

OECD MANUAL ON THE IMPLEMENTATION OF ASSISTANCE IN TAX COLLECTION

MODULE 4

**MODEL MEMORANDUM OF UNDERSTANDING ON ASSISTANCE IN THE RECOVERY OF
TAX CLAIMS BASED ON THE CONVENTION ON MUTUAL ADMINISTRATIVE
ASSISTANCE IN TAX MATTERS**

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INTRODUCTION

The present Module provides a model Memorandum of Understanding (MOU) which can be used as a working agreement between tax administrations which are able and wish to provide each other assistance in the recovery of tax claims. The model MOU assumes that the legal instrument used as the basis of providing assistance in the collection of taxes is the Convention on Mutual Administrative Assistance in Tax Matters (hereafter the Convention). Differences in domestic legislation may require modifications of this model. All the issues included in the present model MOU are discussed in the OECD Manual on the Implementation of Assistance in Tax Collection. A separate model MOU has been developed for collection assistance based on a bilateral tax convention.

MEMORANDUM OF UNDERSTANDING BETWEEN THE COMPETENT AUTHORITIES OF (STATE A) AND (STATE B) CONCERNING ASSISTANCE IN THE RECOVERY OF TAX CLAIMS:

In accordance with the terms of the Convention, the undersigned competent authorities hereby agree that the following procedures will apply to mutual assistance concerning the recovery of tax claims arising within the respective States.

COMPETENT AUTHORITIES

Requests for assistance and related correspondence will be sent to:

- a. In State A:
- b. In State B:

TAXES COVERED

Requests for recovery concern taxes covered by the Convention:

- a. In State A, taxes listed in State A's Annex A to the Convention, provided that State B does not reserve the right not to provide assistance in the recovery of all or certain taxes listed according to Article 30-1-b of the Convention or certain tax claims according to Article 30-1-c of the Convention.
- b. In State B, taxes listed in State B's Annex A provided that State A does not reserve the right not to provide assistance in the recovery of all or certain taxes listed according to Article 30-1-b of the Convention or certain tax claims according to Article 30-1-c of the Convention.

CONFIDENTIALITY

The confidentiality of the information exchanged for purposes of assistance in the recovery of tax claims is governed by Article 22 of the Convention.

The competent authorities may want to agree on whether the conditions of secrecy applying in the Party supplying the information are more restrictive.

DOCUMENTATION THAT SHOULD ACCOMPANY A REQUEST¹

The following documentation will accompany a request for assistance:

1. An official copy of the instrument permitting the enforcement of the tax claim. In the case of requests
 - by State A, this will consist of ...
 - by State B, this will consists of ...
2. A declaration by the competent authority of the applicant State confirming that:
 - The tax claim concerns a tax covered by the Convention for which the requested State has not made a reservation to provide assistance in the recovery of tax claims.
 - The tax claim is not contested

or, where it is directed to a person who is not a resident of the applicant State, the tax claim may not be contested, **(unless otherwise agreed by way of an international arrangement concluded between authorities empowered to commit the state under the internal constitutional order, as provided for in Article 11 paragraph 2).**
 - The tax claim is enforceable under the laws of the applicant State.
 - The applicant state has pursued all measures available in its own territory to collect the claim, except where recourse to such measures would give rise to disproportionate difficulty.
 - The request is in conformity with the laws and administrative practices of the applicant State;
 - The information in the request and in the attached documents is correct.

The instrument permitting enforcement in the applicant state shall, where appropriate and in accordance with the provisions in force in the requested state, be accepted, recognised, or supplemented as soon as possible after the date of the receipt of the request for assistance, by an instrument permitting enforcement in the latter State.

For further documentation to be included, see Part III of the OECD Manual on the Implementation of Assistance in Tax Collection.

¹ If the tax claim concerns a deceased person or his estate, the applicant State should inform the requested state about the limit of the recoverable amount and provide details of the value of the estate or the property acquired by each beneficiary of the estate as Article paragraph 3 of the Convention stipulates that the amount of tax recovered from each of the persons benefiting from the estate against whom a claim can still be made shall not exceed the value of his portion of the estate.

MINIMUM AMOUNT

The Competent Authorities will not request or provide assistance in recovery where the tax claim is less than (figure and currency A) or (figure and currency B).

CURRENCY AND EXCHANGE RATES

The applicant State will express the amount of the claim to be collected in the currency of the applicant State and the currency of the requested State. The exchange rate to be used will be the rate quoted:

- a. In State A:
- b. In State B:

YEARS COVERED

Requests for assistance under the present MoU can be made in respect of tax claims that were finally determined after (DDMMYY).

TIME LIMITS

1. The time limits beyond which a claim may no longer be collected are governed by the law of the applicant State.
2. Acts of collection carried out by the requested State in pursuance of a request for assistance, which, according to the laws of that State, would have the effect of suspending or interrupting the period mentioned in paragraph 1, will also have this effect under the laws of the applicant State. The requested State will inform the applicant State about such acts.
3. In any case, the requested State is not obliged to comply with a request for assistance which is submitted after a period of XX years from the date of the original instrument permitting enforcement.

CALCULATION OF INTEREST IN THE COLLECTION PERIOD

Option 1: The applicant State shall calculate and regularly provide an update to the requested State of the amount of interest accrued after the request has been accepted for collection. Such updates should be added to the claim to be collected and need not be the subject of a new request.

Option 2 The applicant State shall calculate the amount of interest accrued after the request has been accepted for collection. After having received the collected money, the applicant State can make a new request for assistance concerning only the additional interest provided the additional interest exceeds the minimum amount.

Option 3 The requested State shall calculate interest during the collection period, applying its own interest rate, and add it to the amount to be collected.

Option 4 The requested State shall calculate interest during the collection period applying the interest rate of the applicant State, and add it to the amount to be collected.

DEFERRAL, PAYMENT BY INSTALMENTS AND WAIVER OF CLAIMS

1. The requested State has responsibility for consideration and acceptance of deferral and payment by instalments. It shall first inform the applicant State.
2. The requested State shall not accept a compromise of the claim or remit/waive the claim in part or in full without the approval of the applicant State. The requested State may have to cease collection of the foreign claim under the following conditions:
 - a. The taxpayer has been granted a debt settlement arrangement under the law of the requested State;
 - b. The taxpayer is a company that is undergoing liquidation or is in administration due to insolvency.

COSTS OF COLLECTION

Ordinary costs incurred in providing assistance shall be borne by the requested State and extraordinary costs incurred in providing assistance shall be borne by the applicant state, **(unless the two states have entered into a bilateral agreement, whether general or in specific cases, on the sharing of costs).**

Ordinary costs are those expected in normal domestic collection proceedings and extraordinary costs are defined as those incurred when a particular type of procedure, which is not ordinarily used in the requested state, is used at the request of the other state, or supplementary costs of experts, interpreters, or translators, costs of judicial and bankruptcy proceedings.

As soon as the competent authority of the requested State anticipates that extraordinary costs are likely to be incurred, it will inform the competent authority of the applicant State and indicate the estimated amount of such costs, if possible. The applicant State will inform the requested State as soon as possible if it accepts such extraordinary costs.

TRANSFER OF PAYMENTS TO THE APPLICANT STATE

Any sum recovered by the requested State, including where applicable the interest, will be transferred to the applicant State in the currency of the requested State.

The transfer will take place within [XX days] of the date on which recovery was effected.

Amounts collected by the requested State will be forwarded to:

- a. In State A: ... (name of bank, SWIFT-code or IBAN-code, account number, name of account holder, etc.)
- b. In State B: ... (name of bank, SWIFT-code or IBAN-code, account number, name of account holder, etc.)

When an amount is transferred, the competent authority of the requested State will advise the competent authority of the applicant State.

TIME LIMITS FOR RESPONDING TO A REQUEST

The competent authorities agree to provide acknowledge receipt of requests for assistance within XX days.

The competent authorities agree to report back on any progress in collection actions within XX months.

COMMUNICATION BETWEEN THE COMPETENT AUTHORITIES

The competent authorities agree to communicate by secure electronic means of communications when possible. They also agree, in case of urgency, to communicate by telephone, subject to confirmation in writing.

LANGUAGE

Option 1: All information and particulars communicated between the competent authorities in relation to a request for assistance will be conveyed in English or French: the official languages of OECD and of the Council of Europe.

Option 2: All information and particulars communicated between the competent authorities in relation to a request for assistance will be conveyed in [XX] language.

The following documents must be accompanied by a translation in the language of the requested State:

- a. Requests made to State A:
- b. Requests made to State B:

POTENTIAL MODIFICATIONS TO THE REQUEST

1. Upon receipt by the requested State, in writing or in electronic form, of a notification by the applicant State of an amendment to the amount of the tax claim, where that amendment leads to a reduction in the amount of the claim, the requested State will continue action to recover the claim but such action will be limited to the amount still outstanding.

2. If at the time the requested State is informed of the reduction in the amount of the claim, an amount exceeding the amount still outstanding has already been received, but the transfer procedure has not yet been initiated, the requested State will repay the amount overpaid to the person entitled thereto.

3. Upon receipt by the requested State, in writing or in electronic form, of a notification by the applicant State of an amendment to the amount of the tax claim, where that amendment leads to an increase in the amount of the claim, then:

- a. the additional request will as far as possible be dealt with by the requested State at the same time as the original request;
- b. where, in view of the requested State, consolidation of the additional request with the original request is not possible, the requested State will be required to comply with the additional request only if it concerns an amount not less than the minimum amount referred to above.

UNCOLLECTIBLE CLAIMS

When the competent authority of the requested State determines that a tax claim is uncollectible, the competent authority will return the request with a report, providing details on why the claim is uncollectible.

WITHDRAWAL OF A REQUEST

If the request for assistance in collection becomes devoid of purpose, the competent authority of the applicant State shall immediately notify, by telephone or fax, the competent authority of the requested state that the request is being withdrawn. This shall be followed by a written notification from the competent authority of applicant State. The competent authority of the requested State will acknowledge, in writing, the withdrawal of the request.

INVENTORY/FEEDBACK

1. Each State will annually inform the other of the number of requests for information and recovery sent and received each year, the amount of the claims involved and the amounts collected.
2. The competent authorities may consult with each other at any time with the aim of ensuring effective implementation of this Memorandum.

DISPUTE RESOLUTION MECHANISMS

Contracting States may consult, under the provisions of Article 24, to overcome any difficulty they may encounter. The competent authorities will consult, as necessary, in the event of any litigation resulting from the application of the assistance in collection program.

Proceedings with respect to the existence, or validity or the amount of a tax claim of an applicant State shall only be brought before the courts or administrative bodies of that applicant State.

EFFECTIVE DATE AND MODIFICATIONS

1. This Memorandum becomes effective [on signature] on [the later of the two signature dates].
2. This Memorandum may be modified at any time by agreement between the competent authorities.
3. This Memorandum is concluded for an indefinite period of time. It may be terminated by written notification by either competent authority.
4. This Memorandum will be evaluated xx years after the date of entry into effect.