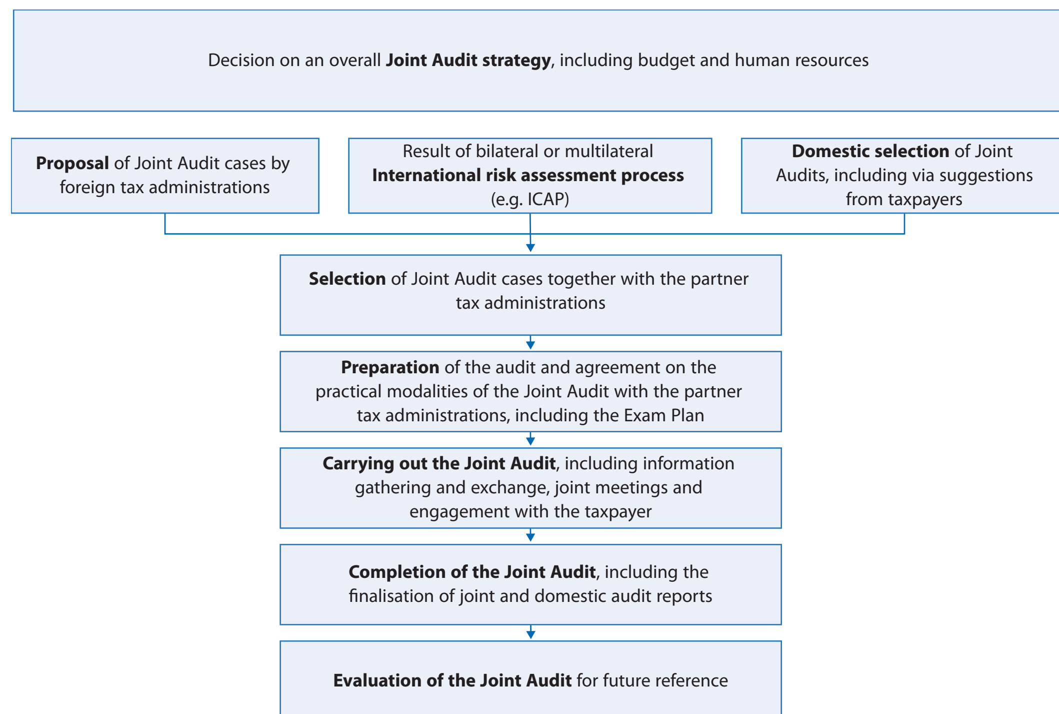
Chapter 7

Joint Audit guidance

122. The previous chapters outlined the role of Joint Audits, summarised the main reasons to engage in this form of international co-operation and provided details on specific topics. This chapter provides practical guidance and related recommendations on how to start, conduct and complete a Joint Audit procedure based on the best practices identified during the Project.[1]

123. This chapter looks first at the overall strategic direction that jurisdictions may take towards Joint Audits, as well as the budgetary, human resource and organisational framework implications. It then sets out the key considerations for the Joint Audit case selection process before turning to the preparation of the Joint Audit, such as the development of a Joint Audit Exam Plan followed by the details on the conduct of the Joint Audit. Finally, the chapter discusses the conclusion of the Joint Audit, including the drafting of a final Joint Audit report.

124. Graphically, the steps of a Joint Audit can be depicted as follows:



7.1. Strategic approach to Joint Audits

125. Joint Audits do not just happen. Tax administrations need to consider their overall approach to international tax co-operation and, within that context, the role they see for Joint Audits in the short, medium and longer term. For instance, tax administrations may decide to take a very proactive approach, which will have implications on resources, the level of outreach and engagement both internally and externally. Such an active approach may also suggest the conclusion of a MoU with key partner tax administrations outlining the framework for their Joint Audit activities.

126. Alternatively, a tax administration may, in light of its particular circumstances, take a less active approach and mainly respond to the Joint Audit requests of others. A tax administration that is interested in exploring the potential of Joint Audits may decide to first engage in a pilot project and then, based on that experience, decide whether to roll out a more extensive Joint Audit programme. For such tax administrations, one or two experienced tax officials conducting the initial Joint Audit pilot should be sufficient and no dedicated Joint Audit team would be needed from the outset.

127. Whatever approach a tax administration decides to take, it will have to be implemented on a consistent basis. International tax co-operation only works if it is based on trust and reciprocity. Joint Audit cases need to be considered objectively and irrespective of whether they may result in an increased or a reduced yield for the tax administration concerned.

128. Where a tax administration decides to take a proactive approach to Joint Audits, it will need to think through the organisational implications and how to best deliver successful outcomes in an efficient manner. The experience from this Project shows that there are several components that can contribute to the success of a Joint Audit in the context of such a proactive approach.

- **Capturing expertise and making it known within the tax administration**. It is essential that all tax auditors that deal with international tax issues are informed about the existence and possibilities of a Joint Audit, which should include awareness sessions and Joint Audit training for all auditors exposed to international tax issues. Such information may include actual experiences with Joint Audits including results, costs and benefits. Several tax administrations involved in the preparation of this report have established centres of excellence and central or expert joint audits teams that every tax auditor can contact and that guide the auditor in determining whether a particular case is suitable for a Joint Audit.
- **Identifying necessary skills**. Given that a Joint Audit will often require language skills, cultural sensitivities and a degree of understanding of foreign laws and practices, it is essential for cases to successfully advance through the Joint Audit stage, that a central or expert team offers support and is involved throughout the Joint Audit process. Of course, the size of any such team will depend on the size of a Joint Audit programme. Where a tax administration wishes to explore Joint Audits, possibly as a pilot programme, it may be enough to use an experienced international auditor with the necessary language skills. If subsequently it then wishes to scale up the Joint Audit work, the size of any team will also depend on the size and organisational structure of the tax administration in question.
- **Reviewing incentives and disincentives**. It may be useful to review the performance targets or metrics of tax auditors to see whether they have the effect of discouraging Joint Audits even in situations where, from an overall perspective, they would be beneficial to all concerned. For instance, a purely domestic audit would typically

be completed more quickly compared to a Joint Audit. If the internal performance evaluation favours audit completion times, irrespective of whether audit results create double taxation and cases return via MAP, then this creates a disincentive for Joint Audits. The same applies if there is little credit for a complete exploration of a complex international case with the participation of other tax administrations via a Joint Audit even where there are pertinent risk indicators.

- **Managing costs**. Joint Audits involve travel and there may be costs related to building up additional expertise, e.g. via the establishment of an expert team. Within the EU and for intra-EU Joint Audits, the FISCALIS programme covers travel costs. However, no such funding is currently available for non-intra EU Joint Audits. Based on the experience of the Expert Group, it would therefore be beneficial if each tax administration with a Joint Audit programme would allocate an appropriate budget to the programme on an annual basis so as to streamline and simplify its practical operation. Special funding arrangements could also be considered for less experienced jurisdictions with lower capacities wishing to participate in Joint Audits.[2]
- **Technical infrastructure**. The conduct of a Joint Audit may also require further technical assistance compared to a domestic audit. This includes the secure exchange of documents during the audit (for example via the Common Transmission System, CTS) and to communicate via international compatible telephone and/or video conferencing systems that allow for a secure information exchange between the team members on a regular basis. This could cause initial investment cost but could in turn reduce travel costs.

Quotes from the Project

"When deciding whether to conduct a Joint Audit, the decision cannot only be based on the available resources. Rather, it has to weigh the available resources against the importance of the specific case." (the Netherlands)

"We decided that international co-operation is an important subject and seek to develop as much experience as possible. We will therefore also take on small cases or cases with jurisdictions we have not yet worked with." (Germany)

"A small case for one jurisdiction may be a big case for the other jurisdiction." (Germany)

7.2. Case selection

7.2.1. Selection process

129. The domestic case selection process will in part be a reflection of the jurisdiction's overall approach to Joint Audits. A jurisdiction pursuing a proactive Joint Audit approach will typically follow a combination of a top down and bottom up selection process. In a **top down** selection process, a jurisdiction defines the criteria a case should meet to be suggested for a Joint Audit. These criteria can be the outcome of criteria developed by reference to domestic objectives and/or the result of close co-operation between two or more jurisdictions to identify suitable cases. A **bottom up** process describes the practice where selection is carried out by the "field" auditors and other tax examiners to identify cases that appear suitable to be suggested as a Joint Audit.

130. A jurisdiction with a less active approach towards Joint Audits will focus more on selection criteria relating to the circumstances, in which to accept a Joint Audit proposal by another jurisdiction. When a jurisdiction is exploring Joint Audits via a Joint Audit pilot, it will typically not yet have any specific case selection process for Joint Audits in place.

131. The international selection process may build on the domestic selection process. It is here that the tax administrations decide, which of the cases proposed will be taken forward as a Joint Audit.

132. Tax administrations with a proactive Joint Audit programme tend to hold selection meetings with their main partner jurisdictions on a regular basis, in which they present cases that meet the joint selection criteria. With parties where Joint Audit activities is less frequent, the scheduling of international selection meetings may be more ad hoc and driven by the number and urgency of cases that the participating tax administrations wish to propose.

133. An international selection meeting helps to discuss a specific proposal and the potential risks at stake before the tax administrations decide to engage in a Joint Audit. The potential benefit of an international risk selection mechanism is that the information available in two or more jurisdictions provides a better basis for risk analysis than a unilateral risk assessment. Furthermore, this selection method allows the involved jurisdictions to jointly engage in the Joint Audit procedure from the beginning on an equal footing and thus prevents disputes from the earliest stage.

134. As more tax administration engage in Joint Audits and as the number of multilateral rather than bilateral Joint Audits increases, the process and logistics of international case selection becomes more challenging. Within the EU, there are currently several Member States organising bilateral selection meetings, but there are at present no such meetings involving tax administrations from non-EU Member States. To fill this gap in a way that is resource effective, the FTA should provide a forum where tax administrations wishing to propose Joint Audit cases to one or more other FTA member tax administrations can meet and schedule case selection meetings with different counterparties on the same day and in the same location. The FTA Secretariat should be supporting the organisation and logistics, without being involved in any of the substantive discussions.

7.2.2. Case selection criteria

135. As outlined in detail in Chapter 3 case selection is decisive to optimise the cost-benefit-ratio of a Joint Audit. While tax administrations will have their own criteria, the experience from this Project shows that a Joint Audit should be considered for example where:

- there are reasons to believe that a domestic audit alone, even if supplemented by information exchange or other forms of international tax co-operation, would be less efficient or less successful in developing a full understanding and appreciation of the facts
- particular issues, a transaction or series of transactions lead a tax administration to the view that a tax examination on a unilateral basis may lead to double taxation, for example because of a cross-border business restructuring
- the case under consideration is similar to types of cases that are already part of the existing MAP pipeline

- a treaty partner has requested a Joint Audit, the information contained in the request indicates that a Joint Audit would be an appropriate action and the requested tax administration has a common or complementary interest in conducting a Joint Audit
- the taxpayer has suggested a Joint Audit, the information contained in the suggestion indicates that a Joint Audit would be an appropriate action and the respective tax administrations have a common or complementary interest in conducting a Joint Audit
- two treaty partners experience an expansion in cross-border trade and investment and a Joint Audit would help build relationships and facilitate a better understanding of each other's auditing rules, practices and procedures
- a case has made no or little progress in MAP, particularly in the absence of arbitration provision in the respective treaties, and there is reason to believe that a Joint Audit intervention has the potential to unlock the situation; or
- APA negotiation have taken a long time and a Joint Audit would allow to create tax certainty for past years and/or otherwise assist in resolving the issues for future years
- a joint or separate risk assessment has led two or more tax administrations to the view that a particular issue, transaction or series of transactions presents a material international tax risk.

7.2.3. Case preparation and initiation

136. When a jurisdiction identifies a case based on its domestic selection criteria, it will need to consider whether there are any obstacles to take it forward. The first question will be whether the international legal framework is in place with the other jurisdiction. Chapter 4 provides details on the available legal frameworks and their scope.

137. If the international legal framework is in place, the legal parameters for conducting the Joint Audit, such as whether the other jurisdiction allows for active or passive presence and whether this is subject to further requirements such as the consent of the concerned taxpayer(s), will need to be analysed as well as any practical obstacles that may exist.[3]

138. A Joint Audit Profile that supports the decision making process in this respect is made available in the Joint Audit Implementation Package.[4] It contains relevant information about the other jurisdiction's audit procedure and allows getting an overview of the other jurisdiction's legal situation and relevant information for conducting a Joint Audit with that jurisdiction. The Joint Audit Profile also contains for example information about the other jurisdiction's audit cycles, statutes of limitations and legal particularities that allow the conduct of Joint Audits or may limit the conduct a particular Joint Audit.

139. Finally, the Joint Audit Profile provides relevant contact details of the respective Competent Authorities in each jurisdiction and the Template for a Proposal/Invitation for a Joint Audit can be used to provide the requested tax administration with all relevant details to be in a position to take a decision.

140. Where after this analysis a tax administration wishes to initiate a Joint Audit it should outline in its Proposal/Invitation the international legal framework that is intended to be used for the international co-operation, the main features of its domestic legal framework (or refer to its Joint Audit Profile) and include an explanation why a Joint Audit is considered the best approach to address the particular case. Possible uncertainties about the legal base can be subject to further discussion during the preparation process.

7.2.4. Reaction to a Joint Audit proposal and decision

141. The requested tax administration should confirm the receipt of a Joint Audit proposal and should provide a response to the proposal as soon as possible within the timeframe set out in the Joint Audit Profile, which should not exceed two months after the receipt of the proposal. The reaction can be an acceptance, a rejection or a deferral to a later stage. Where the requested tax administration requires more time to provide a final response, it is preferable to seek an extension rather than decline the joint audit proposal due to expiration of the two months period. The indicated timeframe in the Joint Audit Profile serves as an orientation and a Joint Audit proposal should not be declined because the requested tax administration requires more time to analyse whether to engage in the Joint Audit procedure. There is currently no legal obligation to accept a proposal for a Joint Audit. However, if the requested tax administration declines a Joint Audit proposal, it should provide the reason for its refusal in writing to the requesting tax administration.[5]

142. In considering whether to accept a case, tax administrations will also review whether a Joint Audit is the best way forward or whether other forms of international tax co-operation may be more appropriate in a particular case. As every Joint Audit also includes exchange of information and tax administrations have the ability to decline a request for information where the other jurisdiction has not yet exhausted all domestic means available to gather the requested information, the question has sometimes arisen whether this principle has any relevance or application in the international case selection process for Joint Audits.

143. This principle should not impact the initiation of a Joint Audit. This is because the international legal framework – unlike for EOIR – do not contain an obligation to enter into a Joint Audit. Tax administrations will therefore always only agree on the conduct of a Joint Audit if they have a common or complementary interest in a case and decide that a Joint Audit is the most efficient and effective way to obtain the information. Furthermore, tax administrations may propose a Joint Audit to reduce risks of possible double taxation, which introduces considerations beyond those relevant for cases limited to exchange of information.

7.2.5. Involvement of taxpayer in selection process

144. It is important that jurisdictions agree on a communication protocol early to address the taxpayer jointly and coherently. Whether to inform the concerned taxpayer about a Joint Audit selection meeting will therefore mainly depend on the facts and circumstances of the specific case and should in any case be the result of a joint consultation of the participating tax administrations, that might have different concerns about an early involvement of the taxpayer(s). This may have particular importance when engaging with jurisdictions that have a legal obligation to notify taxpayers early or that have a culture of procedural transparency. Chapter 5 describes in more detail how tax administrations should engage with the taxpayer during a Joint Audit.

145. Where a taxpayer has suggested a Joint Audit, there will necessarily be taxpayer contact from the very beginning. In other situations, tax administrations should engage with the taxpayer already during the case selection phase, unless the facts and circumstances of the case suggest otherwise. Taxpayers may provide valuable insights for the tax administration before agreeing with the other jurisdiction on an audit. Furthermore, it allows the taxpayer to prepare for the audit, which can make the subsequent audit process more efficient.

7.3. Preparation of the audit process

146. After jurisdictions have agreed to a Joint Audit, the participants have to prepare for the audit procedure, both from a domestic and an international perspective.

147. Domestically, this preparation will be similar to the preparation of a domestic audit and in part may have already been completed as part of the domestic selection process. This can include (1) the collection and review of relevant internal and external information available on the selected taxpayers (e.g. compliance history, MAP/APA history, compliance information, previous audits, registration history, ownership structure, review of tax returns and financial statements, information from publically available sources); (2) identification of the relevant tax issues and risk areas; and (3), if applicable, the identification of any criminal activity and/or ongoing investigations.

148. In addition, the international preparation of the Joint Audit includes (1) the potential conclusion of a MoU, (2) the selection of the Joint Audit team members, (3) the preparation of the initial meeting (including the preparation of presentations and the preparation of a Joint Audit exam plan[6]), and (4) the set-up of communication channels. Each of these points is discussed below.

7.3.1. Conclusion of a MoU or an ad hoc agreement

149. When two or more tax administrations agree to engage in a Joint Audit, they should agree on the governing principles of their intended collaboration (sometimes referred to as a "code of conduct") and the agreed audit approach. This can be done in form of a MoU as outlined above in 7.1. Tax administrations that regularly work together usually decide to conclude an overarching agreement like an MoU that governs the conduct of multiple Joint Audits and outlines the applicable legal framework, the general audit approach relating to the possible levels of presence (passive or active) allowed under the respective domestic laws of all participating jurisdictions, as well as particularities of the domestic legal situation of the participating jurisdictions. The MoU can also contain escalating strategies in case jurisdictions experience difficulties during the conduct of a Joint Audit or when the conduct of a Joint Audit is terminated before it is completed.

150. If jurisdictions are conducting a Joint Audit for the first time it may not be necessary to conclude an MoU and it will be sufficient to incorporate general arrangements in the Joint Audit exam plan.

7.3.2. Selection of the Audit team

151. The tax administrations will select the members of the Joint Audit team based on the needs of each specific case.

152. Every Joint Audit team should include an assigned responsible Joint Audit co-ordinator to manage the procedure and function as SPOC.[7] The Expert Group stressed that the co-ordinator function is also important to build a level of trust between Joint Audit partners. The co-ordinators can participate in an international network and develop close working relations that can be intensified with each case work.

153. Furthermore, every Joint Audit team has to include a (delegated) Competent Authority for Exchange of Information (CA-EOI) to secure the exchange of information during the Joint Audit process. One of the benefits of an international audit is the direct interaction between the audit teams and direct exchange of information to allow auditors

to discuss facts and circumstances and understand differences in legislation, different audit approaches and interpretations. The direct contacts between auditors are governed by the rules of exchange and therefore require the presence of a CA-EOI.

154. Some jurisdictions will include a representative of the central CA-EOI in the team, whereas other jurisdictions have the practice to delegate CA-EOI status to all or some auditors in the team. Jurisdictions are free to choose the method that best fits their circumstances, provided that it is clear to the other Joint Audit partners who has the CA-EOI status. The chosen approach by the participating jurisdictions is then recorded in the MoU or in the ad hoc agreement. This can be supported by exchanging mandate letters that confirm which team members have CA-EOI status.[8]

155. The Joint Audit team should possess detailed knowledge about the taxpayer and the specific case. This can either be done by assigning the local auditor to the Joint Audit team or by otherwise ensuring that all relevant domestic information is available during the audit. The Joint Audit team may be assisted by subject matter experts if necessary (e.g. transfer pricing, financial transactions, relevant industry experience).

156. It is recommended that the team has authorised member(s) who can decide about the domestic tax consequences of the Joint Audit. As outlined in Chapter 2, some jurisdictions also chose to include the MAP Competent Authority in their Joint Audit teams, either from the beginning of the Joint Audit or at a later stage if it becomes clear that a case cannot be resolved without MAP. If jurisdictions chose not to include the MAP Competent Authority in each Joint Audit team, they should consider creating other mechanisms, such as special fast-track procedures, to achieve early dispute resolution if it becomes evident that an agreement cannot be achieved during the Joint Audit procedure.

157. The guiding principle to select the members of the audit team should be to keep the team as small as possible, in order to reduce costs and ensure close working relations between the individual members. Therefore, the audit team, once selected, should remain in place until the Joint Audit is completed.

7.3.3. Preparation of the initial meeting

158. When jurisdictions are starting a Joint Audit, it is recommended to organise an initial **face-to-face meeting** between the tax administrations to ensure that all participants have the same level of knowledge, identify possible audit risks and agree on a (draft) Joint Audit exam plan. The face-to-face meeting is usually organised and hosted by the tax administration that is initiating the audit.

159. The initial meeting is also an occasion for the audit team members to get to know each other and to establish trust. A certain level of trust is the basis for good co-operation and allows an understanding of the other tax system, the audit culture, the legal procedures in the other jurisdiction and the audit actions taken throughout the process. Once jurisdictions have experience in working together, personal meetings might be replaced by telephone and video conferencing to increase efficiency and reduce cost.

160. Tax administrations are expected to prepare presentations for the initial meeting to explain why the initiating tax administration has selected the specific taxpayer and why the requested tax administration accepted the invitation, what their understanding of the issues are and what information is available. Most importantly, the presentation should also outline what the participating tax administrations are expecting to achieve with the Joint Audit. The presentations then serve as a basis for further discussions and to identify

potential risk areas of practical, factual or legal nature that can then be addressed by mitigating strategies.

161. The initiating jurisdiction is expected to prepare a draft Joint Audit exam plan that can be finalised at the initial meeting.[9] A Joint Audit Exam Plan should include the following elements:

a. Case description
b. Participating tax administrations
c. Audit team members with contact details
d. Taxpayers with contact details
e. Audit scope periods
f. Relevant Taxes
g. Objectives/Audit topics
h. Audit approach including specification of level of co-operation and conduct of direct interaction
i. Timeframe and timeline for audit steps
j. Domestic procedural particularities
k. Communication approach and specification of the communication channels
l. Summary of potential audit risks and escalation strategies
m. Finalisation/Report

162. The following forms of presence can be identified:

Form of presence	Yes/No
Passive presence of foreign officials in tax administration offices	
Passive presence of foreign officials during an examination (including at the premises of the taxpayer or the tax advisor)	
Active presence of foreign officials allowed to participate with host jurisdiction officials in interviews of individuals and to examine books and records	

163. If the participating jurisdictions have not already concluded a MoU, the Joint Audit Exam Plan should include the essential elements otherwise included in the MoU.

164. By the end of the meeting, jurisdictions should have agreed on a mandate for the tax officials to be present abroad in the territory of the other jurisdiction.

7.3.4. Agreement on communication channels

165. To ensure smooth co-operation, it is essential that all participating tax administrations of a Joint Audit can communicate with each other through secure channels of communication, such as encrypted emails, secure telephone or video conferencing.

166. Regarding the communication with taxpayers, it is recommended to define a communication protocol with the taxpayer and to inform the taxpayer on a regular basis. This will prepare the taxpayer in case the tax assessment is adjusted based on the information gathered during the Joint Audit.

7.3.5. Involvement of taxpayer

167. If the taxpayer has not already been informed about the Joint Audit during the case selection phase, this should be done in the preparation phase, unless there are particular facts and circumstances that suggest otherwise. Depending on the number of tax administrations and number of taxpayers involved in the Joint Audit, the participating tax administrations can appoint a Joint Audit co-ordinator to be the point of contact for the taxpayers and who would be also responsible to identify the responsible personnel in the structure of the involved taxpayers. The benefits of involving the taxpayer from an early stage on are outlined in Chapter 5. This includes inter alia (1) to consult with the taxpayer about the starting date of the Joint Audit and the dates for calls, visits or other face-to-face meetings; and (2) to provide the taxpayer early on with an outline of the audit topics and an envisaged timeframe in order to ensure that all information required is available. The tax administrations may share the Joint Audit Exam Plan with the taxpayer unless facts and circumstances of the case suggest otherwise.

7.4. Conducting the audit

168. Once the Joint Audit Exam Plan is agreed by all participating tax administrations, the Joint Audit activities can begin. Participants may decide that the Joint Audit officially starts with the signing or the confirmation of the Joint Audit Exam Plan.

7.4.1. Collective information requests

169. To avoid inefficiencies, it is best practice that the Joint Audit team consults internally before requesting information from taxpayers. The collective information requests should seek all information required by the participating tax administrations in accordance with their respective domestic laws and respecting the relevant international legal instruments.

170. The use of collective information requests ensures that taxpayers will only have to answer questions and supply information once and facilitate the verification if and how a specific request was addressed by the taxpayer. The frequencies of such information requests may differ depending on the level of co-operation, the complexity of the case and the domestic practice of the participating tax administrations.[10]

7.4.2. Operational phase

171. In the Joint Audit Exam Plan, tax administrations decide what kind of audit activities they envisage to undertake during the Joint Audit. This will include whether tax administrations plan to visit taxpayers' premises and whether the foreign auditors will actively participate in the audit. As far as possible, tax administrations should strive to gather and to exchange information in form of a "dialogue" between the involved parties to enhance efficiency and to avoid misunderstandings.

172. Before engaging in this form of active presence, it is important that all audit team members have the same understanding of what kind of actions can and will be carried out by the foreign tax officials and whether there are legal particularities that have to be observed during the process.[11] It is therefore good practice to have pre-meetings before jointly visiting the taxpayer to clarify any outstanding questions and legal uncertainties.

173. Some jurisdictions have specific procedural requirements in their domestic legislation, for example, that documents have to be prepared and/or signed or the confirmation of

onsite visits etc.[12] It is important to identify these particularities at an early stage, allowing the participating tax administrations to agree on the practicalities of the examination. The specific domestic requirements will also affect the foreign auditors in situations where active presence is agreed. These issues should be further explored[13] and addressed in the MoU and/or Joint Audit exam plan.

174. After each meeting between the participating audit teams and after each meeting with the taxpayer, the audit teams should prepare minutes to summarise such meetings and if possibly lay down a common understanding of the gathered facts.

7.4.3. Update on audit progress

175. Regular updates on the audit progress are important to keep the audit procedure on track. In a Joint Audit, the team members from the different participating tax administrations should be informed about any relevant developments in a simultaneous manner.

176. To develop and maintain close working relations, jurisdictions should interact with each other on a regular basis. This can be done in person or via telephone or video conferencing. The frequency will be determined by the requirements of the case. The purpose of the meetings or calls is to discuss the status and progress, e.g. findings to date, deviations from the Joint Audit exam plan and to agree on adjustments to the Joint Audit exam plan.

177. It is in the interest of all participants to organise the calls or meetings in the most efficient and effective manner. Depending on the circumstances, Joint Audit participants can limit such meetings to telephone or videoconferencing sessions to ensure regular contact between the Joint Audit teams. However, when working with other jurisdictions for the first time, it can be advisable to schedule several face-to-face meetings. Such an approach can be also chosen when addressing complex cases.

7.4.4. Involvement of taxpayer

178. During the Joint Audit it is equally important to keep the taxpayer involved. Chapter 5 outlines the considerations to be taken into account in this respect.

179. If considered appropriate, a regular consultation with the taxpayer allows:

- the taxpayer the possibility to engage with the tax administrations and remain updated on the progress of the audit, areas of concern and, to the extent possible, interim results
- a possibility to align the flow of information between taxpayer and tax administrations and to maintain the commitment of the taxpayer
- to share results with the taxpayer before tax administrations agree on a final outcome, therewith giving the opportunity to correct possible misunderstandings and provide any missing documentation or other evidence.

7.5. Audit completion

7.5.1. Final audit phase

180. In the final phase of the audit, all information and evidence gathered during the audit is summarised, interpretations shared and conclusions drawn. For this purpose, the participating tax administrations should organise a final meeting to discuss the facts and see whether a common view can be reached. Before the final meeting, tax administrations can share a first draft of the final report to allow comments from all involved tax

administrations. The initiating jurisdiction will usually provide a first draft of the final report unless the parties agree differently. A template for a Final Joint Audit Report that can be used as a reference for drawing up the final report is available in the Joint Audit Implementation Package.[14]

181. It is important to include the taxpayer at this stage, in order to provide clarity about the envisaged outcomes and to allow for a final round of input. This allows taxpayer to understand the perspective of the tax administrations and will hopefully enhance the acceptance of a subsequent tax adjustment.

182. The Joint Audit procedure concludes with the agreement on the Final Joint Audit Report, which should include a summary of the audit findings and should be shared with the taxpayer.

183. Besides the facts and common conclusions, the Final Joint Audit Report should also include the areas where a common understanding could not be achieved, for example, because of deviating interpretations of facts. Even if the Final Joint Audit Report itself does not have a legally binding effect, a full description of the relevant facts and figures and the extent to which the administrations have not reached a common understanding will support and speed up any subsequent procedures such as MAP. It is therefore of particular importance that the report reflects the issues on which views differ, as well as the basis for the differing views.

7.5.2. Domestic audit outcomes

184. The Final Joint Audit Report does not have a legal status as such and therefore will have to be formalised into national tax assessments in the participating jurisdictions. The taxes due and the tax position of the taxable person(s) in the participating jurisdictions are subsequently processed by the respective tax administrations.

7.6. Evaluation

185. When a Joint Audit is finalised, the audit results should be recorded internally within the respective tax administration at case level for future reference. The relevant information to be collected for this purpose is described in Chapter 3.

7.7. Recommendations

1. Strategic approach
   - Decide on the strategic approach on Joint Audits and implement organisational measures and components accordingly.
   - For jurisdictions following a proactive approach this may include:
     - designating experts/create team(s) with specific expertise in international tax co-operation and Joint Audits
     - ensuring that all auditors exposed to international tax issues are aware of the existence and potential of Joint Audits
     - ensuring that the contact details of the expert teams are known to all tax auditors involved in international tax issues and that the expert teams have the skills and resources to guide auditors in the case selection and throughout the Joint Audit 15

  - ensuring that there are no constraints or disincentives (e.g. performance evaluation criteria) to start a Joint Audit when the case merits it and consider implementing incentives for using Joint Audits in appropriate circumstances
  - implementing a domestic annual budget for the conduct of Joint Audits that are not eligible to be covered by the EU-FISCALIS programme
  - providing the necessary technical infrastructure that allows for a secure exchange between the team members on a regular basis, for example by using CTS to allow secure exchange of documents.

2. Case selection
   - Choose case selection process that fits the strategic Joint Audit approach.
   - Conduct due diligence analysis of the international and domestic legal framework to examine audit relevant obstacles with the support of the counterparty's Joint Audit Profile before initiating a Joint Audit.
   - When following a proactive Joint Audit approach, consider determining joint case selection criteria, the participation in joint case selection meetings on a regular basis, or where substantial double taxation is imminent, the possibility to suggest the case for a joint audit without a selection meeting.
   - Consider the key benefits set out in Chapter 3.
   - Use the template for a Joint Audit Proposal when initiating a Joint Audit and include main features of own domestic legal framework (or refer to own Joint Audit Profile).
   - When rejecting a Joint Audit invitation, provide reasons why the invitation is not being accepted.
   - The FTA to provide a forum where tax administrations wishing to propose Joint Audit cases to one or more other FTA member tax administrations can meet and schedule case selection meetings with different counterparties on the same day and in the same location. The FTA Secretariat to support the organisation and logistics, without being involved in any of the substantive discussions.

3. Preparation of the audit process
   - Conclude a working agreement that sets out the governing principles of the intended collaboration (for example in a MoU or in the Joint Audit Exam Plan).
   - When selecting the members for the Joint Audit team,
     - assign a responsible Joint Audit co-ordinator
     - include a CA-EOI in the team
     - ensure that background information on the taxpayer is available during the audit
     - include case specific experts to the team (e.g. a transfer pricing specialist or international law expert, etc.)
     - include a MAP Competent Authority in the team or consider fast-track MAP when required

  - keep the team as small as possible
  - avoid replacing team members in the course of the Joint Audit.
- Organise initial face-to face meeting when engaging in a Joint Audit for the first time.
- Prepare presentations for initial meeting with taxpayer specific background information and agree on a detailed Joint Audit Exam Plan.
- Determine secure communication channels (e.g. CTS) between members of the Joint Audit teams and a communication protocol with the taxpayer.

4. Conducting the audit
   - Agree as early as possible on timelines, dates for meetings, taxpayer visits etc.
   - Agree on communication approach towards taxpayer and prepare collective information requests.
   - Organise pre-meetings before interacting directly with the taxpayer to address any domestic legal procedural particularities and clarify the audit approach.
   - Provide regular updates on the audit progress for all members of the Joint Audit teams via personnel meetings or regular telephone and/or videoconferencing.
5. Audit completion
   - Organise a final meeting between the participating tax administrations and with the taxpayer(s) before completing the audit to allow final input.
   - Complete the Joint Audit with a Final Joint Audit Report that outlines the Joint Audit outcome and also contains a full description of the relevant facts and figures and the extent to which the administrations have not reached a common understanding to support subsequent procedures (e.g. MAP).
6. Evaluation
   - Gather relevant data and evaluate each Joint Audit procedure for future reference.

Notes

1. A Joint Audit Implementation Package that includes relevant templates and model agreements that can facilitate and streamline any practical aspects of the conduct of a Joint Audit is being developed and kept up to date, available at www.oecd.org/tax/forum-on-tax-administration/publications-and-products/.
2. See Chapter 6.
3. Practical obstacles can relate to different statutes of limitations, limitations on re-auditing the same audit cycle or to identify corresponding audit cycles, as well as technical obstacles, such as compatible computer programmes, telephone or video conferencing systems.
4. www.oecd.org/tax/forum-on-tax-administration/publications-and-products/.
5. Under the EU-Directive 2011/16 Art 12 para. 3 foresees that Member States shall confirm their agreement or communicate its reasoned refusal to the authority that proposed a simultaneous control.

6. The Joint Audit Implementation Package includes a template for a Joint Audit exam plan, available at www.oecd.org/tax/forum-on-tax-administration/publications-and-products/.

7. Jurisdictions following a proactive approach can also consider to have specialised SPOCs responsible for certain jurisdictions for bilateral Joint Audits.

8. For EU Member States the written confirmation of the EOI status is mandatory, Art 11. (3) EU Directive 2011/16.

9. The Joint Audit Exam Plan template that is made available in the Joint Audit Implementation Package can be used as an example to go through the different stages of preparation.

10. Participating tax administrations should come to a broad understanding how many requests for information should be sent to the taxpayer in total to avoid misunderstanding about the procedural approach.

11. This is outlined in the respective Joint Audit Profile to support the preparation of a Joint Audit.

12. These particularities should be outlined in the jurisdictions specific Joint Audit Profile.

13. See Chapter 4.

14. www.oecd.org/tax/forum-on-tax-administration/publications-and-products/.

15. Tax administrations may also agree to use a functional email address that is accessible to all members of the Joint Audit team.

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), "Joint Audit guidance", 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/e46e819e-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.

OECD