
- OECD (2010), *Joint Audit Report*, OECD Publishing, Paris, available at www.oecd.org/tax/administration/45988932.pdf.
- OECD (2002), “The 2002 Model Agreement on Exchange of Information on Tax Matters and its Commentary” in *Implementing the Tax Transparency Standards: A Handbook for Assessors and Jurisdictions*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264088016-en>.
- OECD (1998), *Harmful Tax Competition: An Emerging Global Issue*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264162945-en>.
- OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264115606-en>.
- Valkama, M. (2013), “The Nordic Mutual Assistance Convention on Mutual Administrative Assistance in Tax Matters”, in O.C. Günther and N. Tüchler, *Exchange of Information for Tax Purposes*, Linde Verlag, Vienna.
- Wöhler, V. (2018), *Data Protection and Taxpayers’ Rights: Challenges Created by Automatic Exchange of Information* (Vol. 10), WU – Tax Law and Policy Series, International Bureau of Fiscal Documentation, Amsterdam.



From:
Joint Audit 2019 – Enhancing Tax Co-operation and Improving Tax Certainty
Forum on Tax Administration

Access the complete publication at:
<https://doi.org/10.1787/17bfa30d-en>

Please cite this chapter as:

OECD (2019), "Introduction", in *Joint Audit 2019 – Enhancing Tax Co-operation and Improving Tax Certainty: Forum on Tax Administration*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/21180dc6-en>

This work is published under the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of OECD member countries.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

You can copy, download or print OECD content for your own use, and you can include excerpts from OECD publications, databases and multimedia products in your own documents, presentations, blogs, websites and teaching materials, provided that suitable acknowledgment of OECD as source and copyright owner is given. All requests for public or commercial use and translation rights should be submitted to rights@oecd.org. Requests for permission to photocopy portions of this material for public or commercial use shall be addressed directly to the Copyright Clearance Center (CCC) at info@copyright.com or the Centre français d'exploitation du droit de copie (CFC) at contact@cfcopies.com.