



MANUAL PARA LA APLICACIÓN DE LAS DISPOSICIONES RELATIVAS AL INTERCAMBIO DE INFORMACIÓN CON FINES TRIBUTARIO:

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DESCLASIFICADO

MÓDULO 5 - LAS FISCALIZACIONES O COMPROBACIONES SIMULTÁNEAS

El manual completo contiene, actualmente, los siguientes Módulos:

Módulo general - Aspectos generales y legales del intercambio de información

Módulo 1 - El intercambio de información previa petición

Módulo 2 - El intercambio espontáneo de información

Módulo 3 - El intercambio automático (o sistemático) de información

Módulo 4 - El intercambio de información sectorial

Módulo 5 - Las fiscalizaciones o comprobaciones simultáneas

Módulo 6 - Las fiscalizaciones o comprobaciones tributarias en el extranjero

Módulo 7 - El perfil por países en materia de intercambio de información

Módulo 8 - Los Instrumentos y Modelos para el intercambio de información

La finalidad del Manual es proporcionar, a los funcionarios encargados de realizar el intercambio de información con fines tributarios, una visión general sobre el funcionamiento de las disposiciones sobre el intercambio de información e indicaciones de carácter técnico y práctico para mejorar tales intercambios.

El Manual puede ser utilizado en los programas de formación y para diseñar o actualizar el manual de cada país. La estructura modular permite a cada país elegir las partes relevantes para sus programas en materia de intercambio de información

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MANUAL DE LA OCDE PARA LA APLICACIÓN DE LAS DISPOSICIONES SOBRE EL INTERCAMBIO DE INFORMACIÓN CON FINES TRIBUTARIOS

MÓDULO SOBRE REALIZACIÓN DE FISCALIZACIONES O COMPROBACIONES TRIBUTARIAS SIMULTÁNEAS

1. INTRODUCCIÓN

1. Este módulo está diseñado para proporcionar a los funcionarios de la autoridad competente, a los funcionarios que examinan los tributos y a otro personal pertinente de la administración fiscal, una guía práctica en la realización eficaz de fiscalizaciones o comprobaciones tributarias simultáneas. El mismo se propone servir de guía a las administraciones tributarias que actualmente carecen de directrices para la realización de fiscalizaciones o comprobaciones tributarias simultáneas y complementar, más que sustituir, cualquier otro procedimiento que las administraciones tributarias puedan tener. Se recomienda a los funcionarios que, cuando realicen comprobaciones tributarias simultáneas, consulten este módulo.
2. También se recomienda a las autoridades competentes que consulten este módulo cuando efectúen actividades de formación en materia de intercambio de información del personal perteneciente a la administración tributaria, incluyendo a los inspectores y a los auditores tributarios que participen en las fiscalizaciones o comprobaciones fiscales simultáneas.
3. El Modelo de Acuerdo de la OCDE para la Realización de Fiscalizaciones o Comprobaciones Tributarias Simultáneas y las Directrices para las Auditorías Simultáneas Inter-Nórdicas han sido tenidas en cuenta para el desarrollo de este módulo.
4. Puede ser que los países quieran considerar la negociación de Protocolos de Acuerdo, acuerdos de trabajo o cualquier otro instrumento similar con otros países, a fin de facilitar la eficaz realización de comprobaciones tributarias simultáneas. Este módulo, conjuntamente con el Modelo de Acuerdo de la OCDE para la Realización de Comprobaciones Tributarias Simultáneas, por ejemplo, podría ser utilizado como base para desarrollar un instrumento adecuado a tal efecto.

2. ANTECEDENTES-¿QUÉ ES UNA FISCALIZACIÓN O COMPROBACIÓN TRIBUTARIA SIMULTÁNEA?

5. Una fiscalización o comprobación tributaria simultánea es un acuerdo entre dos o más países para fiscalizar de una manera simultánea e independiente, cada uno en su propio territorio, la situación tributaria de los contribuyentes (o de un contribuyente) en el que tengan un interés común o relacionado, con la finalidad de intercambiar cualquier información relevante que puedan obtener de este modo.

6. Como herramienta para el cumplimiento y control usada por las administraciones tributarias, las comprobaciones tributarias simultáneas son efectivas en los casos en que pueda existir elusión y evasión fiscal internacional. La fiscalización o comprobación puede tener lugar en el ámbito de la imposición directa e indirecta. Las inspecciones fiscales simultáneas contribuyen a descubrir la explotación o el abuso de las leyes y procedimientos existentes en un país. Asimismo, garantizan altos niveles de eficacia respecto al intercambio de información entre jurisdicciones tributarias y permiten una revisión general de todas las actividades empresariales relevantes. Las comprobaciones tributarias simultáneas pueden reducir la carga asociadas al cumplimiento por parte de los contribuyentes, al coordinar las consultas de las autoridades tributarias de los diferentes Estados y evitar la duplicidad. También puede jugar un papel importante a la hora de evitar la doble imposición y, de este modo, evitar la necesidad de recurrir posteriormente a un procedimiento amistoso regido por una disposición similar al artículo 25 de Modelo del Convenio Tributario de la OCDE.

7. Algunos países que ha llevado a cabo comprobaciones tributarias simultáneas durante los últimos años, consideran que éstas constituyen una herramienta de control útil y productivo. Hay un creciente interés, en particular, en las comprobaciones tributarias simultáneas, dada la creciente dimensión multilateral de los esquemas de evasión fiscal y la necesidad de cooperación internacional entre administraciones tributarias.

8. Otras formas de cooperación fiscal pueden ser consideradas mientras se lleva a cabo la fiscalización o comprobación tributaria simultánea. Por ejemplo, podría ser recomendable que un funcionario tributario de uno de los países participantes estuviese presente durante una fiscalización tributaria simultánea. El módulo sobre fiscalizaciones o comprobaciones tributarias en el exterior debe ser consultado en estas situaciones.

3. BASE JURÍDICA

9. Las comprobaciones tributarias simultáneas deben ir acompañadas de una solicitud de información y son efectuadas en base a alguna de las siguientes disposiciones:

- i) El artículo sobre intercambio de información contenido en un convenio tributario para evitar doble imposición, basado en el artículo 26 del Modelo de Convenio Tributario sobre la renta y el patrimonio; o
- ii) El artículo 8 de la Convención Conjunta del CE y de la OCDE sobre Asistencia Administrativa Mutua en Asuntos Tributarios; o
- iii) El artículo 12 del Convenio Nórdico sobre Asistencia Mutua en Materia Fiscal; o
- iv) El artículo 8b de la Directiva del Consejo de la Unión Europea 77/799/EEC sobre Asistencia Mutua según la redacción dada por la Directiva del Consejo 2004/56/EC
- v) El artículo 12 del Reglamento del Consejo de la Unión Europea sobre cooperación administrativa en materia del Impuesto sobre el Valor Añadido 1798/2003

10. Cualquier intercambio de información que surja de dichas comprobaciones se hará a través de las autoridades competentes según se define en los instrumentos enumerados anteriormente. La información será proporcionada, por tanto, en respuesta a la información solicitada que acompañó la solicitud para una fiscalización o comprobación fiscal simultánea. Cualquier información adicional que pueda ser previsiblemente pertinente para cualquier otro país puede ser objeto de intercambio espontáneo.

4. OBJETIVOS-CUÁNDO CONSIDERAR LA FISCALIZACIÓN O COMPROBACIÓN TRIBUTARIA SIMULTÁNEA

11. Las comprobaciones tributarias simultáneas se pueden utilizar para determinar la correcta responsabilidad de un contribuyente y para facilitar el intercambio de información en los casos en que, en particular:

- se sospeche del uso de técnicas y pautas de elusión tributaria que impliquen transacciones meramente formales, disfrazadas como transacciones con fundamento económico, esquemas de financiación controlada, manipulación de precios, asignación de costes o refugios fiscales;
- se sospeche la presencia de renta no declarada y evasión tributaria que conlleve el blanqueo de capitales, devoluciones, sobornos, pagos ilegales, etc.
- se sospeche la existencia de esquemas de elusión o evasión tributaria que involucren jurisdicciones de baja tributación;
- se identifiquen riesgos respecto de los impuestos sobre el consumo (operaciones triangulares, inversión del sujeto pasivo, etc.);
- se detecte que los costes sean compartidos o cargados y los beneficios sean asignados entre contribuyentes de diferentes jurisdicciones tributarias o, en general, estén involucrados aspectos sobre precios de transferencia;
- se identifiquen prácticas comerciales, transacciones complejas, problemas en la fiscalización o comprobación y tendencias de incumplimiento que puedan ser particulares de un sector o grupo de sectores; y
- se utilicen métodos de atribución de beneficios en áreas especiales, tales como en el comercio global y en los nuevos instrumentos financieros.

5. ASIGNACIÓN DE RESPONSABILIDADES

12. Las comprobaciones fiscales simultáneas serán realizadas de manera separada, dentro del marco de la ley y de la práctica nacional, por los funcionarios de la administración tributaria de cada país, utilizando las normas disponibles sobre intercambio de información.

13. Las administraciones tributarias deben considerar la asignación de personal a los puestos descritos a continuación, a fin de asegurar que las comprobaciones tributarias simultáneas se lleven a cabo de forma eficaz y uniforme.

El Coordinador de las Fiscalizaciones o Comprobaciones Tributarias Simultáneas

14. El coordinador de las comprobaciones simultáneas es responsable de la gestión y coordinación general del cumplimiento del programa de la fiscalización o comprobación tributaria simultánea de la administración tributaria. A efectos prácticos y siempre que sea posible, el coordinador de las comprobaciones tributarias simultáneas deben estar debidamente autorizados o tener la delegación correspondiente para intercambiar información como autoridad competente. En este sentido, el coordinador de las comprobaciones tributarias simultáneas es responsable de:

- identificar los casos susceptibles de dar lugar a una fiscalización o comprobación tributaria simultánea, trabajando en colaboración con sus contrapartes en otros países y acordar con ellos los casos que serán objeto de examen bajo el procedimiento de fiscalización o comprobación tributaria simultánea;
- establecer redes de contacto eficaces con el personal de la administración tributaria pertinente que llevará a cabo las comprobaciones tributarias simultáneas, convocando reuniones en el momento y el lugar que sea necesario con el citado personal (como por ejemplo, reuniones con el personal relevante de auditoría para identificar los casos susceptibles de fiscalización o comprobación tributaria simultánea);
- nombrar a un representante designado, quien tendrá la responsabilidad funcional de dirigir y coordinar los casos seleccionados para la fiscalización o comprobación tributaria simultánea, mediante consulta con otro personal de la administración al cargo de los asuntos sobre cumplimiento fiscal;
- sólo si lo considera factible, hacer lo preciso para que los representantes designados obtengan la asignación del adecuado status como autoridad competente autorizada o delegada;
- intercambiar información con otros países en la totalidad de las comprobaciones tributarias simultáneas, si ha sido autorizado o delegado para ejercer los poderes de autoridad competente (incluyendo la asistencia a reuniones en las que probablemente se intercambia información) o, asegurando que el personal de la autoridad competente debidamente autorizado y delegado estará involucrado en el intercambio de información a la primera oportunidad posible;
- informar a los responsables del control del cumplimiento fiscal de las administraciones tributarias y a las partes contratantes del tratado sobre las actividades realizadas con respecto a las comprobaciones tributarias simultáneas; y
- coordinar las sesiones de formación para del personal relevante de la administración tributaria para poner en su conocimiento ésta u otras directrices específicas relevantes para las administraciones tributarias, y coordinar la evaluación/examen de las comprobaciones tributarias simultáneas finalizadas, a fin de asegurar que se hayan llevado a cabo de acuerdo con los procedimientos relevantes que gobiernan las comprobaciones tributarias simultáneas.

Los representantes designados

15. Los representantes designados son los responsables de todos los aspectos prácticos relacionados con el caso de fiscalización o comprobación tributaria simultánea que se esté llevando a cabo, incluyendo:

- la gestión general y el liderazgo del equipo del caso asignado para fiscalización o comprobación tributaria simultánea;
- entablar comunicación con el coordinador de las comprobaciones tributarias simultáneas;
- organizar del equipo de auditoría;
- establecer *prima facie* si existe o no una base para llevar a cabo parte de la auditoría mediante auditoría informática, designando, si es necesario, un coordinador de servicios informáticos;
- determinar los periodos de fiscalización o comprobación;
- servir de enlace con el/los representante/s designado/s del otro país (o países) durante el transcurso de la fiscalización o comprobación tributaria simultánea, incluyendo la fase de planificación del caso;
- desarrollar planes sobre casos y, siempre que sea posible, sincronizar los programas con los representantes designados del otro país (o países);
- participar en la realización de la fiscalización o comprobación tributaria simultánea;
- asegurarse de que todos los que participen en la fiscalización o comprobación tributaria simultánea reciben la información oportuna sobre los avances del caso;
- asegurarse de que se realicen las comprobaciones tributarias simultáneas de acuerdo con este módulo y otras directrices, procedimientos y buenas prácticas relacionadas, impuestas por su administración tributaria; y
- si es administrativa y legalmente posible y justificado, atender y llevar a cabo comprobaciones en el otro país (o países).

Audidores de las Comprobaciones Tributarias Simultáneas ("Audidores").

16. Los auditores de las comprobaciones tributarias simultáneas son responsables de realizar auditorías simultáneas de acuerdo con la planificación de casos desarrollada por el líder de equipo (es decir, su representante designado), incluyendo identificar, recopilar y analizar la información pertinente, entrevistar a los contribuyentes y sus representantes, preparar las actas de las reuniones y asistir en la preparación del informe final.

El Coordinador de los Servicios Informáticos (Opcional)

17. El coordinador de los servicios informáticos es el responsable de planificar y de coordinar los aspectos informáticos de las comprobaciones fiscales simultáneas. El Apéndice C de las Directrices sobre Auditorías Inter-Nórdicas Simultáneas establece una descripción completa de las funciones de los coordinadores de los servicios informáticos y el Modelo de trabajo aplicable a la Auditoría Informática.

**6. SELECCIÓN REALIZACIÓN Y FINALIZACIÓN DE UNA COMPROBACIÓN
TRIBUTARIA SIMULTÁNEA.
LOS 10 PASOS DEL PROCESO**

PASO 1-SELECCIÓN INICIAL DEL CASO

Las administraciones tributarias consideran, de forma individual, los casos adecuados para la fiscalización o comprobación tributaria simultánea

PASO 2-ACUERDO SOBRE LA ELEGIBILIDAD DE LOS CASOS

Acuerdo alcanzado por las administraciones tributarias sobre los casos que se consideran adecuados para las comprobaciones tributarias simultáneas

PASO 3-REALIZACIÓN DE COMPROBACIONES PRELIMINARES

PASO 4-CONTACTO CON LOS CONTRIBUYENTES

Contacto e información a los contribuyentes acerca de las comprobaciones tributarias simultáneas

PASO 5-REUNIÓN INICIAL PARA LA PLANIFICACIÓN

Reunión inicial entre los representantes designados para discutir las estrategias de coordinación, etc.

PASO 6-REUNIONES Y ENTREVISTAS CON LOS CONTRIBUYENTES

PASO 7-COMPROBACIONES ADICIONALES

Fase posterior a la de la entrevista con el contribuyente sujeto a la fiscalización o comprobación tributaria simultánea

PASO 8-FINALIZACIÓN DEL CASO

PASO 9-INFORME FINAL

PASO 10- PUESTA EN PRÁCTICA DE LAS MEJORAS RECOMENDADAS

Formulación de mejoras en el proceso implementadas por el coordinador de las comprobaciones tributarias simultáneas.

PASO 1- SELECCIÓN INICIAL DEL CASO

18. Los coordinadores de las comprobaciones tributarias simultáneas deben, al menos una vez al año, identificar de forma independiente a los contribuyentes que pretenden proponer para una fiscalización o comprobación tributaria simultánea. Con frecuencia, esta tarea implicará una intensa comunicación con el personal relevante de auditoría de la administración tributaria. Los coordinadores de las comprobaciones tributarias simultáneas pueden asimismo organizar reuniones para discutir acerca de casos potencialmente adecuados para las comprobaciones tributarias simultáneas.

19. El número de casos propuestos por los coordinadores de las comprobaciones tributarias simultáneas deberá tener en cuenta las limitaciones en los recursos de la administración tributaria y otros factores que pueden reducir la capacidad de las administraciones tributarias para llevar a cabo las auditorías.

20. Cada coordinador de comprobaciones tributarias simultáneas deberá informar a su/s contraparte/s de su selección de posibles casos para comprobación tributaria simultánea, usando los criterios de selección abajo señalados. Se deberá explicar las razones por las que se seleccionaron los casos, al igual que la información que condujo a sus propuestas, conjuntamente con cualquier otra información pertinente. También se debe proporcionar información respecto de los plazos de prescripción aplicables a los casos propuestos para fiscalización o comprobación tributaria simultánea.

Criterios para la selección de casos

21. Cualquier caso seleccionado para fiscalización o comprobación tributaria simultánea, generalmente implicará a un contribuyentes o contribuyentes con operaciones en los países participantes, ya sea a través de filiales o a través de establecimientos permanentes. Deben tenerse en cuenta los siguientes factores, además de los factores señalados en la Parte 4 de este módulo, en lo que respecta al momento en que puede resultar adecuado llevar a cabo una fiscalización o comprobación tributaria simultánea:

- la existencia de indicios de incumplimiento sustancial de la norma tributaria en los países participantes;
- indicación de otras formas de planificación tributaria internacional agresiva que, en caso de ser contrarrestada de forma exitosa, podría generar un rendimiento tributario adicional para los países participantes;
- indicación de que el resultado económico de un contribuyentes o contribuyentes vinculados, durante un periodo de tiempo, es significativamente peor de lo que podría esperarse, por ejemplo;
- el resultado económico no refleja los adecuados beneficios cuando se contrapone con las ventas, los activos totales, etc.;
- casos en los que el contribuyente sufra pérdidas de manera constante, especialmente pérdidas a largo plazo;
- casos en los que el contribuyente, independientemente de la rentabilidad, pagó poco o ningún impuesto durante el periodo de referencia.

PASO 2-ACUERDOS SOBRE LOS CASOS ADECUADOS.

22. Tras considerar la información anterior, cada coordinador de comprobaciones tributarias simultáneas debe, conjuntamente con el personal adecuado de su propia administración tributaria, tomar una decisión sobre si su país desea participar en una fiscalización o comprobación tributaria simultánea. Al tomar esta decisión, la administración tributaria debe considerar la información recibida de la administración tributaria que desea la fiscalización o comprobación tributaria simultánea, conjuntamente con la información disponible en sus propias fuentes. A tal efecto, el coordinador de las comprobaciones tributarias simultáneas debe procurar obtener cualquier información que se requiera a fin de tomar una decisión, ya sea conforme a sus leyes nacionales o a las disposiciones del Artículo pertinente sobre intercambio de información de los instrumentos referidos anteriormente.

23. Los coordinadores de las comprobaciones tributarias simultáneas deben confirmar por escrito a su/s contraparte/s su conformidad o su negativa a llevar a cabo la fiscalización o comprobación tributaria simultánea específica (mencionando los contribuyentes, impuestos, años fiscales afectados y sucintamente las razones para la aceptación o el rechazo).

24. Los coordinadores de las comprobaciones tributarias simultáneas deberán nombrar representantes designados que tendrán la responsabilidad funcional de dirigir y coordinar la fiscalización.

25. Los coordinadores de las comprobaciones tributarias simultáneas pueden presentar mutuamente otras solicitudes de intercambio de información o proporcionar información espontánea, unos a otros, de acuerdo con las disposiciones relevantes sobre intercambio información.

26. Un prerequisite para la selección es que los mismos años fiscales estén sometidos a fiscalización o comprobación en dos o más países interesados en la fiscalización o comprobación tributaria simultánea.

27. El coordinador de las comprobaciones tributarias simultáneas de cada país puede, mediante declaración dirigida a su/s contraparte/s en el otro país (o países) señalar que, de acuerdo con su legislación nacional, informará a sus residentes o nacionales antes de transmitir la información relevante de acuerdo con el artículo de intercambio información.

28. Todos los casos seleccionados para la fiscalización o comprobación tributaria simultánea debe ser examinados por el / los representante/s designado/s a fin de establecer si existe una base para llevar a cabo la auditoría informática. En los casos en que se considere adecuado llevar a cabo parte de la auditoría mediante la auditoría informática, el representante designado deberá nombrar un coordinador de servicios informáticos.

PASO 3-REALIZACIÓN DE LAS COMPROBACIONES PRELIMINARES.

Tareas Preliminares a la Fiscalización o comprobación.

Los auditores, preferiblemente, deben realizarlas siguientes tareas antes de mantener la reunión de planificación inicial entre los representantes designados:

1. Revisión de los estados financieros y las declaraciones del impuesto sobre la renta, por ejemplo:
 - a) análisis de los estados financieros y declaraciones del impuesto sobre la renta;
 - b) cálculo de las cifras más relevantes, ratios, etc.;
 - c) identificación y localización de incidencias fiscales importantes;
 - d) identificación y registro de cualquier aspecto que pueda ser pertinente

2. Análisis de la organización del grupo, por ejemplo:
 - a) la estructura del grupo;
 - b) la propiedad;
 - c) las transacciones del grupo;
 - d) las cuentas entre compañías;
 - e) la revisión de la información disponible internamente en las administraciones tributarias:
 - i. antecedentes;
 - ii. correspondencia previa;
 - iii. casos, decisiones o fallos previos; y
 - iv. otras circunstancias especiales que revistan importancia para la auditoría; y

 - f) la información relevante obtenida de otras administraciones tributarias

PASO 4 - CONTACTO CON LOS CONTRIBUYENTES.

30. Se recomienda que el primer contacto con los contribuyentes sometidos a inspección mediante el procedimiento de fiscalización o comprobación tributaria simultánea, se produzca al mismo tiempo en los países participantes, o tan cerca uno de otro como sea posible.

31. Naturalmente, se deben observar los requisitos formales que en cada país rigen la notificación de la auditoría al/a los contribuyente/s. Algunos países, por ejemplo, requieren que se de un preaviso suficiente a aquellos contribuyentes que vayan a ser objeto de la comprobación. Con carácter previo a iniciar una fiscalización o comprobación tributaria simultánea, las administraciones deberán conocer los requisitos formales respecto a los derechos en el ámbito de las notificaciones en el otro país (o países) en las primeras etapas del proceso.

32. El contacto con el contribuyente deberá establecerse durante o con posterioridad a llevar a cabo las comprobaciones preliminares (Paso 3) y antes de la reunión de planificación inicial (Paso 5).

PASO 5 - REUNIÓN INICIAL PARA LA PLANIFICACIÓN

33. Antes de que los países individualmente comiencen la auditoría del caso seleccionado, deberá celebrarse una reunión de planificación inicial con la finalidad de:

- definir las áreas de interés común a ser examinadas;
- desarrollar conjuntamente estrategias que aseguren la eficaz coordinación de las comprobaciones tributarias simultáneas;
- entender de qué forma cada país se propone llevar a cabo su fiscalización o comprobación (por ejemplo, ello debería incluir la información mutua acerca del tiempo y alcance propuestos, sobre las comprobaciones preliminares, acerca de las reuniones con el contribuyente y sobre los procedimientos para la presentación de informes);
- entender qué es lo que se fiscalizará en cada país;
- acordar fechas como objetivos;
- discutir aspectos técnicos relacionados;
- acordar las buenas prácticas en relación a cómo se intercambiarán la información entre los países;
- determinar si alguno de los auditores de un país puede participar en las investigaciones del otro país (o países), y efectuar acuerdos a tal fin si se considera deseable; y
- determinar si cualquier parte de la fiscalización o comprobación puede realizarse informáticamente.

34. El representante designado del país que propone la fiscalización o comprobación tributaria simultánea debe organizar la reunión de planificación inicial.

35. Cuando no sea posible realizar tal reunión debido, por ejemplo, al coste, la logística u otras razones, los representantes designados deberán acordar otros métodos de comunicación (por ejemplo, la tele conferencia, el teléfono, el intercambio de documentos) que produzcan el mismo resultado.

PASO 6 - REUNIONES Y ENTREVISTAS CON LOS CONTRIBUYENTES

36. Durante la reunión preliminar entre el contribuyente y los auditores, el representante designado deberá informar al contribuyente acerca de la fiscalización o comprobación tributaria simultánea, incluyendo el asesoramiento acerca de cómo se intercambiará la información relevante entre las administraciones tributarias y los fundamentos jurídicos para hacerlo.

37. Los auditores deberán procurar obtener la siguiente información del contribuyente:

- la visión general sobre las actividades del negocio del contribuyente, antecedentes, desarrollo etc.;
- los propietarios actuales y estructura del grupo;
- la descripción de los sistemas de presentación de informes y de la contabilidad, incluyendo los sistemas informáticos;
- los planes de cuentas y las instrucciones contables;
- los informes de auditores externos;
- detalles acerca de las transacciones comerciales y económicas con compañías vinculadas en otros países;
- detalles sobre la política del grupo en relación con los precios de transferencia;
- detalles acerca de otras transacciones internas del grupo;
- detalles acerca de cualquier acuerdo interno del grupo o regulaciones del grupo (por ejemplo, relativas a las materias contables);
- las actas de la junta directiva; y
- cualquier otro detalle individual y específico del/de los contribuyente/s que está/n siendo auditados.

PASO 7-COMPROBACIONES ADICIONALES

38. Conviene subrayar que una fiscalización o comprobación tributaria simultánea eficiente y eficaz requiere la estrecha cooperación de funcionarios de la administración tributaria situados en diferentes países. Los representantes designados deberán intentar, en la medida que sea factible, la sincronización de sus programas de trabajo y comunicarse sobre una base habitual acordada.

39. En el transcurso de la fiscalización o comprobación tributaria simultánea, los representantes designados deben asegurarse de que los auditores participantes estén continua y completamente informados sobre cuál ha sido el avance del trabajo en cada uno de los países. Esto se puede hacer a través de, por ejemplo, hojas de información periódicas, boletines, etc. Las reuniones deberán celebrarse sólo si son necesarias y requeridas, con la participación de los auditores a fin de intercambiar la experiencia adquirida de las comprobaciones fiscales simultáneas y para planificar iniciativas adicionales.

40. El intercambio de información debe tener lugar de acuerdo con el artículo sobre intercambio de información que exista en el instrumento entre los países participantes en la fiscalización o comprobación tributaria simultánea. Es, por tanto, esencial que los coordinadores de las comprobaciones tributarias simultáneas (o cualquier otro funcionario de la autoridad competente delegada o autorizada) asista a todas las reuniones en las que se pueda intercambiar información para asegurar que cualquier intercambio se efectuará legalmente y de conformidad con los procedimientos de las administraciones tributarias relativos al intercambio de información.

41. Cuando surjan cuestiones sobre una potencial doble tributación en el curso de las comprobaciones tributarias simultáneas:

- los contribuyentes podrán presentar una solicitud para el inicio de un procedimiento amistoso en una fase anterior que en el caso de que no hubiera una fiscalización o comprobación tributaria simultánea; y
- los representantes de las autoridades competentes podrán recopilar pruebas más completas para aquellos ajustes fiscales para los que el acuerdo amistoso pudiera ser solicitado.

PASO 8-FINALIZACIÓN DEL CASO

42. Si cualquiera de los países concluye que ya no le resulta beneficioso continuar con la fiscalización o comprobación tributaria simultánea, deberá retirarse notificando por escrito su decisión al otro país (o países), a la brevedad mayor posible con posterioridad a haber tomado la decisión.

43. Una fiscalización o comprobación tributaria simultánea solamente debe concluirse después de la coordinación y consulta (preferiblemente a través de una reunión) entre los representantes de cada uno de los países participantes. Durante esta consulta, los representantes designados deberán intentar adoptar una posición común en relación con el/los contribuyente/s en lo que se refiere a las áreas de fiscalización o comprobación tributaria simultánea en las cuales hay concurrencia entre la legislación de diversos países. Esta fase de consulta deberá realizarse antes de las negociaciones finales con el/los contribuyente/s.

44. La resolución de las cuestiones relativas a la doble tributación, puestas de manifiesto en la fiscalización o comprobación, están reservadas al procedimiento amistoso

PASO 9-INFORME FINAL

45. Una vez finalizada la fiscalización tributaria simultánea, el representante designado deberá emitir un informe detallado en el que se incluya un resumen de los resultados alcanzados y una evaluación de los procedimientos implantados para lograr éstos resultados.

46. A fin de mejorar la transparencia y el programa, este informe debe ser intercambiado con otros países que participen en la fiscalización o comprobación tributaria simultánea.

47. Los representantes designados también deberán suministrar una copia del informe al coordinador de las comprobaciones tributarias simultáneas.

48. El informe final debe incluir las siguientes áreas:

Parte general

- un resumen de la fiscalización tributaria realizada y los resultados logrados (naturaleza y cantidad);
- una declaración señalando si alguna parte del resultado puede ser directamente atribuido al procedimiento de fiscalización o comprobación tributaria simultánea (incluyendo las razones por las que dicha parte puede atribuirse directamente al procedimiento de fiscalización o comprobación simultánea); y
- una declaración respecto a si el/los contribuyente/s ha/n aceptado las conclusiones alcanzadas por los auditores y/o qué acciones puede/n tomar el/los contribuyente/s en el futuro.

Observaciones

49. Las comprobaciones tributarias simultáneas con frecuencia pueden revelar la explotación o el abuso sistemático de leyes existentes en algún/os país/es. Por lo tanto, se recomienda que en el informe se mencione:

- las transacciones u otras cuestiones que sistemáticamente aprovechan las diferencias entre legislaciones y entre las administraciones tributarias de los distintos países; y
- cualquier manipulación indeseable o no establecida en los convenios tributarios para evitar doble imposición que operan en los países participantes.

50. También es importante informar acerca de la percepción de los contribuyentes sobre acerca la realización de la fiscalización o comprobación tributaria simultánea. A tal fin, el informe debe hacer referencia a:

- cualquier problema o dificultad al tratar con el/los contribuyente/s en el transcurso de la fiscalización o comprobación tributaria simultánea; y
- los comentarios y otras reacciones del/de los contribuyente/s como consecuencia de estar sujeto a una fiscalización o comprobación tributaria simultánea

51. Para asistir a las administraciones tributarias en el desarrollo de áreas susceptibles de cooperación y mejora de los procedimientos para realizar comprobaciones tributarias simultáneas, es importante que los representantes designados expresen su punto de vista personal sobre:

- el nivel general de cooperación experimentado entre los países participantes;
- la calidad y temporalidad de la información intercambiada entre los países participantes;

- las áreas en las que los procedimientos de comprobación tributaria simultánea no funcionaron satisfactoriamente;
- las propuestas de mejora;
- cualquier otro comentario que contribuya a mejorar la eficacia de las comprobaciones tributarias simultáneas en el futuro.

PASO 10- PUESTA EN PRÁCTICA DE LAS MEJORAS RECOMENDADAS

52. Como parte del ciclo de mejora continua, los coordinadores de las comprobaciones tributarias simultáneas deben tratar de implementar los cambios en los procedimientos y programas de cumplimiento de las comprobaciones tributarias simultáneas, basándose en la información de retorno contenida en los informes finales.

53. Cualquier cambio material en los procedimientos de las comprobaciones tributarias simultáneas de las administraciones fiscales y/o en los programas deben ser comunicados, a través de los coordinadores de las comprobaciones tributarias simultáneas.

54. Se desprende de lo anterior que, cualquier material para la formación o los cursos sobre procedimientos de fiscalizaciones o comprobaciones tributarias simultáneas y/o programas debe ser actualizado para reflejar estos cambios.

ANEXOS:

**ANEXO 1: MODELO DE ACUERDO DE LA OCDE EN PARA LLEVAR A CABO
COMPROBACIONES TRIBUTARIAS SIMULTÁNEAS
(Disponible sólo en inglés)**

**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 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.

**ANEXO 2: DIRECTRICES INTRA-NÓRDICAS PARA LAS INSPECCIONES SIMULTÁNEAS
INTER-NÓRDICAS. (Disponible sólo en inglés)**

*Guidelines for
Inter-Nordic Simultaneous Audits*

The Project Group 2005

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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 inkomsts-katten, däri inbegripet sjömannsskatten och kuptionskatten);
- 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 inkomsts-katten); and
- 7) the capital tax to the State (den statliga förmögenhets-skatten);

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.

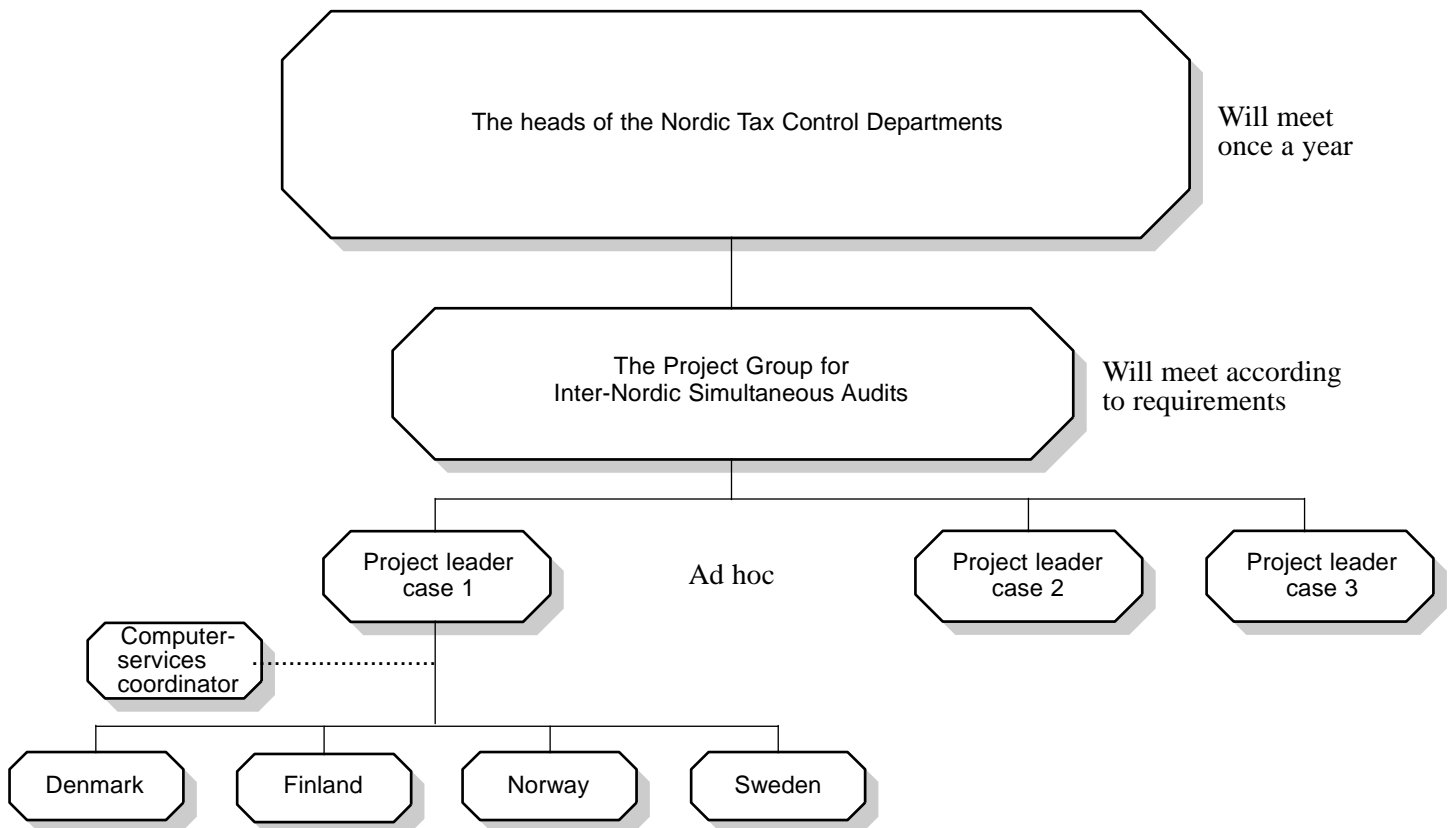
This part of the report may, e.g. contain the following:

- 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....

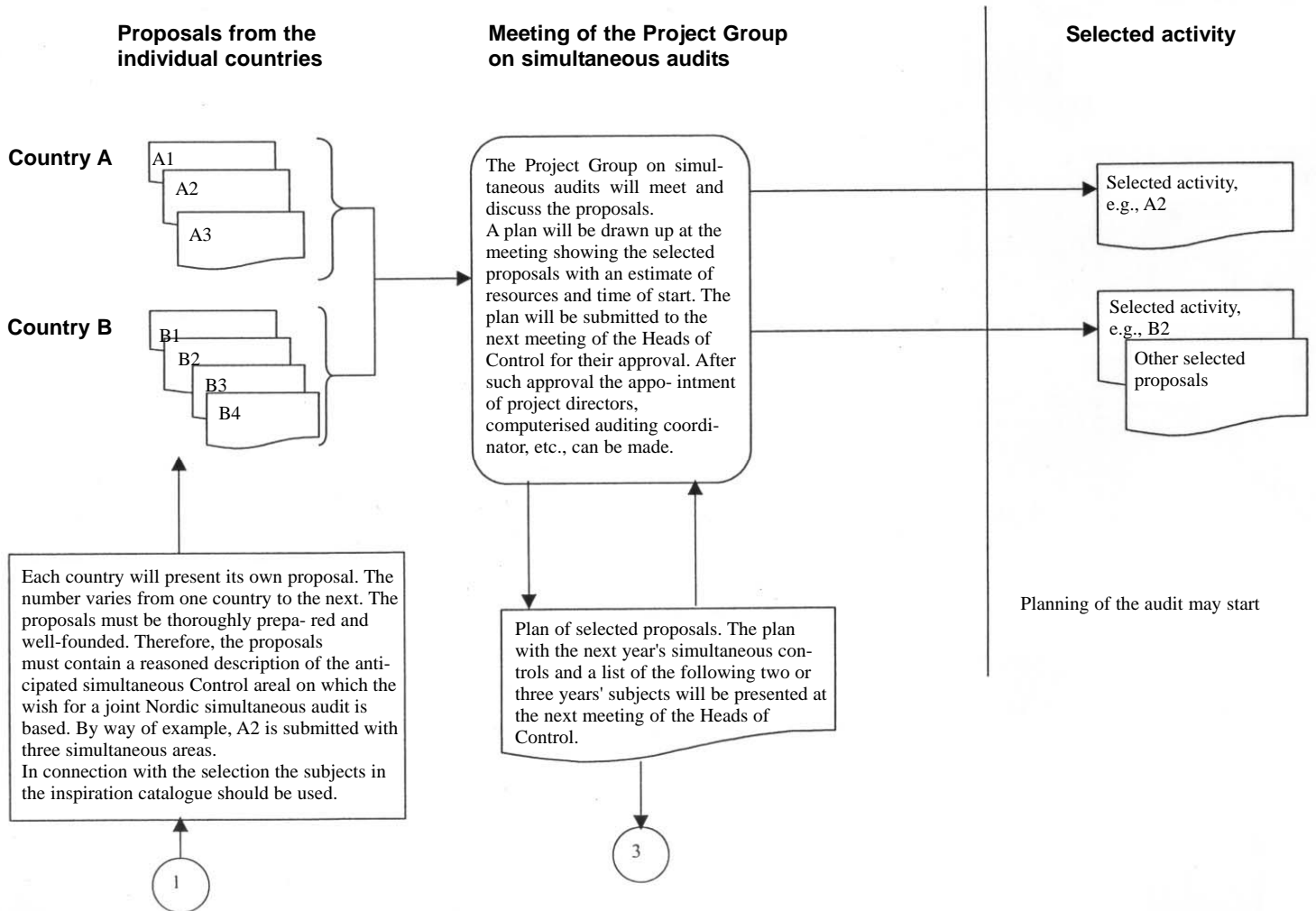
Signatures of all Competent Authorities involved in the present Agreement.

Appendix H

Schematic Presentation of the Selection Procedure/ Auditing Process

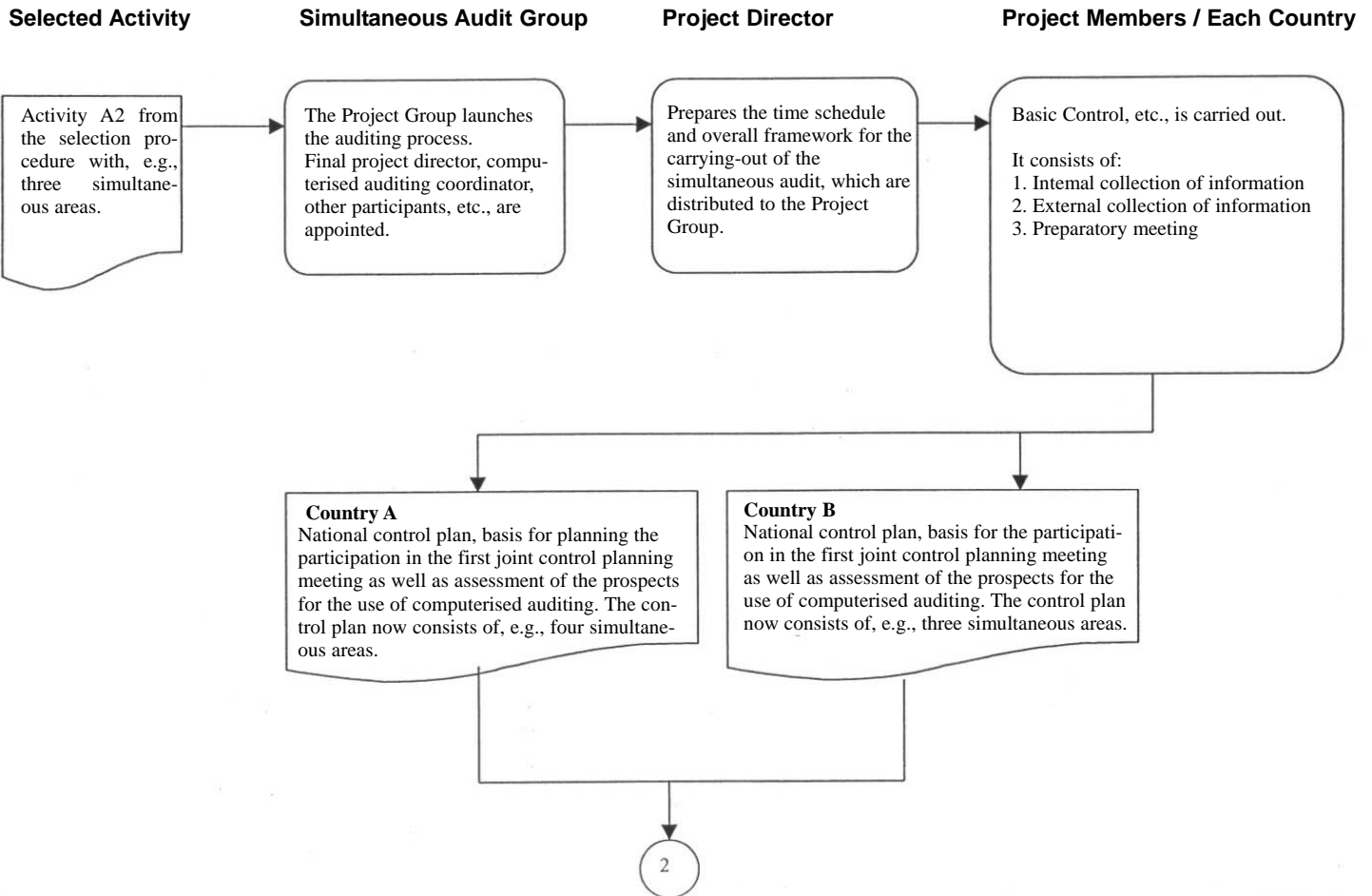
Selection procedure, many proposals

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

