



**MANUAL ON THE IMPLEMENTATION OF
EXCHANGE OF INFORMATION PROVISIONS FOR TAX PURPOSES**

Approved by the OECD Committee on Fiscal Affairs on 23 January 2006

UNCLASSIFIED

MODULE 5 ON CONDUCTING SIMULTANEOUS TAX EXAMINATIONS

The complete manual currently consists of the following Modules:

- General Module - General and legal aspects of exchange of information
- Module 1 - Exchange of information on request
- Module 2 - Spontaneous exchange of information
- Module 3 - Automatic (or routine) exchange of information
- Module 4 - Industry-wide exchange of information
- Module 5 - Simultaneous tax examinations
- Module 6 - Tax examinations abroad
- Module 7 - Country profiles regarding information exchange
- Module 8 - Information exchange instruments and models

The purpose of the Manual is to provide tax officials dealing with exchange of information for tax purposes with an overview of the operation of exchange of information provisions and some technical and practical guidance to improve the efficiency of such exchanges.

The manual can be used for training and to design or update domestic manuals. The modular approach allows countries to choose only the parts that are relevant to their specific exchange programs.

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OECD MANUAL ON THE IMPLEMENTATION OF EXCHANGE OF INFORMATION FOR TAX PURPOSES

MODULE ON CONDUCTING SIMULTANEOUS TAX EXAMINATIONS

1. INTRODUCTION

1. This module is designed to provide competent authority officials, tax examiners and other relevant tax administration staff practical direction regarding the effective conduct of simultaneous tax examinations. It is intended to provide guidance to tax administrations that do not presently have any guidelines regarding the conduct of simultaneous tax examinations and to complement, rather than substitute, any other procedures that tax administrations may have in place. Officials are encouraged to refer to this module when carrying out simultaneous tax examinations.

2. Competent authorities are also encouraged to refer to this module when conducting exchange of information training for relevant tax administration staff, including tax examiners and auditors assigned to simultaneous tax examinations.

3. The *OECD Model Agreement for the Undertaking of Simultaneous Tax Examinations* and *Guidelines for Inter-Nordic Simultaneous Audits* were taken into account when developing this module.

4. Countries may wish to consider negotiating bilateral or multilateral Memoranda of Understanding, working arrangements or any other similar instruments with other countries, to facilitate the efficient conduct of simultaneous tax examinations. This module, together with the *OECD Model Agreement for the Undertaking of Simultaneous Tax Examinations*, for example, could be used as a basis for developing a suitable instrument in this regard.

2. BACKGROUND - WHAT IS A SIMULTANEOUS TAX EXAMINATION?

5. A simultaneous tax examination is an arrangement by two or more countries to examine simultaneously and independently, each on its territory, the tax affairs of taxpayers (or a taxpayer) in which they have a common or related interest with a view to exchanging any relevant information which they so obtain.

6. As a compliance and control tool used by tax administrations, simultaneous tax examinations are effective in cases where international tax avoidance and evasion is suspected. The examination can relate to both direct and indirect taxes. They assist in revealing exploitation or abuse of existing laws and procedures in individual countries. Simultaneous tax examinations also ensure high levels of efficiency regarding the exchange of information between tax jurisdictions and enable a comprehensive review of all relevant business activities. Simultaneous tax examinations may reduce the compliance burden for taxpayers by co-ordinating enquiries from different States' tax authorities and avoiding duplication. They can also play a role in averting double taxation and thus prevent the need to subsequently resort to a mutual agreement procedure under a provision similar to Article 25 of the OECD Model Tax Convention.

7. Several countries that have been carrying out simultaneous tax examinations for a number of years report that they are a useful and productive control tool¹. There is a growing interest in particular in multilateral simultaneous tax examinations given the increasing multilateral dimension of tax evasion schemes and the need for international co-operation between tax administrations.

8. Other forms of international tax co-operation could be considered whilst carrying out a simultaneous tax examination. For example, it could be advisable to have a tax official from one of the participating countries present during a simultaneous tax examination. The module on tax examinations abroad should be referred to in these situations.

¹ For example, the tax authorities in the Nordic countries have been working with multilateral simultaneous tax examinations for several years and have achieved positive results concerning both direct taxes and VAT.

3. LEGAL BASIS

9. Simultaneous tax examinations will be accompanied by a request for information and are conducted under either:

- i) The exchange of information article of a bilateral tax convention such as one modelled on Article 26 of the OECD Model Tax Convention 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 Matters²; or
- iv) Article 8b of EU Council Directive 77/799/EEC on Mutual Assistance as amended by Council Directive 2004/56/EC^{93/2003}; or
- v) Article 12 of the EU Council Regulation on administrative cooperation in the field of VAT 1798/2003.
- vi) Provisions in tax information exchange agreements modelled on Article 5 of the CIAT Model Agreement on the Exchange of Tax Information.

10. Any exchange of information which follows from such examinations will be made through the competent authorities as defined in the instruments listed above. The competent authority will then provide the response to the information request that accompanied the request for a simultaneous tax examination. Any additional information which may be foreseeably relevant to another country can be exchanged spontaneously.

² The parties to the Convention are Denmark, Finland, Greenland, Iceland, the Faroe Islands, Norway and Sweden.

4. OBJECTIVES – WHEN TO CONSIDER A SIMULTANEOUS TAX EXAMINATION

11. Simultaneous tax examinations can be used to determine a taxpayer's correct liability and to facilitate an exchange of information in cases where, inter alia:

- apparent tax avoidance techniques or patterns involving substance versus form transactions, controlled financing schemes, price manipulations, cost allocations or tax shelters are suspected;
- unreported income, and tax evasion involving money laundering, kickbacks, bribes, illegal payments, etc. is suspected;
- tax avoidance or evasion schemes involving low tax jurisdictions are suspected;
- consumption tax risks (triangular delivery operations, reverse charges etc) are identified;
- costs are shared or charged and profits are allocated between taxpayers in different taxing jurisdictions or more generally transfer pricing issues are involved;
- multinational business practices, complex transactions, examination issues and non-compliance trends are identified that may be particular to an industry or group of industries; and
- profit allocation methods in special fields such as global trading and new financial instruments are used.

5. ALLOCATION OF RESPONSIBILITIES

12. Simultaneous tax examinations will be conducted separately within the framework of national law and practice by tax administration officials of each country using the available exchange of information provisions.

13. Tax administrations should consider appointing staff to the following positions to ensure simultaneous tax examinations are carried out effectively and consistently.

Simultaneous Tax Examinations Coordinator

14. The simultaneous tax examinations coordinator has overall management and co-ordination of the tax administration's simultaneous tax examination compliance program. For practical purposes and where possible, the simultaneous tax examinations coordinator should be properly authorised or delegated to exchange information as a competent authority. In this regard the simultaneous tax examinations coordinator is responsible for:

- identifying suitable cases for simultaneous tax examination, liaising with their counterparts in other countries and agreeing with them on which cases will be examined under the simultaneous tax examination procedure;
- establishing effective networks with the relevant tax administration personnel that will be conducting simultaneous tax examinations and convening meetings if and when necessary with key personnel (e.g. meetings to identify suitable cases for simultaneous tax examination with key audit staff);
- Nominating a designated representative who will have the functional responsibility for directing and coordinating the case selected for simultaneous tax examination, through consultation with other tax administration compliance personnel;
- Only if considered practicable, organising for the appropriate authorised or delegated competent authority status for designated representatives;
- establishing procedures for exchanging information with other countries in all simultaneous tax examination cases;
- exchanging information with other countries in all simultaneous tax examination cases, if authorised or delegated to exercise the powers of the competent authority (including attending meetings where information is likely to be exchanged), or, ensuring properly authorised and delegated competent authority staff will be involved at the earliest possible opportunity to exchange the information;
- reporting on activities carried out regarding simultaneous tax examinations to tax administration compliance managers and tax treaty partners; and
- co-ordinating the delivery of awareness training for relevant tax administration staff on these and other relevant tax administration-specific guidelines, and co-ordinating the conduct of reviews of completed simultaneous tax examinations to ensure they are carried out in

accordance with relevant procedures governing the conduct of simultaneous tax examinations³.

Designated Representatives

15. Designated representatives have responsibility for all practical aspects of the simultaneous tax examination case being conducted, including:

- overall management and team leader of the case assigned for simultaneous tax examination;
- liaising with the simultaneous tax examinations coordinator;
- assembling the audit team;
- establishing prima facie whether or not there is a basis for conducting part of the audit by computerised audit and appointing a computer services coordinator if necessary;
- determining examination periods;
- liaising with the designated representative(s) of the other country (or countries) throughout the course of the simultaneous tax examination, including the case planning phase;
- developing case plans, and, where possible, synchronising schedules with designated representatives of the other country (or countries);
- participating in the conduct of the simultaneous tax examination;
- ensuring everyone participating in the simultaneous tax examination receives timely information about developments in the case;
- ensuring simultaneous tax examinations are conducted in conformance with this module and other related guidelines, procedures and best practices imposed by their tax administration; and
- if administratively and legally possible and warranted, attending and conducting examinations in the other country (or countries)⁴.

Simultaneous Tax Examination Auditors (“Auditors”)

16. Simultaneous tax examination auditors are responsible for conducting the simultaneous audit in accordance with the case plan developed by their team leader (i.e. their designated representative), including identifying, compiling and analysing relevant information, interviewing taxpayers and their representatives, taking minutes of meetings and assisting with the preparation of the final report.

Computer Services Coordinator (Optional)

17. The computer services coordinator is responsible for planning and coordinating the computer aspects of the simultaneous tax examination. Appendix C of the *Guidelines for Inter-Nordic Simultaneous Audits* provides a full description of the functions of computer services coordinators and the Working Model for Computerised Auditing.

³ These tasks may be carried out by other officials, depending on the structure and allocation of responsibilities within the tax administration.

⁴ Refer to Module on Tax Examinations Abroad.

6. SELECTING, CONDUCTING AND CONCLUDING A SIMULTANEOUS TAX EXAMINATION

10 STEP PROCESS

STEP 1 – INITIAL CASE SELECTION

Tax administrations individually consider suitable cases for simultaneous tax examination

STEP 2 – AGREEMENT ON SUITABLE CASES

Agreement reached between tax administrations on which cases are deemed suitable for simultaneous tax examination

STEP 3 – CONDUCT PRELIMINARY EXAMINATIONS

STEP 4 – TAXPAYERS CONTACTED

Taxpayers contacted and informed about simultaneous tax examination

STEP 5 – INITIAL PLANNING MEETING

Initial meeting between designated representatives to discuss coordination strategies, etc

STEP 6 – MEETINGS AND INTERVIEWS WITH TAXPAYERS

STEP 7 – FURTHER EXAMINATIONS

Post taxpayer interview phase of simultaneous tax examination

STEP 8 – FINALISATION OF CASE

STEP 9 – FINAL REPORT PREPARED

STEP 10 – PROCESS IMPROVEMENTS IMPLEMENTED

Recommended process improvements implemented by simultaneous tax examinations coordinator

STEP 1 – INITIAL CASE SELECTION

18. Simultaneous tax examinations coordinators should, on an annual basis at least, independently identify taxpayers they intend to propose for a simultaneous tax examination. This task will often involve extensive liaison with relevant tax administration audit personnel. Simultaneous tax examinations coordinators may also arrange to meet with each other to discuss potentially suitable cases for simultaneous tax examination.

19. The number of cases proposed by the simultaneous tax examinations coordinators should take into account tax administration resource constraints and other factors that may reduce the tax administrations' ability to carry out the audits.

20. Each simultaneous tax examinations coordinator should inform its counterpart(s) of its respective choice of potential cases for simultaneous tax examination using the selection criteria provided below. Explanations regarding why the cases were selected should be given as should information leading to its proposals together with any other relevant information. Information regarding the statute of limitations applicable to the cases proposed for simultaneous tax examination should also be provided.

Criteria for case selection

21. Any case selected for simultaneous tax examination will generally involve a taxpayer or taxpayers having operations either through affiliates or through permanent establishments in the participating countries. The following factors should be taken into account in addition to the factors outlined in Part 4 of this module concerning when it may be suitable to conduct a simultaneous tax examination:

- indication of substantial non-compliance with tax law in the participating countries;
- indication of other forms of international aggressive tax planning which, if countered successfully, may generate additional tax yield in the participating countries;
- 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; and
- cases where the taxpayer, regardless of profitability, paid little or no tax over the relevant period.

STEP 2 – AGREEMENT ON SUITABLE CASES

22. After consideration of the above information, each simultaneous tax examinations coordinator should then, in conjunction with the appropriate personnel in their tax administration, make a decision on whether or not its country wishes to participate in a simultaneous tax examination. In making this decision, the tax administration should consider the information received from the tax administration seeking the simultaneous tax examination, together with information from its own sources. In this regard, the simultaneous tax examinations coordinator may 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 instruments referred to earlier.
23. Simultaneous tax examinations coordinators should confirm in writing to their counterpart(s) their agreement or refusal to undertake a specific simultaneous tax examination (mentioning the taxpayers, taxes, tax years involved and brief reasons for acceptance or refusal).
24. Simultaneous tax examinations coordinators should nominate designated representatives who will have the functional responsibility for directing and coordinating the examination.
25. Simultaneous tax examinations coordinators may then present to each other requests for exchange of information or provide each other with information spontaneously under and in conformity with the relevant exchange of information provision.
26. A prerequisite condition of selection is that the same tax years be open for examination in the two or more countries interested in conducting the simultaneous tax examination.
27. The simultaneous tax examinations coordinator of each country may, by declaration addressed to its counterpart(s) in the other country (or countries), indicate that, in accordance with its domestic legislation, it will inform its residents or nationals before transmitting information concerned in conformity with the exchange of information article.
28. All cases selected for simultaneous tax examination should be examined by the designated representative(s) with a view to establishing whether there is a basis for carrying out parts of the audit by computerised audit. In cases where it is considered suitable to conduct part of the audit by computerised audit, the designated representative should nominate a computer services coordinator.

STEP 3 – CONDUCT PRELIMINARY EXAMINATIONS

Preliminary Examination Tasks

29. The following tasks should be carried out by the auditors preferably prior to holding the initial planning meeting between the designated representatives:

1. Review of financial statements and income tax returns, e.g.
 - a) analysis of financial statements and income tax returns;
 - b) calculation of relevant key figures, ratios, etc;
 - c) identification and localisation of substantial tax problems; and
 - d) identification and recording of any other issues that may be relevant.

2. Analysis of group organisation, e.g.
 - a) group structure;
 - b) ownership;
 - c) group transactions;
 - d) inter company accounts;
 - e) review of information available internally to the tax administrations:
 - i. history;
 - ii. previous correspondence;
 - iii. previous cases, decisions or judgments; and
 - iv. other special circumstances of importance to the audit; and
 - f) relevant information obtained from other tax administrations.

STEP 4 – CONTACT THE TAXPAYERS

30. It is recommended that the first approaches to the taxpayers to be audited under the simultaneous tax examination procedure occur simultaneously in the participating countries, or as close to each other as possible.

31. The formal rules of the individual countries governing taxpayer(s) notification of audit must naturally be observed. Some countries, for example, require that taxpayers who have been selected for audit be given sufficient notice of the examination. Tax administrations about to commence a simultaneous tax examination should therefore be aware of the formal rules regarding notification rights of the other country (or countries) at an early stage of the process.

32. Contact with the taxpayer should be made during or after the conduct of the preliminary examinations (Step 3) and before the initial planning meeting (Step5).

STEP 5 - INITIAL PLANNING MEETING

33. Before the individual countries commence the actual audit of the selected case, an initial planning meeting should be held to:

- define areas of common interest to examine;
- jointly develop strategies that seek to ensure the simultaneous tax examination is effectively coordinated⁵;
- understand how each country proposes to conduct its examination (e.g. this should include informing each other of the proposed time and scope, preliminary examinations, meetings with the taxpayer and reporting procedures);
- understand what each country will examine;
- agree on target dates;
- discuss related technical issues;
- agree on best practice regarding how information will be exchanged between the countries⁶;
- ascertain whether any of the auditors from one country can participate in the investigations of the other country (or countries), and make agreements to that effect if considered desirable; and
- ascertain whether any part of the examination should be performed as a computerised audit.

34. The designated representative from the country proposing the simultaneous tax examination should organise the initial planning meeting.

35. Where such a meeting may not be possible due to, for example, cost, logistical or other restraints, designated representatives should agree on other methods of communication (e.g. teleconference, telephone, exchange of documents) that will achieve the same result.

⁵ In certain circumstances and where practicable, this may include the nomination of a country that will be responsible for the project management of the tax examinations (under the Nordic Guidelines, for example, the leading co-ordinator or “Project Leader” is typically from the country suggesting the audit).

⁶ Simultaneous tax examinations coordinators and/or competent authority staff members should be consulted regarding all exchange of information matters throughout the entire simultaneous tax examination procedure.

STEP 6 - MEETINGS AND INTERVIEWS WITH TAXPAYERS

36. During the preliminary meeting between the taxpayer and the auditors, the designated representative should inform the taxpayer about the simultaneous tax examination, including advice about how information will be exchanged among the relevant tax administrations and the legal basis (or bases) for doing so.

37. The auditors should seek to obtain the following information from the taxpayer:

- overview – taxpayer’s business activities, history, development, etc;
- present ownership and group structure;
- description of reporting and accounting systems including computer systems;
- account plans and accounting instructions;
- reports by external auditors;
- details about business and economic transactions with group companies in other countries;
- details about the group policy on internal transfer pricing;
- details about other internal group transactions;
- details about any internal group agreements or group regulations (e.g. concerning accounting matters);
- records of the board of directors; and
- any other details unique and specific to the taxpayer(s) being audited.

STEP 7 – FURTHER EXAMINATIONS

38. It should be emphasized that an efficient and effective simultaneous tax examination requires the close cooperation of tax administration officials located in different countries. Designated representatives should attempt, as far as practicable, to synchronise their work schedules and communicate on an agreed, regular basis.

39. During the course of the simultaneous tax examination, designated representatives should ensure that participating auditors be continuously and fully informed as to how far the individual countries have progressed with their work. This can be achieved through, for example, periodical information sheets, newsletters, etc. Meetings should be held if and when required with the participating auditors in order to exchange experience gained from the simultaneous tax examination and for planning further initiatives.

40. Exchange of information must take place in accordance with the exchange of information article of the instrument between the countries participating in the simultaneous tax examination. It is therefore essential that simultaneous tax examinations coordinators (or any other delegated or authorised competent authority officials) attend all meetings where information may be exchanged to ensure any exchange will be done legally and in conformity with the tax administrations' procedures regarding exchange of information.

41. Where potential double taxation issues 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 tax examination; and
- the representatives of the competent authorities will be able to compile more complete factual evidence for those tax adjustments for which the mutual agreement procedure may be requested.

STEP 8 – FINALISATION OF CASE

42. If either country concludes that it is no longer beneficial to continue the simultaneous tax examination, it should withdraw by notifying the other country (or countries) in writing as soon as possible after making that decision.

43. A simultaneous tax examination should only be concluded after coordination and consultation (preferably through a meeting) between the designated representatives of each participating country. During this consultation the designated representatives should attempt to agree on a common position regarding the taxpayer(s) with respect to the areas subjected to simultaneous tax examination for which there is a concurrence between legislation in the various countries. This consultation phase should occur prior to final negotiations with the taxpayer(s).

44. The resolution of issues pertaining to double taxation raised by the examination are reserved to the mutual agreement procedure.

STEP 9 – FINAL REPORT

45. At the conclusion of the simultaneous tax examination, the designated representative should produce a comprehensive report containing a summary of the results achieved and an evaluation of the procedures implemented to achieve these results.

46. For the purposes of transparency and program improvement possibilities, this report should be exchanged with the other countries participating in the simultaneous tax examination.

47. The designated representatives should also provide a copy of the report to their simultaneous tax examinations coordinator.

48. The final report should cover the following areas:

General

- a summary of the simultaneous tax examination undertaken and the results achieved (nature and quantum);
- a statement outlining whether a certain share of the result can be directly attributed to the simultaneous tax examination procedure (including why such a share can be directly attributable to the simultaneous tax examination procedure); and
- a statement as to whether or not the taxpayer(s) has accepted the conclusions reached by the auditors and/or what action the taxpayer(s) may take in the future.

Observations

49. Simultaneous tax examinations may often reveal systematic exploitation or abuse of existing laws in the individual countries. It is therefore recommended that the report should mention:

- transactions or other matters which systematically exploit differences in the legislation and tax administration of the other countries; and
- any undesirable or unintended exploitation of the tax conventions governing the participating countries.

50. It is also important to report on how the taxpayers perceived the conduct of the simultaneous tax examination. To this end, the report should make reference to:

- any problems or difficulties in dealing with the taxpayer(s) during the course of the simultaneous tax examination; and
- comments and other reactions from the taxpayer(s) as a consequence of being subjected to a simultaneous tax examination.

51. To assist tax administrations in developing areas of cooperation and improving procedures for conducting simultaneous tax examinations, it is important for designated representatives to express their personal views on:

- the overall level of cooperation experienced between the participating countries;
- the quality and timeliness of information exchanged between participating countries;

- areas where the simultaneous tax examination procedure did not function satisfactorily;
- proposals for improvement; and
- any other comments that will assist in the delivery of more effective simultaneous tax examinations in the future.

STEP 10 – PROCESS IMPROVEMENTS IMPLEMENTED

52. As part of the continuous improvement cycle, simultaneous tax examinations coordinators should seek to implement changes to simultaneous tax examination compliance procedures and programs based on feedback contained in the final reports.

53. Any material changes to the tax administration's simultaneous tax examination procedures and/or program should be brought to the attention of other relevant countries via the simultaneous tax examinations coordinators.

54. It follows that any training materials/courses on simultaneous tax examination procedures and/or programs are updated to reflect these changes.

ANNEX 1.



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.

* Germany, Luxembourg and Switzerland abstained.

** See C(97)195 for the most recent Recommendation of the Council concerning the Model Tax Convention on Income and Capital.

APPENDIX: 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 Matters¹.

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 of 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 1) 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 co-ordinating 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 co-ordinating 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 co-ordination meetings to plan and follow closely the performance of the simultaneous examination.

G. Conducting the simultaneous tax examination

A simultaneous tax examination requires the co-operation 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 in and in, both texts being equally authoritative. It may be modified at any time by agreement between the competent authorities.

This Agreement is hereby agreed to on 199..

Signatures of all Competent Authorities involved in the present Agreement.

ANNEX 2.
GUIDELINES FOR INTER-NORDIC SIMULTANEOUS AUDITS

*Guidelines for
Inter-Nordic Simultaneous Audits*

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Introduction

Over a number of years the tax authorities of the Nordic countries have been working with simultaneous tax examinations. The results of the audits are reported each year to the Meeting of Nordic Heads of Tax Control Departments, where it has been decided - on an ongoing basis - that the work is to be continued and, wherever appropriate, intensified. Internationally as well, there is an increasing awareness of the initiative and the possibilities it offers with a view to the fight against cross-border tax planning.

Cooperation on a simultaneous tax examination should be arranged when it is considered that, thereby, the participating countries will achieve more rapid and better results, cf. the purpose, than in the case of strictly national controls.

In order to ensure an efficient and rational processing of cases, the work on simultaneous tax examinations should be performed in accordance with the following guidelines, which have been acceded to by all the countries that have endorsed the Nordic Assistance Convention.

Definition

A 'simultaneous tax examination' means an arrangement where two or more countries agree to examine simultaneously and independently, each on its own territory, the tax affairs of one or more persons (individuals as well as legal entities) in whom they have a common or related interest, with a view to exchanging any relevant information which they so obtain.

Purpose

- To determine a taxpayer's correct tax liability in accordance with national laws by means of efficient administrative cooperation.
- To increase the insight on the taxpayers' total commercial activities - including by making use of the enhanced prospects of reconciliation.
- To increase the prospects of countering new tax avoidance and evasion schemes, the nature of which is, on an ever-increasing scale, becoming multinational.
- To increase the awareness of, and learn from, the various participating countries' auditing methods by means of ongoing exchange of experience.
- To coordinate inquiries made with the taxpayers - so as to render the burden on the audited companies less onerous.

1. Legal Basis

The legal basis for cooperation on the conducting of simultaneous audits (simultaneous tax examinations) can be found in Article 12 of the Nordic Convention on Mutual Administrative Assistance in Tax Matters (the Nordic Assistance Convention). The Convention is applicable to taxes, VAT and excises which are set out in Article 2 of the Nordic Assistance Convention, cf. Appendix A.

The Council of Europe - OECD Convention on Mutual Administrative Assistance in Tax Matters contains a similar provision in Article 8. The Convention, which has been acceded to by Denmark, Finland, Norway, Iceland and Sweden, came into force on 1 April 1995.

By virtue of the changes adopted in April 2004 by Council directive (2004/56/EC) the assistance directive (77/799/EEC) now also contains provisions governing simultaneous tax examinations (Article 8b).

Thus, the said Articles contain provisions allowing the exchange of information on the greatest possible scale so as to ensure that national tax laws are complied with.

Reference should also be made to the OECD Model Agreement for the Undertaking of Simultaneous Tax Examinations, cf. Appendix G. These guidelines outline a number of factors that may be relevant to the carrying-out of simultaneous tax examinations.

2. Administrative guidelines for the performance of simultaneous audits

The Nordic countries are agreeing that it is expedient to continue conducting part of their control activities by means of joint simultaneous audits of major companies carrying out business in more than one country.

In the case of joint simultaneous audits, the basic principle is that all taxes, VAT and excises covered by the Nordic Assistance Convention shall be subject to tax control.

A simultaneous audit comprises localisation and control of the mutual problem areas in the company, e.g., transfer pricing. However, information and experience should also be exchanged concerning matters ascertained in connection with the national tax control, and which may be important for or give rise to examinations in the other participating countries.

The work on inter-Nordic simultaneous audits is organised as shown in Appendix F.

2.1. Responsibility and management

The overall responsibility for implementing inter-Nordic simultaneous audits lies with the heads of the tax control departments of the individual countries.

The work on simultaneous audits is incorporated as part of the countries' general tax control work. Responsibility and management shall be exercised in accordance with the normal procedures of the individual countries.

2.2. The project group

Responsibility and management in connection with individual concrete projects are undertaken by a project group, which is responsible for reporting to the heads of tax control departments. The project group has one member from each country, Denmark, Finland, Norway and Sweden. The other countries covered by the Nordic Assistance Convention may participate in the project group according to their wishes and requirements.

The members of the project group shall represent the competent authorities of their respective countries.

The project group appoints from among its members a chairman, who is responsible for the work of the project group, including holding the necessary meetings.

The chairmanship of the project groups shall rotate among the countries in the following order, Denmark, Finland, Norway and Sweden.

The chairmanship shall be held for two years at a time.

The project group is responsible for selecting and carrying out the number of simultaneous audits determined by the heads of the tax control departments.

Moreover, the project group is responsible that the staff participating in the simultaneous audits is informed about the contents of these guidelines.

The project group shall ensure that the individual projects are carried out as planned and that the tax control work is conducted in an efficient and rational manner. As required, the project group shall hold courses for persons, who are to function as project leaders, see Item 2.3 below.

The project group refers to the meeting of the heads of tax control departments and shall submit final reports on individual projects as described below under Section 4.

2.3. Project management

The project group agrees on the country that is to be responsible for the project management of individual audits. This country appoints a person as project leader.

This person is responsible for conducting tax control in the case for which he is appointed as project leader.

The project leader shall draw up a plan for conducting the tax control. Quarterly reports on the course of the audit should be submitted to the project group.

The functions of the project leader shall be performed on the basis of the guidelines described in the attached Appendix B. The project leader refers to the project group.

2.4. Computerised audit

All cases selected for simultaneous audit should be examined with a view to establishing whether there is a basis for carrying out parts of the audit by computerised audit.

The country which is responsible for the project management of the specific case appoints a computer-services coordinator, who will assume responsibility for planning and coordinating the computer aspects of the audit work.

The computer-services coordinator shall work on the basis of the description of functions of computer-services coordinators, the audit shall be performed according to the working model for computerised auditing, see the attached Appendix C.

The computer-services coordinator refers to and reports to the project leader.

2.5. Overall planning and selection of companies

The selection of companies for simultaneous audits shall be based on motivated proposals from the individual countries. The number of companies selected must not exceed the number which it will be realistically possible to audit.

Plans that span three or four years should be prepared with proposals for suitable subjects for simultaneous audits. This will enable participating countries to take such plans into account when they do their own planning and set their priorities. The plans must be presented and approved at the annual meeting of the heads of tax control departments.

The companies selected for inter-Nordic simultaneous audits are primarily international companies, which the countries have agreed will be suitable for a coordinated simultaneous tax control.

It is agreed that it may also be expedient to carry out simultaneous audits of smaller companies with activities in one or more of the Nordic countries.

Moreover, it should be possible to initiate current simultaneous audits of suitable tax control cases that arise spontaneously and where there is an obvious need for speedy initiation of a coordinated tax control.

Due to resource planning and other considerations, simultaneous audits can only be initi-

ated as exceptions within a current year.

The selection of control subjects may take its point of departure in the instructions stated in the above-mentioned OECD Model Agreement for the Undertaking of Simultaneous Tax Examinations, cf. Appendix G.

The members of the project group are responsible that the countries make a reasonable number of proposals for audits.

2.6. Planning of tax control

Each of the countries participating in the individual case shall appoint a responsible auditor leader and persons responsible for computerised auditing. The auditor leader has the overall responsibility for the case in his own country.

Before the individual countries commence the actual audit of the selected company, a joint planning meeting shall be held, at which the more detailed guidelines for implementing the tax control are agreed.

The computer-services coordinator shall carry out a coordination of each country's needs for the initiation of computerised auditing and the extent thereof.

Generally speaking, the joint planning meeting shall be held before data are obtained from the enterprises so that, for the common control areas, a coordinated perception can be achieved as regards computerised audit.

Computer-services auditors shall participate in the said planning meeting when computerised audit is likely to be used in the auditing.

At the joint planning meeting the computer-services auditors shall arrange the specific cooperation regarding the determination of data, collection of data, and any coordination of the conversion of data for further processing on the data-processing equipment, when computerised audit is used for selected common control areas.

Prior to the planning meeting, basic tax control must have been conducted in all participating countries, see the enclosed guidelines on performance of basic tax control, Appendix D.

Prior to the planning meeting the computer-services coordinator shall have evaluated the need for commencing computerised audit and shall propose the scope of such audit.

The company selected may be invited to this planning meeting to present information about the company.

The project leader is responsible for organising the initial planning meeting.

2.7. Coordination of tax control procedures

At the planning meeting the group should attempt to localise tax control areas that are of common interest and matters in which mutual assistance can be offered in connection with the audit.

It should be agreed how and to what extent the individual country shall carry out investigations and to what extent tax control information shall be exchanged.

Agreements can be made to the effect that auditors from one country can participate in investigations in other countries, see Article 13 of the Nordic Assistance Convention.

A time schedule for the implementation of the simultaneous audit shall be drawn up. This schedule shall set times for the progress of the audits, e.g. performance of the audit in the company, the holding of meetings and the conclusion of the case.

2.8. Communication among auditors

It should be ensured that the auditors participating in the individual projects are continuously and fully informed as to how far the individual countries have progressed with their audit work.

The participating auditors may communicate mutually, but shall keep the project leader informed. The project leader shall be responsible that everyone participating in the case receives information about developments in the case.

This can be done by, for example, sending out periodical information sheets, circular letters, newsletters, infos, etc.

Meetings shall be held as required with the participating auditors in order to exchange experience gained from the tax control work and to plan further initiatives.

It is the project leader's responsibility to hold such meetings whenever required. Exchange of information must take place in accordance with the rules of the Nordic Assistance Convention, that is, through the competent authorities in the countries. The competent authorities may be represented at all meetings in order to ensure the legal exchange of all documents.

3. Completion of the case

After completion of the outgoing tax control, but before the final negotiations with the company, a meeting should be held at which the conclusion of the simultaneous audit is discussed.

At this meeting the participants shall attempt to agree on a common position vis-à-vis the company regarding the areas subject to tax control for which there is a concurrence between legislation in the various countries.

4. Final report

At the completion of the case an evaluation shall be made. The project leader shall report to the project group on the performance of the simultaneous audit.

The project group shall submit an account of the course of the projects implemented during the year to the annual meeting of the heads of the Nordic tax control departments.

5. Conclusion

These guidelines have been agreed upon as a basis for the implementation of inter-Nordic simultaneous audits.

The guidelines shall also be used in connection with simultaneous audits in which only two or three countries participate, or in connection with audits that have been started spontaneously.

This text has been approved at the meeting of the heads of the Nordic Tax Control Departments in Ribe 7 – 9 September 2005. At the same time the guidelines agreed upon 6 September 2002 are rescinded.

Appendix A

Extracts from the Nordic Convention on Mutual Administrative Assistance in Tax Matters

Article 2

1. The existing taxes to which the Convention shall apply are:

a) in Denmark :

- 1) the income tax to the State (indkomstskatten til staten);
- 2) the municipal income tax (den kommunale indkomstskat);
- 3) the income tax to the county municipalities (den amtskommunale indkomstskat);
- 4) the special income tax (den særlige indkomstskat);
- 5) the church tax (kirkeskatten);
- 6) the tax on dividends (udbytteskatten);
- 7) the tax on interest (renteskatten);
- 8) the tax on royalties (royaltyskatten);
- 9) the taxes imposed under the Hydrocarbon Tax Act (skatter i henhold til kulbrinte-skatteloven);
- 10) the capital tax to the State (formueskatten til staten); and
- 11) the sailors' tax (sømandsskatten);

b) in the Faroe Islands:

- 1) the provincial income tax (skat til landskassen);
- 2) the municipal income tax (kommunal indkomstskat);
- 3) the church tax (kirkeskat);
- 4) the tax on dividends (udbytteafgift); and
- 5) the tax on royalties (royaltyafgift);

c) in Greenland:

- 1) the tax to the Province (landsskat);
- 2) the special tax to the Province (særlig landsskat);
- 3) the municipal tax (kommuneskat);
- 4) the tax on dividends (udbytteskat);
- 5) the municipal equalization tax (fælles-kommunal skat); and
- 6) the taxes imposed under the Hydrocarbon Tax Act (skatter i henhold til kulbrinte-skatteloven);

d) in Finland:

- 1) the national income and capital tax (valtion tuloja varallisuusvero);
- 2) the municipal tax (kunnallisvero);
- 3) the church tax (kirkollisvero); and
- 4) the withholding tax on non-residents' income (lähdevero);

e) in Iceland:

- 1) the national income tax (tekjuskattur til ríkisins);
- 2) the municipal income tax (útsvar til sveitarfélaga); and
- 3) the national capital tax (eignarskattur til ríkisins);

f) in Norway:

- 1) the income and capital tax to the State (inntekts- og formuesskatten til staten);
- 2) the income and capital tax to the municipalities (inntekts- og formuesskatten til kommunene);

- 3) the income tax to the counties (innteks-skatten til fylkene);
- 4) the contribution to the tax equalization fund (fellesskatten til Skattefordelingsfondet);
- 5) the taxes imposed under the Petroleum Tax Act (skattene i henhold til petroleums-skatteloven);
- 6) the tax to the State on remuneration of foreign artistes (avgiften til staten på honorarer til utenlandske kunstnere); and
- 7) the sailors' tax (sjømannsskatten);

g) in Sweden:

- 1) the income tax to the State including the sailors' tax and the coupon tax (den statliga inkomstskatten, däri inbegripet sjömannsskatten och kupongskatten);
- 2) the tax on public entertainers (bevillningsavgiften för vissa offentliga föreställningar);
- 3) the tax on undistributed profits of companies (ersättningsskatten);
- 4) the tax on distribution in connection with reduction of share capital or the winding-up of a company (utskiftnings-skatten);
- 5) the profit-sharing tax (vinstdelnings-skatten);
- 6) the municipal income tax (den kommunala inkomstskatten); and
- 7) the capital tax to the State (den statliga förmögenhetsskatten);

h) in all Contracting States:

- 1) taxes on inheritances and gifts
- 2) motor vehicle taxes, to the extent laid down in an agreement concluded pursuant to Article 20;
- 3) value added tax and any other general turnover tax, to the extent laid down in an agreement concluded pursuant to Article 20;
- 4) excise duties, to the extent laid down in an agreement concluded pursuant to Article 20; and
- 5) social security contributions and other public levies, to the extent laid down in an agreement concluded pursuant to Article 20.

2. Prepayments of the taxes and levies referred to in subparagraphs (a) to (g) of paragraph 1 shall likewise be regarded as "taxes".

3. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes.

Appendix B

Description of the Functions of Project Leaders

Introduction

The Guidelines for Inter-Nordic Simultaneous Audits state that a project leader shall be appointed for each company that is selected for tax control by an inter-Nordic simultaneous audit.

This appendix describes the scope of the work and responsibility of the project leader, and defines the competence of the project leader.

1. Selection

It follows from *The Guidelines for Inter-Nordic Simultaneous Audits*, Item 2.3, that the project group shall determine which country shall be responsible for conducting the simultaneous audit. This country appoints a project leader.

The project leader is responsible that the simultaneous audits are carried out in accordance with these guidelines.

It should be attempted to distribute the task of project leader equally between the countries. The country which has suggested a company for a simultaneous audit should, as a rule, undertake the leadership of the project. If a company has its main registered office in one of the Nordic countries, it would be natural for the company's home country to assume the task of project leader.

The person appointed as project leader should have sufficient qualifications and practical experience in the tax control of companies to undertake the task as project leader. As a rule, the project leader should participate personally and actively in the tax control work on the company in question.

2. Scope of work and responsibility

The countries participating in the simultaneous audit of a company remain responsible for the implementation of the tax control of the country's own company. In simultaneous audits, the countries should cooperate to the greatest extent possible to the planning and implementation of the simultaneous audit.

The project leader shall be responsible for:

- drawing up proposals for a time schedule and the overall framework for implementing the simultaneous audit;
- the time schedule shall be forwarded to the project group not later than one month after the appointment of the project leader;
- appointing a computer-services coordinator and for cooperating with him, see Appendix C;
- convening the members of the project group to all meetings concerning the case and sending out information on all other initiatives, including copies of all correspondence;
- the implementation of basic tax control in all participating countries before the first joint planning meeting, see Appendix D;
- convening and conducting joint planning meetings;

- selecting joint tax control areas
- drawing up minutes of the proceedings at all meetings
- drawing up a list of all participants and contact persons
- ensuring that general tax control information is collected and distributed (i.e. information that concerns all participating countries). This presupposes that the exchange of information is carried out in accordance with the provisions of the Nordic Assistance Convention
- following the progress of the simultaneous audit in the participating countries
- communicating continuous information about the progress of the simultaneous audit, about successful and less successful tax control initiatives, etc., e.g. by means of a newsletter issued not less than once a month
- identifying possible conflicts of interest between the participating countries and contributing to a reasonable solution of such conflicts
- reporting to the project group if the time schedule for the audit is not adhered to by one or more of the participating countries
- planning and convening the final meeting
- holding a final meeting for the participating auditors, etc., before the audit is completed in the various countries
- preparing analyses, statistics and a final report for the project group.

Appendix C

Description of the Functions of Computer-Services Coordinators and Working Model for Computerised Auditing

Introduction

In *Guidelines for Inter-Nordic Simultaneous Audits* it is stated that all cases selected for a simultaneous audit should be considered with a view to deciding on the appropriateness of using computerised audits in connection with the specific case.

If it is found that in the individual case there are grounds for using computerised audits, a computer-services coordinator shall be appointed.

Within the EU they have produced a working formula comprising nine steps (see below) as to how a computerised audit is to be carried out. The formula is extensively based on the working methods already practised within the Nordic countries.

It is recommended that the formula be used in applicable parts in connection with computerised audit in conjunction with Nordic simultaneous audits. The auditor must not necessarily complete all the steps, but he/she should consider the various steps and carry them out to the extent that they are applicable.

The formula is introduced in the document known as "SCAT Document 29" of 2 July 2001. Besides the working formula the document also contains a description of the education/training required to achieve the know-how and skills which an auditor needs in order to be able to work in accordance with the formula. The working formula is shown below under item 3.

1. Selection

The country which undertakes management of the project is responsible for appointing a computer-services coordinator. The project leader shall ensure that a qualified computer-services coordinator is appointed.

In this connection it is important that the computer-services coordinator be appointed as early in the case procedure as possible.

The computer-services coordinator and the project leader shall ensure that each country participating in the simultaneous audit appoints a responsible computer-services coordinator.

2. Scope of work and responsibility

The project leader is responsible for the entire audit, and the computer-services coordinator therefore reports to him.

The computer-services coordinator and the project leader shall cooperate on the working out of time schedules for implementation of the computerised audit.

Moreover, the computer-services coordinator is responsible for:

- carrying out a coordination of each country's needs for the initiation of computerised auditing and the extent thereof;
- making sure that, generally speaking, the joint planning meeting is held before data are obtained from the enterprises so that, for the common control areas, a coordinated perception can be achieved as regards computerised audit;

- the participation of computer-services auditors in the said planning meeting when computerised audit is likely to be used in the auditing;
- ensuring that, at the joint planning meeting, the computer-services auditors arrange the specific cooperation regarding the determination of data, collection of data, and any coordination of the conversion of data for further processing on the data-processing equipment, when computerised audit is used for selected common control areas;
- describing the information achieved by the description of the company's computer systems in the various countries in the form of a report to be used as a basis for the further planning.

It should appear from this report what accounting systems are used in the various countries and

- what information can be obtained from the different accounting systems;
- what the data files look like;
- what possibilities there are for carrying out comparable selections in the various countries;
- coordinating the computerised part of the audit;
- ensuring that the various jointly agreed selections have actually been carried out in the various countries;
- collecting and redistributing general tax control information via the computer medium;
- on-going reporting to the project leader on the progress of the computerised audit;
- keeping the other auditors responsible for computerised audits currently informed about matters concerning the computerised audit that may be of interest to them;
- drawing up a final report on the developments of the computerised part of the specific simultaneous audit. This report shall contain an account of the work carried out, both with regard to the analyses of computer systems and data support in connection with the case as well as an evaluation of the importance of the computerised audit for the audit as a whole.

The report shall also describe the problems, if any, arising in the course of the case – be they of a technical nature or otherwise, such as legislative obstacles in each country;

- collecting and describing the computerised auditing actions used in connection with the audit;
- transmitting the description of the computerised auditing actions to his contact person regarding computerised audit with a view to establishing an idea-and-inspiration catalogue/list; and for
- keeping his contact person regarding computerised audit continuously updated about matters pertaining to the computerised audit that may be of interest to him.

3. Working model for EDP audits

1. Pre-Planning

The EDP auditor should work with the other members of the audit team to create an audit plan.

The EDP auditor will plan the EDP audit to address the objectives of the overall audit.

2. System Mapping

The EDP auditor will establish: -

- What data is available in the system and how it is accessed
- Inputs & outputs and the connections between different parts of the systems
- Data reliability, including the controls maintained over the system, the internal controls and system validation
- Available trader documentation of the system

The EDP auditor will document the system using available information and appropriate techniques.

The EDP auditor will confirm with the company that the information documented is accurate, relevant and a useful representation of the system's revenue processing, calculations and controls.

3. Evaluation of System

The EDP auditor\audit team will evaluate the system to determine revenue strengths and weaknesses (concerning tax filing?).

4. Planning/Developing Test Strategy

The EDP auditor\audit team will consider the aims of the audit plan, the strengths and weaknesses of the system, the available resources, and decide on what is to be tested and how.

5. Data Capture (and Conversion)

The EDP auditor will identify and specify to the company the data required for testing. The EDP auditor, when taking data offsite, will ensure data compatibility using conversion and audit software.

6. Validation

The EDP auditor will confirm the accuracy and completeness of the data against the declarations. This can, e.g. be performed as regards the official reports and declarations from the company (e.g. VAT declarations, results and balance sheets).

7. Execute Test Strategy

The EDP auditor will test the accounting data, searches and selections that have been determined under item IV.

8. Report on EDP Audit

The EDP auditor will produce a report in accordance with existing rules and/or laws.

9. Future Action

The EDP auditor will ensure that the implementation of suggestions and recommendations are implemented and followed up.

Appendix D

Basic Tax Control/Collection of information in connection with Simultaneous Audits

Introduction

According to *Description of Functions of Project Leaders* basic tax control/collection of information should be conducted in connection with a simultaneous audit. This basic tax control/collection of information is obligatory in all audits.

The project leader is responsible that the auditor leaders in the other participating countries are informed about the basic tax control and that it is carried out in accordance with the following guidelines.

The basic tax control/collection of information can be divided into two main points, namely:

1. Time and scope

The basic tax control/collection of information must have been performed in all participating countries before the initial planning meeting is held.

The time and scope of the basic tax control/collection of information should always be adapted to the individual case. The purpose of the basic tax control/collection of information is to collect information to be used for a more detailed determination of control areas, etc.

It is recommended that the first approaches to the companies in a group should take place simultaneously in the participating countries, e.g. within the same week. The formal rules of the individual countries must naturally be observed.

The basic tax control can be divided into two main points, namely

- 1) investigations, analysis and collection of information carried out before the company is contacted, see Section 2, and
- 2) the first introductory contact with the companies in the participating countries, see Section 3.

2. Preliminary examinations

As point of departure the following work procedures must be carried out, wholly or partly, before any contact with the company:

- review of financial statements and income tax returns
 - analysis of a financial statement and income statement
 - calculation of relevant key figures
 - localisation of substantial tax, VAT and excise problems
- analysis of group organisation
 - ownership
 - group transactions
 - inter company accounts

- computerised audit (Proposal: should be deleted)
- review of information available to the tax and excise authorities
 - history
 - previous correspondence
 - previous cases, decisions or judgments
 - other special circumstances of importance for the audit
- information from other authorities.

3. Preliminary meeting with a company

As a rule, it is recommended that personal contact should be established between the company and the tax authorities before the first planning meeting. At the preliminary meeting the tax authorities should inform the company about the simultaneous audit and it should be attempted to obtain the following information:

- information about the simultaneous audit, including the statutory powers of the tax and excise authorities (Article 12 of the Nordic Assistance Agreement)
- advice in connection with the simultaneous audit that information will be exchanged among the tax authorities of the participating countries
- presentation of the company's business activities, history, development, etc.
- present ownership and group structure
- description of reporting and accounting systems including computer systems
- computerised audit - applicability test
- account plans and accounting instructions
- report by external auditors (auditor's records)
- information about business and economic transactions with group companies in the other Nordic countries.
- information about the group policy on internal transfer pricing
- information about other internal group transactions
- information about any internal group agreements or group regulations, e.g. concerning accounting matters
- records of the board of directors
- initial review of (part of) the financial bookkeeping, e.g. concerning group transactions

It should be emphasised that the primary purpose of the basic tax control is to collect specific factual information about the selected group generally and about the group's (subsidiary) companies in the participating countries.

It is a necessary condition for obtaining a reasonable benefit from the preliminary planning meeting that basic tax control has been conducted prior to the meeting as described above.

Appendix E

Final Reporting of Simultaneous Audits

Introduction

According to the *Description of Functions of Project Leaders*, the project leader shall prepare a written report to the project group for inter-Nordic simultaneous audits containing an evaluation of the implemented simultaneous audit for which the project leader has been responsible.

It is the project group's view that the report as a rule should contain the following information.

1. General

This section should present an overview of the group that has been audited and of the scope of the implemented audit. The report must, therefore, as a minimum contain the following items:

- brief description of the group
- number of firms (companies, etc.) in the various Nordic countries
- number of companies audited, distributed according to the participating countries
- number of auditors taking part in the audit, distributed according to the participating countries
- the agreed time schedule for the audit
- description of joint auditing areas
- scope and contents of the computerised audit performed;
- description of the computerised-audit actions, etc., carried out and the experience gained in that regard. The descriptions should be capable of forming the basis for an assessment as to whether the computerised-audit actions are suitable for being included in the idea-and-inspiration catalogue/list concerning the use of computerised audit in inter-Nordic simultaneous audits.

2. Proposed changes

The project leader's report to the project group forms the basis for the group's evaluation of the work and for the project group's report to the heads of tax control departments. It is therefore necessary that the following matters are covered in the project leader's report:

- proposals for changes, divided into changes in income for corporate taxes, personal income taxes and changes in the basis for calculating VAT and other duties. The assessment shall be made by each participating country. The size of the amounts concerning accruals shall be stated separately
- whether a certain share of the result can be attributed directly to the simultaneous audit. If so, it should be indicated (to the extent possible) how large a part of the result this concerns, and a brief description of the circumstances should be given

- statements as to whether the company (group) has accepted the proposed changes and/or whether the company has complained about the changes (instituted proceedings)

3. Observations concerning taxation matters

One purpose of simultaneous audits is to make observations about the systematic exploitation or abuse of existing tax, VAT and excise rules in the individual countries. Therefore, the report should mention:

- transactions or other matters which (systematically) exploit differences in the legislations of the Nordic countries
- any undesirable or unintended exploitation of the Nordic Double Taxation Convention, possibly in interaction with internal rules in the individual countries

4. The Group's attitude/will to cooperate

It is always important to be aware of how (especially) companies experience tax control. The report should therefore mention the following matters:

- any problems or difficulties in working together with the company
- comments and other reactions from the company as a consequence of it being subjected to a simultaneous audit

5. The project leader's own experience and views

With a view to the further use of simultaneous audits, including possible adjustments and improvements in the cooperation, the project group wishes the individual project leader to express his personal views on the simultaneous audit.

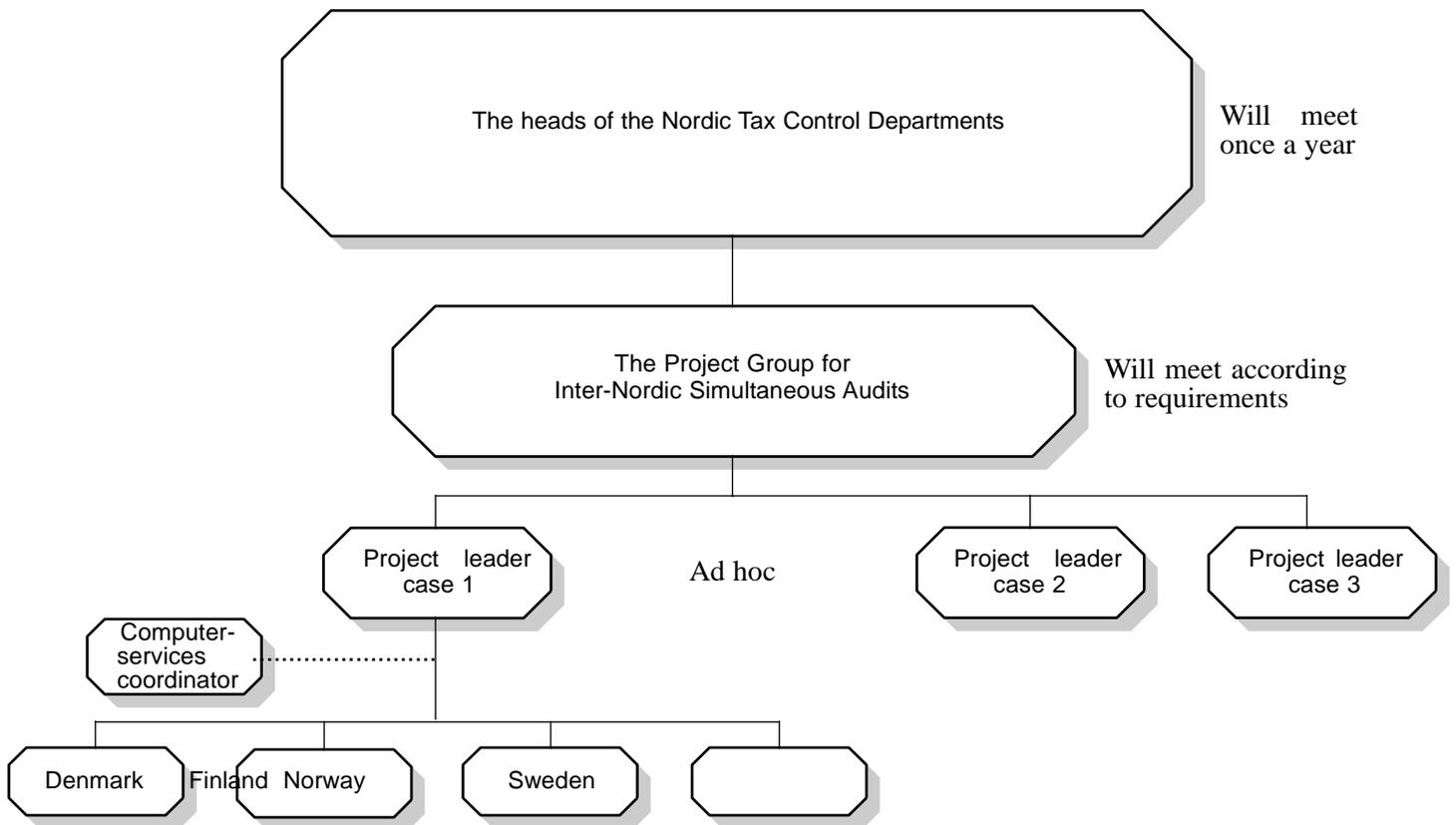
This part of the report may, e.g. contain the following:

- advantages of the cooperation
- exchange of information among the countries
- exchange of information among the auditors
- the role of the project leader
- has the time schedule been observed
- is there anything which has not functioned satisfactorily
- the project leader's own proposals for improvements or changes
- any other comments.

Appendix F

The Project Group for Inter-Nordic Simultaneous Audits

Organisation



Appendix G

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.

¹ Delete the legal bases which are not applicable.

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

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 its 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 co-operation 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 in and in , both texts being equally authoritative. It may be modified at anytime by agreement between the competent authorities.

This Agreement is hereby agreed to on 200....

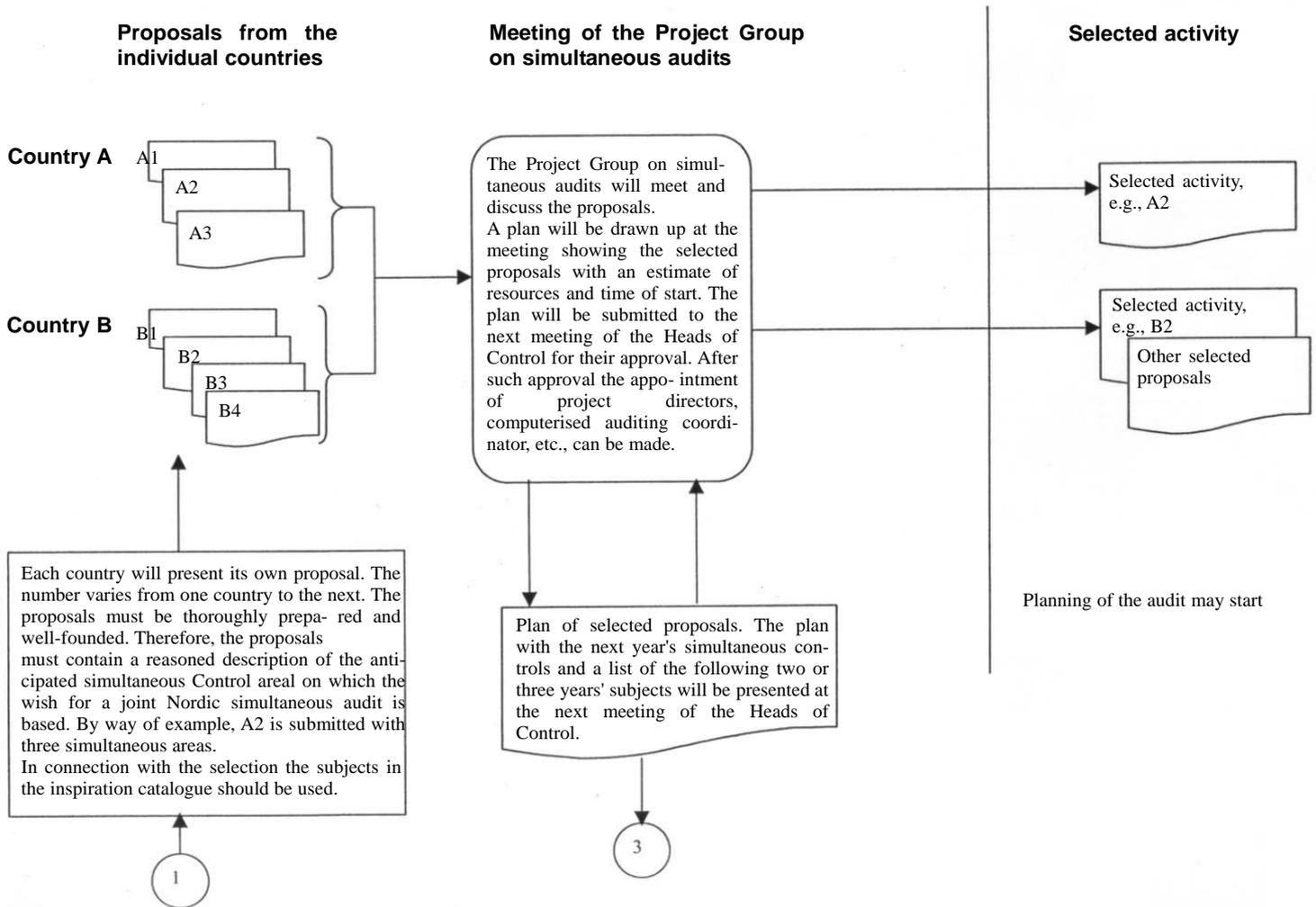
Signatures of all Competent Authorities involved in the present Agreement.

Appendix H

Schematic Presentation of the Selection Procedure/ Auditing Process

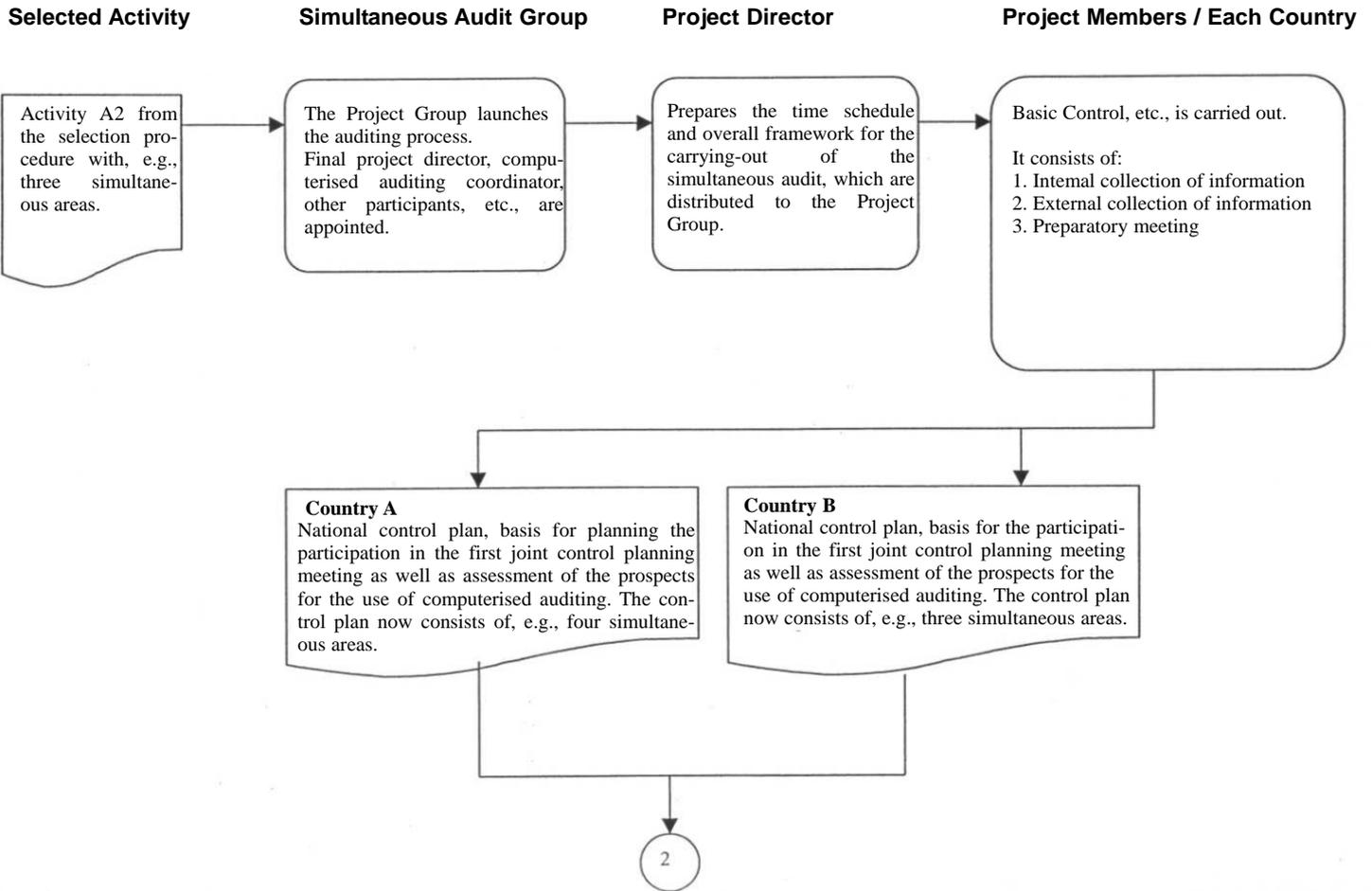
Selection procedure, many proposals

Adopted at the meeting
of Nordic Heads of Control
on the Faroe Islands in
September 2001



Auditing process, One case

Adopted at the meeting of Nordic Heads of Control on the Faroe Islands in September 2001



Auditing process, One case

Adopted at the meeting of Nordic Heads of Control on the Faroe Islands in September 2001

