

MANUAL ON THE IMPLEMENTATION OF ASSISTANCE IN TAX COLLECTION

MODULE 3
MODEL MEMORANDUM OF UNDERSTANDING ON ASSISTANCE IN TAX COLLECTION
BASED ON ARTICLE 27 OF THE OECD MODEL TAX CONVENTION
ON INCOME AND ON CAPITAL

OECD MANUAL ON THE IMPLEMENTATION OF ASSISTANCE IN TAX COLLECTION

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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 tax collection. The model MOU assumes that the legal instrument providing for assistance in collection of taxes is a bilateral tax treaty provision based on Article 27 of OECD Model Tax Convention on Income and on Capital. States basing their mutual assistance on other legal instruments or modified versions of Article 27 will have to modify the model MOU accordingly. Likewise differences in domestic legislation will 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 assistance in collection of taxes based on the Convention on Mutual Administrative Assistance in Tax Matters.

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

In accordance with the terms of the [Tax Convention between (State A) and (State B)], the undersigned competent authorities hereby agree that the following procedures will apply to mutual assistance concerning the recovery of revenue 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 may concern the following taxes as provided for by the [Tax Convention between (State A) and (State B)]:

- a) In State A: taxes imposed under (name of Act)
- b) In State B: taxes imposed under (name of Act)

CONFIDENTIALITY

The confidentiality of the information exchanged for purposes of assistance in tax collection is governed by the Article on exchange of information of the Convention between (State A) and (State B).

Insert confidentiality terms of the tax treaty; any relevant domestic rules
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DOCUMENTATION THAT SHOULD ACCOMPANY A REQUEST

The following documentation will accompany a request for assistance:

1. An official copy of the instrument permitting enforcement. In the case of requests:
 - by State A, this will consist of ...
 - by State B, this will consist of ...

A declaration by the competent authority of the applicant State confirming that:

- The revenue claim is enforceable under the laws of the applicant State;
- The revenue claim is owed by a person who cannot, under the law of the applicant state, prevent its collection;
- The applicant State has pursued all reasonable measures available under its laws or administrative practice to collect the claim;
- The information in the request and in the attached documents is correct.

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

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 exchange 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 revenue claims that were finally determined after (DDMMYY).

TIME LIMITS

The time limits beyond which a claim may no longer be collected are governed by the law of the applicant State.

For options on suspension of time limit, see part I of the Manual on the Implementation of Assistance in Tax Collection.

AGE OF CLAIMS

1. The requested State is not obliged to comply with a request for assistance if the revenue claim is more than XX years old.
2. The start date for the purposes of calculating the period of XX years will be:
 - a) Where a revenue claim of the applicant State is not contested, the date the instrument permitting enforcement was established by the applicant State in accordance with the law in force in that State;
 - b) Where a revenue claim of the applicant State is contested, the date upon which the applicant State establishes that the claim or instrument permitting recovery is no longer contested.

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 by the requested State. 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.
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;
- c. . . .

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 according to prior agreement between the competent authorities of both States.

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 may 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.

- 1. The transfer will take place within [XX days] of the date on which recovery was effected.
- 2. 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 acknowledgement of the receipt of the request 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 correspond by telephone subject to confirmation in writing.

LANGUAGE

All information and particulars communicated between the competent authorities in relation to a request for assistance will be conveyed in the [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

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 revenue 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.

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.

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 revenue 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 the 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 revenue 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

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 revenue 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.