



1992 OECD MODEL AGREEMENT FOR THE UNDERTAKING OF SIMULTANEOUS TAX EXAMINATIONS

(Note by the Secretary General)

THE COUNCIL,

Having regard to Article 5(b) of the Convention on the Organisation for Economic Co-operation and Development of 14th December 1960;

Having regard to the Recommendation of the Council of 11th April 1977 concerning the avoidance of double taxation and, in particular, to the Model Convention for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital set out in the Annex thereto (hereunder referred to as the "Model Convention") [C(77)40(Final)];

Having regard to the Recommendation of the Council of 21st September 1977 on tax avoidance and evasion [C(77)149(Final)];

Considering that most double taxation conventions signed by Member countries follow Article 26 of the Model Convention in providing for co-operation between the competent authorities of the Contracting States, in the form of exchanges of information necessary for carrying out the provisions of the convention or of their domestic laws concerning taxes covered by the convention;

Considering that Article 8 of the joint Council of Europe - OECD Convention on Mutual Administrative Assistance in Tax Matters, which was open to signature on 25 January 1988, expressly mentions simultaneous tax examination;

Considering the increasing use of this form of co-operation between OECD Member countries and the need for guidance on the drawing up of agreements for the undertaking of simultaneous tax examinations;

I. RECOMMENDS to the Governments of Member countries:

- To use the OECD model agreement for the undertaking of simultaneous tax examinations contained in the appendix to this Recommendation, which is an integral part thereof, when they decide to undertake such examinations.

II. INSTRUCTS the Committee on Fiscal Affairs:

- To keep under review the use of a such an OECD model agreement and to report back to the Council as appropriate.

OECD MODEL AGREEMENT FOR THE UNDERTAKING OF SIMULTANEOUS TAX EXAMINATIONS

INTRODUCTION

The present Recommendation provides a model which can be used as a working agreement for those tax administrations which are able and wish to engage in simultaneous tax examinations. Such an agreement may take a bilateral or a multilateral form depending on whether two or more countries are involved in the simultaneous tax examination. The agreement may carry one of the following titles depending upon its context:

BILATERAL (MULTILATERAL) AGREEMENT BETWEEN THE COMPETENT AUTHORITIES OF (STATE A) AND (STATE B) (AND ...) FOR THE CONDUCT OF SIMULTANEOUS TAX EXAMINATIONS

UNDER THE EXCHANGE OF INFORMATION ARTICLE OF THE CONVENTION BETWEEN (STATE A) AND (STATE B) WITH RESPECT TO TAXES ON INCOME AND CAPITAL

UNDER ARTICLE 8 (SIMULTANEOUS TAX EXAMINATIONS) OF THE JOINT COUNCIL OF EUROPE AND OECD CONVENTION ON MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS)

OR UNDER OTHER CONVENTIONS/AGREEMENTS (ARTICLE 12 OF THE NORDIC CONVENTION ON MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS ETC.)¹

A. Definition and legal basis

For the purpose of the Agreement the expression "simultaneous tax examination" means an arrangement between two or more Parties to examine simultaneously and independently, each on its own territory, the tax affairs of (a) taxpayer(s) in which they have a common or related interest, with a view to exchanging any relevant information which they so obtain.

The simultaneous tax examination shall be conducted under :

- i) the exchange of information article of the Convention between (State A) and (State B) with respect to taxes on income and capital; or
- ii) article 8 of the joint Council of Europe and OECD Convention on Mutual Administrative Assistance in Tax Matters; or
- iii) article 12 of the Nordic Convention on Mutual Assistance in Tax Matters.¹

The disclosure of information exchanged under the simultaneous examination Agreement is subject to the provisions of the Convention referred to hereabove and shall be used only for tax purposes.

Any exchange of information which follows from such examinations either on request or spontaneous will be made through the competent authorities.

1. Delete the legal bases which are not applicable.

B. Objectives

The main purpose of simultaneous tax examination is inter alia:

1. To determine a taxpayer's correct liability in cases where:
 - costs are shared or charged and profits are allocated between taxpayers in different taxing jurisdictions or more generally transfer pricing issues are involved;
 - apparent tax avoidance techniques or patterns involving substance versus form transactions, controlled financing schemes, price manipulations, cost allocations or tax shelters are identified;
 - unreported income, money laundering, kickbacks bribes, illegal payments, etc. are identified;
 - transactions with tax havens and tax avoidance or evasion schemes involving tax havens are identified.
2. To facilitate an exchange information on:
 - multinational business practices, complex transactions, examination issues and non-compliance trends that may be particular to an industry or group of industries;
 - cost sharing arrangements;
 - on profit allocation methods in special fields such as global trading and new financial instruments.

A simultaneous tax examination is not intended to be a substitute for the mutual agreement procedure provided for under mutual agreement procedure article of the relevant income tax Convention referred to in Section A i) hereabove.

C. Case selection and examination procedure

The selection procedures will be the following:

1. The competent authority of each State will identify independently taxpayers it intends to propose for a simultaneous examination.
2. The competent authority of each State will inform its counterpart in the other State of its respective choice of potential cases for simultaneous examinations using the selection criteria described below. It will explain, as far as possible, why it has chosen these cases and provide the information leading to its proposals, together with any other relevant information, as well as its statute of limitation applicable to the cases proposed for simultaneous examinations.
3. Each State will determine if it wishes to participate in a particular simultaneous examination.
4. The Competent Authority requested to participate in a simultaneous examination will consider the information in conjunction with information from its own sources and will confirm in writing to its counterpart(s) its agreement or refusal to undertake a specific

simultaneous tax examination [mentioning the taxpayer(s), taxes and tax years involved]. Before making its confirmation, the Competent Authority will seek to obtain any information that it requires in order to reach a decision, either under its domestic laws or under the provisions of the appropriate Exchange of Information Article of the Convention referred to in Section A hereabove.

It will indicate a designated representative who will have functional responsibility for directing and coordinating the examination. The proposing Competent Authority will also indicate in writing a designated representative.

The Competent Authorities may then present to each other requests for exchange of information or provide each other with information spontaneously under and in conformity with the Convention governing the Agreement.

5. The designated representatives of the Competent Authorities will take care of the practical aspects of the simultaneous examination (timetable, periods to examine, State having the functional responsibility for coordinating the examination). If needed and if legally possible, representatives of the Competent Authorities of the foreign contracting State(s) may be allowed in the other(s) contracting State(s).
6. The prerequisite and therefore essential condition of selection is that the tax years be open for examination in the two or more States interested in having a simultaneous examination for a specific taxpayer or specific taxpayers.
7. The competent authority of each State may, by a declaration addressed to its counterpart in the other State, indicate that, according to their internal legislation, it will inform its residents or nationals before transmitting information concerned in conformity with the Exchange of Information Article.

D. Criteria for case selection

Any case selected for a simultaneous examination will generally involve a taxpayer or taxpayers having operations either through affiliates or through permanent establishments in the participating States. The factors taken into consideration in determining whether a case is selected for simultaneous tax examination may include, inter alia:

- indication of tax avoidance and evasion;
- indication of substantial non-compliance of tax law in the participating States;
- indication of a manipulation of transfer prices to the potential detriment of the participating States;
- indication of other forms of international tax planning which, if countered successfully, may generate additional tax yield in the participating States;

- indication that the economic performance of a taxpayer or related taxpayers, over a period of time, is significantly worse than it might be expected, for instance:
 - the economic performance does not reflect appropriate profits when measured against sales, total assets, etc.
 - cases where the taxpayer consistently shows losses, especially long-term losses;
 - cases where the taxpayer, regardless of profitability, paid little or no tax over the relevant period;
- existence of transactions involving tax havens;
- situations where the competent authorities consider it is in the interest of the tax administrations concerned in order to promote international tax compliance.

E. Personnel

Examinations will be conducted separately within the framework of national law and practice by tax administration officials of each State using the available exchange of information provisions. The responsibility lines will be clearly defined. There will be no interchange of personnel but the presence of representatives of the competent authorities of the foreign State(s) (if legally possible) may be justified for the efficiency of the examination.

F. Planning the simultaneous tax examination

Before the start of the tax examination the tax officials in charge of the case will consider with their counterparts from the other State(s), the examination plans of each State, possible issues to be developed and target dates. It may be appropriate to hold coordination meetings to plan and follow closely the performance of the simultaneous examination.

G. Conducting the simultaneous tax examination

A simultaneous tax examination requires the cooperation of tax administration officials located in different States who will simultaneously but independently examine the taxpayer(s) within their jurisdiction. They will try as far as possible to synchronise their work schedules.

Since potential double taxation issues may arise in the course of simultaneous tax examinations:

- the taxpayers will be able to present a request for the opening of the mutual agreement procedure at an earlier stage than they would have if there was no simultaneous examination;
- the representatives of the Competent Authorities will be able to build up more complete factual evidence for those tax adjustments for which the mutual agreement procedure may be requested.

H. Discontinuing the simultaneous tax examination

If either State concludes that it is no longer beneficial to continue the simultaneous examination of a case, it may withdraw by notifying the other State(s).

I. Concluding the simultaneous tax examination

The simultaneous tax examination will be concluded after co-ordination and consultation between the Competent Authorities of each State. Issues pertaining to double taxation raised by the examination are reserved to the Mutual Agreement Procedure.

This Agreement is made inand in, both texts being equally authoritative. It may be modified at anytime by agreement between the competent authorities.

This Agreement is hereby agreed to on199..

Signatures of all Competent Authorities involved in the present Agreement.