

BUILDING EFFECTIVE FRAMEWORKS FOR CROSS-BORDER ASSISTANCE IN THE RECOVERY OF TAX CLAIMS IN AFRICAN COUNTRIES

Introduction

Tax revenues are the main source of funding for the national budget in most African countries.¹ The recovery of those revenues is one of the last but critical steps of the taxation cycle. However, the recovery of unpaid taxes is a challenge for many tax administrations, and even more so in a cross-border context. While taxpayers and their assets are increasingly mobile, the collection powers of the tax administrations are limited to the borders of their respective countries. Without international co-operation mechanisms, they have therefore limited possibilities to recover unpaid taxes where the taxpayers, their income source and all or most of their assets are abroad. Such situations have a significant impact on revenue collection, the fight against tax evasion and more broadly on tax morale.

Since 2019, several developing country members of the Global Forum on Transparency and Exchange of Information for Tax Purposes² (Global Forum), including from Africa,³ have called on strengthening the international tax co-operation framework to ensure effective cross-border assistance in recovery of tax claims.⁴ In that context, the members of the Global Forum's Africa Initiative⁵ undertook in 2020 to build capacities within African tax administrations and to develop the function for cross-border tax recovery.⁶

A dedicated working group made of representatives of 12 African countries was mandated to identify the trends on cross-border assistance in recovery of tax claims in Africa and the conditions necessary for successful recovery (Working Group). It produced a report based on the analysis of the information provided by 23 African countries (the respondents) which is summarised below.⁷

Key steps of cross-border assistance in recovery of tax claims

Cross-border assistance in tax collection is one of the last recourses in the overall tax collection process. First, tax administrations usually issue an assessment to the taxpayer or a notice to the debtor to pay an unpaid self-assessed amount. In the absence of voluntary payment, tax administrations use their domestic recovery powers to collect the outstanding tax claims.

Only if the tax claim is not fully recovered despite the exhaustion of the domestic tax recovery powers, can tax administrations contemplate cross-border assistance. In practice, the competent authority for cross-border assistance in tax recovery determines whether it is appropriate to request assistance under an international agreement. If that is the case, it will send a request for assistance to the competent authority of the foreign jurisdiction and the foreign competent authority will assess the request. If it meets the requirements under the international agreement, that competent authority will apply its own domestic laws, policies and administrative procedures to collect the outstanding tax for the applicant jurisdiction, as if it were its own tax claim.

Therefore, in order to benefit from cross-border assistance in the recovery of tax claims, a jurisdiction needs:

1. an appropriate domestic legal framework to collect outstanding taxes within the jurisdiction, which is effectively used in practice
2. international agreements allowing for cross-border assistance in tax recovery
3. an appropriate administrative and organisational framework to handle this specific form of international assistance in tax matters.

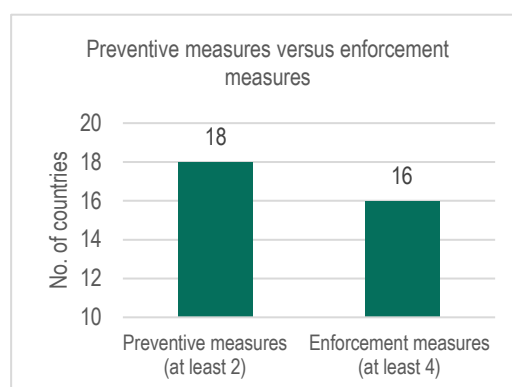
Domestic tax recovery in African countries

Domestic tax collection is usually exerted by a specific function within the tax administration that is appropriately organised and resourced. This function uses in general (i) preventive measures aimed at facilitating the offset of the tax claims and (ii) enforcement measures to recover the unpaid taxes.

Nineteen respondents have a dedicated department within their tax administration to collect tax claims. In three jurisdictions, the operational services spread across the tax administrations offices fulfil this collection function. Almost all respondents (21 respondents) maintain a strategy approved by top management to improve the effectiveness of tax claim recovery. These strategies differ from one jurisdiction to another and can include prioritising the collection of recent tax claims, the collaboration with other government agencies or improving the supervision of claims management functions.

When facing an unpaid tax claim, tax administrations will take preventive measures to collect the debts before resorting to coercive measures. All of the respondents encourage the payment of tax claims by extending the time to pay and the majority (18 respondents) empower the tax administration to use a tax credit to settle a tax claim. Other preventive measures include making mandatory obligations to pay outstanding tax claims prior to bidding for public procurement (two respondents), freezing or suspending of taxpayers' identification number (one respondent) or publicising tax debtors' name (one respondent).

Where these preventive measures are unsuccessful, the tax administration may invoke enforcement measures to compel the payment of tax claims. All the respondents have powers to appoint third parties as "recovery agents" and to seize assets that are sold to recover the outstanding sums. The majority of the tax administrations can also freeze bank accounts (16 respondents) or close the business establishment until the tax is settled (18 respondents). Putting a caveat on property (three respondents), restricting travel outside of the jurisdiction (two countries) and instituting bankruptcy proceedings by the tax administration (one respondent) are used to a lesser extent.



The majority of the respondents have therefore an organisation and powers to collect tax claims at a domestic level. Improving and adapting them to increase their tax collection rate is essential. Strengthening the domestic tax debt recovery function also includes the identification of the factors that affect the recovery rates, the allocation of adequate resources as well as developing tax collection tools.

Cross-border tax recovery in African countries

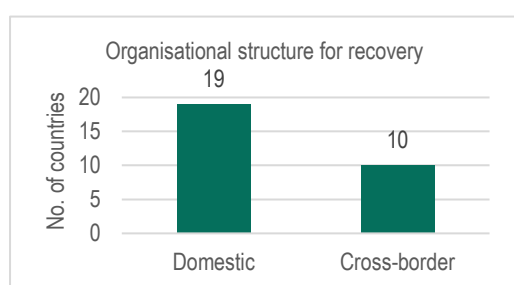
Like all forms of international co-operation in tax matters, cross-border assistance in the recovery of taxes must be based on an international legal instrument that is in force between the requesting and the requested jurisdictions.

All respondents have at least an international legal agreement in place that they can use to request for cross-border assistance in recovery of tax claims ranging from bilateral to multilateral instruments.

The Convention on Mutual Administrative Assistance in Tax Matters (MAAC),⁸ to which over 145 jurisdictions participate, allows for cross-border tax collection, subject to the absence of reservation. Out of the 18 respondents that are signatories to the MAAC, 3 have entered a reservation for providing this form of assistance. Furthermore, it should be noted that 6 of the 18 signatories have not yet ratified the MAAC and it is therefore not in force with respect to them.

However, this form of co-operation is rarely used. Between 2018 and 2020, only five respondents sent a total of 13 requests, representing EUR 9.8 million. During that same period, five respondents received at least one request to provide assistance to other jurisdictions on the recovery of their tax claims with one country receiving 105 requests representing EUR 43.7 million.

One of the main reasons of the almost lack of use of this form of co-operation is that tax officers in respondent countries are not aware of the opportunities offered by administrative assistance in the recovery of tax claims, even when a legal instrument is in place. The respondents assessed their level of knowledge as follows: high (3), medium (7) and low (13). The gaps in the knowledge on cross-border assistance affects not only the quantity but also the quality of requests for cross-border assistance in the recovery of tax claims, resulting in an administrative workload without adding revenue to the treasury.



As opposed to the domestic context, the organisational structure for cross-border recovery is insufficiently developed. Only 10 respondents have a dedicated function for cross-border recovery of tax claims and, in all those countries, the process is managed by the unit in charge of cross-border exchange of information (EOI) for tax purposes.

While all the respondents have at least an international instrument allowing for cross-border assistance in the recovery of tax claims, African countries that seek to receive assistance from other jurisdictions should ensure that they have in place an appropriate and sufficiently wide international legal framework that facilitates this form of assistance with relevant foreign jurisdictions. They should also develop a strategy, raise awareness and train debt recovery officers, and set the right organisation structure coupled with appropriate tools and knowledgeable staff to manage cross-border tax collection.

A case for building capacities on cross-border assistance in tax recovery in Africa

Given the potential of cross-border assistance in tax recovery and to support African countries efforts to develop their capacities in this area, the Global Forum Secretariat is providing technical support to ensure that the cross-border assistance in recovery of tax claims becomes a useful tool to tax administrations that are exposed to the issue of cross-border mobility of tax debtors' asset. The main axis of the Global Forum's capacity-building programme in this area are:

- 1. encouraging African countries to assess the effectiveness of their tax recovery functions and their performance to identify areas for potential improvement**, for example by using the Tax Debt Management Maturity Tool⁹ developed by the OECD Forum on Tax Administration, to ensure that the domestic tax debt recovery system is strong enough to use cross-border assistance only as an ultimate and needful recourse
- 2. assisting African countries to set up an appropriate framework for cross-border assistance in tax collection**, including putting in place an international legal instrument (in particular the MAAC), a solid domestic legal basis and an adequate administrative framework, to ensure that a functional system is in place to support cross-border assistance in the recovery of tax claims
- 3. offering trainings and providing tax officials in charge of tax debt recovery with practical guidance and tools** for effective cross-border assistance in the recovery of tax claims to raise awareness on an effective use of this form of international tax cooperation, including the identification of situations relevant for cross-border recovery, the handling of outgoing and incoming requests and the monitoring of the function.

References

¹ OECD/AUC/ATAF (2021), *Revenue Statistics in Africa 2021: 1990-2019*, OECD Publishing, Paris, available at <https://doi.org/10.1787/c511aa1e-en-fr>.

² For more information regarding the Global Forum and its work, see <https://www.oecd.org/tax/transparency/>.

³ Statement of the participants to the 5th Anniversary dinner of the Africa Initiative available at <https://www.oecd.org/tax/transparency/documents/Statement-10-years-global-forum-Africa-Initiative-ministerial.pdf>.

⁴ Statement of Outcomes of the Global Forum's 10th Anniversary Plenary Meeting available at <https://www.oecd.org/tax/transparency/statement-of-outcomes-global-forum-10-years.pdf>.

⁵ For more information regarding the Africa Initiative, see <https://www.oecd.org/tax/transparency/what-we-do/technical-assistance/africa-initiative.htm>.

⁶ Statement of Outcomes of the 8th Africa Initiative Meeting, available at <https://www.oecd.org/tax/transparency/documents/8th-meeting-of-the-africa-initiative-statement-of-outcomes.pdf>.

⁷ The report prepared by the Working Group was approved during the 10th meeting of the Africa Initiative held on 15 November 2021. The statement of outcomes of the meeting is available at <https://www.oecd.org/tax/transparency/documents/10th-meeting-africa-initiative-statement-of-outcomes.pdf>.

⁸ OECD, Convention on Mutual Administrative Assistance in Tax Matters available at https://read.oecd-ilibrary.org/taxation/the-multilateral-convention-on-mutual-administrative-assistance-in-tax-matters_9789264115606-en#page1.

⁹ OECD (2019), Tax Debt Management Maturity Model, OECD Tax Administration Maturity Model Series, OECD, Paris. www.oecd.org/tax/forum-on-tax-administration/publications-and-products/tax-debt-management-maturity-model.htm