

GLOBAL FORUM ON
**TRANSPARENCY AND EXCHANGE OF
INFORMATION FOR TAX PURPOSES**

A Toolkit for Establishing a Function for Cross-Border Assistance in the Recovery of Tax Claims

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Abbreviations and acronyms

AEOI Automatic exchange of financial account information

BEPS Base Erosion and Profit Shifting

CA Competent Authority

CBAR Cross-border assistance in the recovery of tax claims

CRS Common Reporting Standard

DTC Double Tax Convention

DRM Domestic Resource Mobilisation

EOI Exchange of information

EU European Union

EOIR Exchange of Information on Request

Global Forum Global Forum on Transparency and Exchange of Information for Tax Purposes

IFFs Illicit Financial Flows

MAAC Convention on Mutual Administrative Assistance in Tax Matters

MoU Memorandum of understanding

OECD Organisation for Economic Co-operation and Development

SEOI Spontaneous Exchange of Information

UN United Nations

Preface



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Tax revenues are the main source of funding for the national budget in most countries. Even if a large majority of taxpayers comply with their tax obligations and most taxes are paid on time, there is still a sizable amount of tax which remains unpaid at due date. The recovery of those unpaid taxes is one of the last but critical steps of the taxation cycle. While taxpayers and their assets are increasingly mobile, the powers of tax authorities to collect assessed taxes are limited to the borders of their respective countries. Therefore, in a cross-border context, the recovery of unpaid taxes is a challenge for many tax authorities.

Following calls from African countries and other developing countries to strengthen the international tax co-operation framework by ensuring effective cross-border assistance in the recovery of tax claims¹, members of the Africa Initiative² identified assistance in cross-border recovery of tax claims as one of their priority areas for the period 2021-2023. A Working Group was established³, with the objective of conducting a fact-finding exercise to understand the current position of African countries on cross-border assistance in the recovery of tax claims and ascertaining the conditions necessary for their effective participation in this form of international tax co-operation.

1. The call was first made by participants to the 5th Anniversary of the Africa Initiative held on 25 November 2019, reinforced by some other members of the Global Forum at its 10th Anniversary Plenary Meeting in November 2019. It was further reiterated at the 8th Africa Initiative meeting in October 2020. The Statements of outcomes of these meetings are available at: www.oecd.org/tax/transparency/documents/Statement-10-years-global-forum-Africa-Initiative-ministerial.pdf; www.oecd.org/tax/transparency/documents/statement-of-outcomes-global-forum-10-years.pdf and www.oecd.org/tax/transparency/documents/8th-meeting-of-the-africa-initiative-statement-of-outcomes.pdf.
2. The Africa Initiative is an African-focused partnership between the Global Forum, its 37 African members and various partners and donors, including African institutions, aimed at unlocking the potential of tax transparency and exchange of information for African countries, by ensuring that they are well equipped to better tackle tax evasion and other illicit financial flows and increase their tax revenues. More information on the Africa Initiative at www.oecd.org/tax/transparency/what-we-do/technical-assistance/africa-initiative.htm.
3. The Working Group was composed of 24 members drawn from 12 African countries: Benin, Burkina Faso, Cameroon, Ghana, Kenya, Madagascar, Mauritius, Senegal, South Africa, Tanzania, Tunisia and Uganda.

The note on Cross-Border Assistance in the Recovery of Tax Claims and Conditions Necessary for Effective Assistance (the Note)⁴ prepared by the Working Group was approved by the Africa Initiative in November 2021. One key recommendation was for African countries to establish appropriate legal, administrative and operational frameworks for cross-border assistance in recovery of tax claims.

Working with its African members, the Global Forum Secretariat's capacity-building team aims at developing capacities and ensuring that cross-border assistance in the recovery of tax claims becomes a useful tool to tax authorities that are exposed to the issue of cross-border mobility of tax debtors and their assets. This toolkit for establishing a function for cross-border assistance in tax recovery is part of the efforts to provide tax authorities with practical tools for participating in this form of administrative assistance. Its objective is to raise awareness and provide guidance on the steps to follow to establish and manage an effective function for cross-border assistance in the recovery of tax claims. It is aimed at assisting jurisdictions with no or limited experience in this form of mutual administrative assistance in tax matters, but also more advanced jurisdictions which are looking to improve their existing framework.

This toolkit was produced thanks to the generous support of donor countries and organisations, and technical support from Belgium, France and Japan. We also thank the members of the Africa Initiative Working Group on cross-border assistance in the recovery of tax claims and jurisdictions that have kindly shared their experience in this toolkit (France, Japan, Lesotho, Norway, South Africa and Tunisia).

4. The summary of the findings of the Note are available at www.oecd.org/tax/transparency/documents/cross-border-assistance-recovery-of-tax-claims-african-countries.pdf.

About this toolkit

There are several publications on cross-border assistance in the recovery of tax claims. However, most of the existing literature focuses, in general, on the key requirements and the procedure to request and provide this form of mutual assistance in tax matters. This toolkit is the first of its kind as, beyond the procedural requirements and processes, it addresses the specific needs of jurisdictions which want to start the implementation of cross-border assistance in the recovery of tax claims. It provides guidance on building the frameworks necessary for this form of assistance with a focus on the establishment and the management of a dedicated function within a tax authority.⁵

The annexes provide resources that are relevant for establishing or managing the function for cross-border assistance in tax recovery such as model memorandum of understanding, cheklists and other useful resources.

The toolkit is divided into three chapters, as follows:

- Chapter 1 provides some background information on the context of international co-operation in tax matters and explains its various forms and the importance of cross-border assistance in the recovery of tax claims.
- Chapter 2 provides an overview of the key elements of cross-border assistance in the recovery of tax claims, including the conditions for providing this form of mutual administrative assistance in tax matters and the various steps to follow. It also explains the synergies between cross-border assistance in the recovery of tax claims and other forms of mutual administrative assistance in tax matters, as well as the importance of establishing a specific function for cross-border assistance in the recovery of tax claims.
- Chapter 3 provides details on the establishment of a function for cross-border assistance in the recovery of tax claims. It highlights the need for an overarching implementation strategy, describes the mission of such a function within a tax authority and the legal, administrative and operational frameworks as well as the resources needed to ensure an effective use of this form of mutual assistance.

5. In the context of this toolkit, a tax authority covers a tax administration or a tax function in a ministry of finance.

1. Introduction

International co-operation in tax matters is essential for tax authorities to properly enforce their domestic legal framework within an increasingly globalised economy. It assists tax authorities to detect, combat and deter cross-border tax evasion through different forms of mutual administrative assistance, including cross-border assistance in the recovery of tax claims (CBAR).

This toolkit focuses on one form of international cooperation in tax matters, CBAR, which may be facilitated through a bilateral legal instrument such as a double tax convention (DTC), multilateral DTC (e.g. regional DTCs) or multilateral legal agreements such as the convention on mutual administrative assistance in tax matters (MAAC).

1.1. GENERAL CONTEXT FOR INTERNATIONAL CO-OPERATION IN TAX MATTERS

The globalisation of economies and the establishment of common markets or free trade areas have increased cross-border transactions and the mobility of citizens across national borders. The mobile character of taxpayers, together with their capital and assets, present significant challenges to tax authorities – whose enforcement powers are limited to their national territory – and have an impact on the assessment and recovery of taxes.

Due to the territorial limitation of tax authorities, they are unable to investigate their taxpayers' affairs beyond their national borders unless they obtain the assistance of foreign tax authorities. International co-operation in tax matters thus allows tax authorities to co-operate with each other to enforce their domestic legislation and protect their tax base by tackling cross-border tax evasion.

1.2. FORMS OF INTERNATIONAL CO-OPERATION IN TAX MATTERS

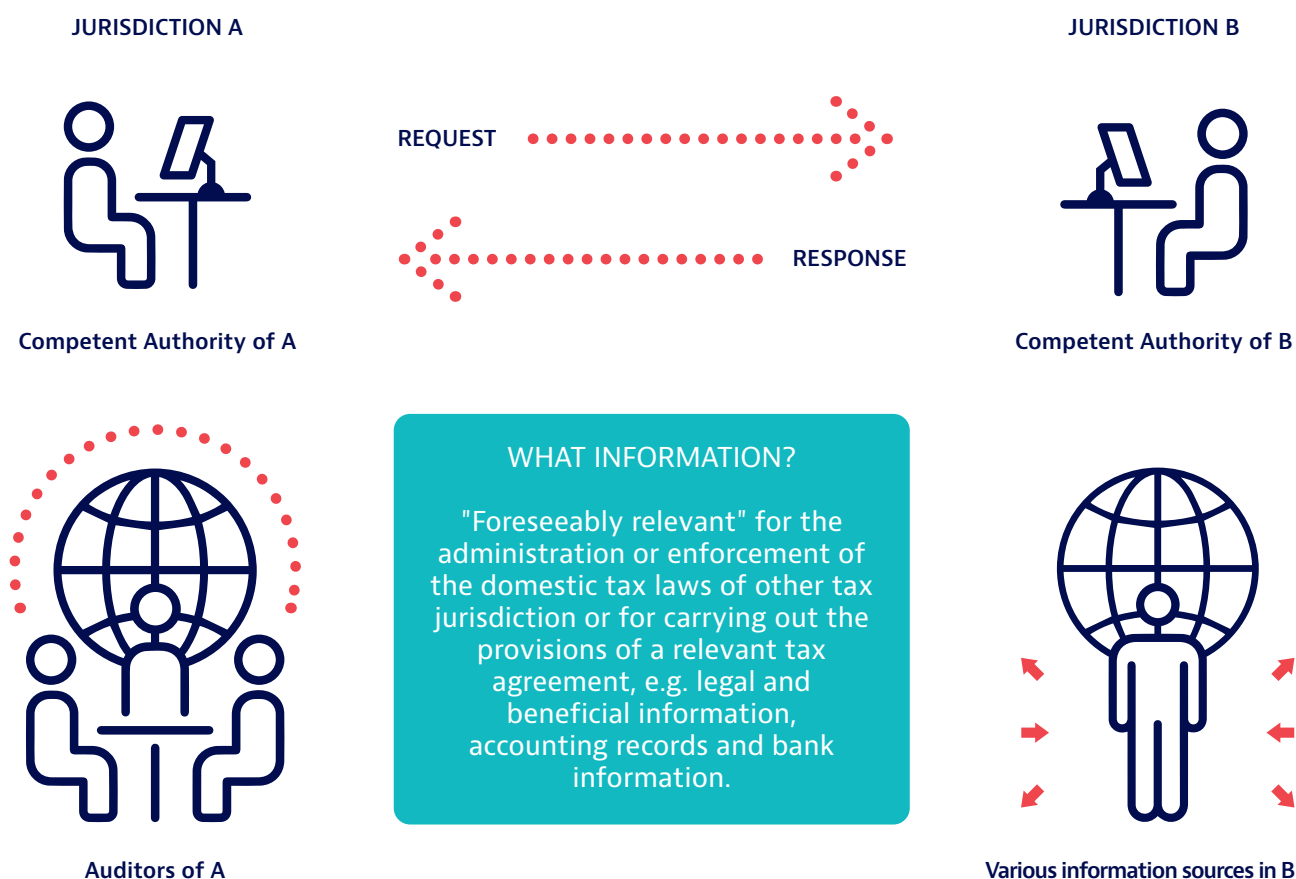
The mutual administrative assistance in tax matters can be broadly separated between exchange of information (EOI) for tax purposes, the service of documents, measures of conservancy and CBAR.

1.2.1. Exchange of information for tax purposes

EOI is the cross-border sharing of information for tax purposes between tax authorities, under an international

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FIGURE 1. Exchange of information on request



legal instrument that is in force between two or more jurisdictions. EOI allows tax authorities to clarify the position of their taxpayers having connections with foreign jurisdictions and helps to detect and prevent cross-border tax evasion, ensure the correct application of a jurisdiction's domestic tax legislation and foster domestic tax compliance.

There are various forms of EOI allowed under international agreements that provide for mutual administrative assistance in tax matters:

- **Exchange of information on request (EOIR)**⁶ refers to a situation where the competent authority (CA) of one jurisdiction asks for specific information from the CA of another country on the basis of an international agreement in force between the two jurisdictions. EOIR is the exchange of information that is foreseeably relevant for the administration

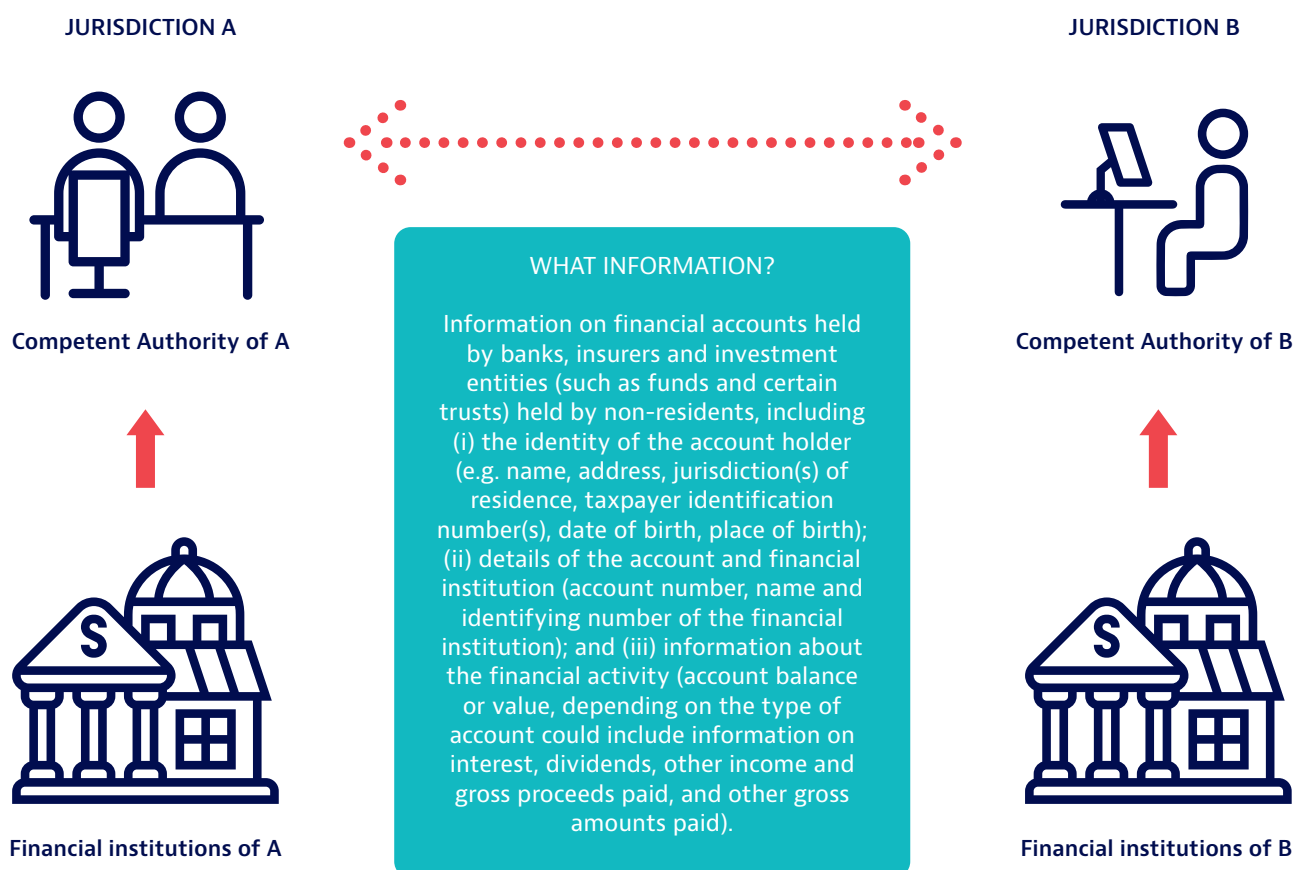
and enforcement of the tax laws of the requesting jurisdiction or administering the international agreement under which it is requested, based on a specific request made by one jurisdiction to another. Figure 1 illustrates EOIR.

- **Automatic exchange of information (AEOI)**⁷ occurs when CAs of two jurisdictions exchange, without prior request and on a periodic basis, predefined information in accordance with an international agreement. Information, which is exchanged automatically, usually consists of details of income arising in the source country, e.g. interest, dividends, royalties, pensions. This information is obtained on a routine basis (generally through reporting of the payments by the payer) by the sending jurisdiction and is thus available for transmission. CAs interested in AEOI shall agree in advance, as to what type of

6. More information about EOIR is available at www.oecd.org/tax/transparency/what-we-do.

7. More information about AEOI is available at www.oecd.org/tax/automatic-exchange.

FIGURE 2. Automatic exchange of information



information they wish to exchange on this basis, and how and when the exchanges will happen. AEOI may occur under different forms for example through an Intergovernmental Agreement to implement the Foreign Account Tax Compliance Act⁸ and Country-by-Country Reporting.⁹ However, any reference in this toolkit to AEOI refers to the international standard for automatic exchange of financial account information (the AEOI standard)¹⁰ as illustrated by Figure 2.

- **Spontaneous exchange of information (SEOI)** enables the provision of information that is foreseeably relevant to a foreign CA and that has not been

previously requested. SEOI may take place in a voluntary or in a mandatory manner.

Voluntary SEOI may take place if, in the course of its ordinary work functions, a tax official of one jurisdiction identifies information that could help another jurisdiction to enforce their domestic tax laws. In this circumstance, the CA of the jurisdiction will evaluate the information and decide whether to spontaneously share it (as long as there is an international agreement in force that allows SEOI between both jurisdictions). Its effectiveness largely depends on the ability of field officers and tax auditors to identify, in the course of their activities (e.g. tax management, tax audit and investigation), information that may be relevant for a foreign tax authority. Figure 3 illustrates voluntary SEOI.

SEOI can also be a mandatory where a jurisdiction is obligated to send information to a partner jurisdiction under specific circumstances. For instance, jurisdictions that implement the minimum standards of the Base Erosion and Profit

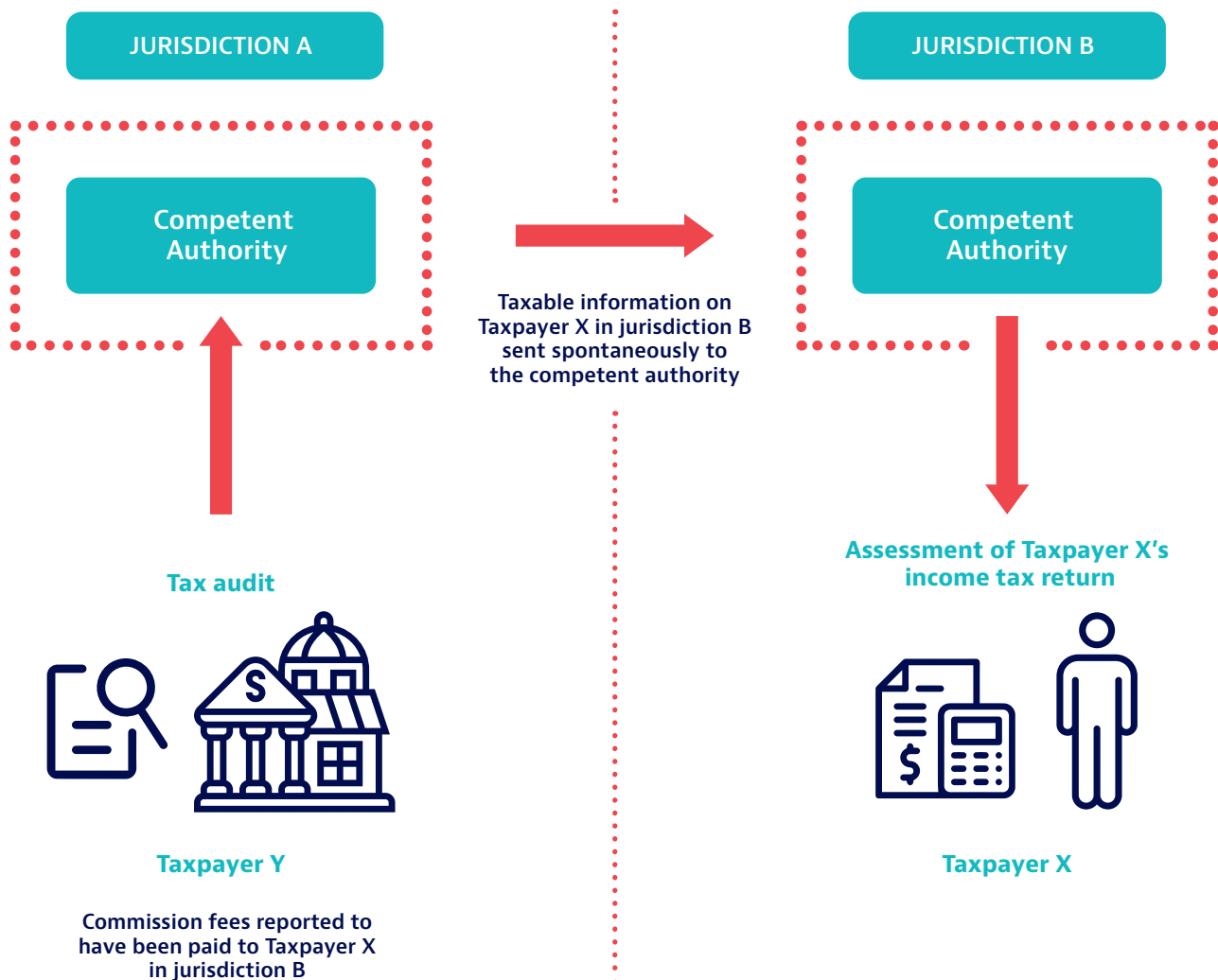
8. More information about the Foreign Account Tax Compliance Act is available at <https://home.treasury.gov/policy-issues/tax-policy/foreign-account-tax-compliance-act>.

9. More information about Country-by-Country Reporting is available at www.oecd.org/tax/beps/beps-actions/action13/.

10. More information about AEOI under the CRS is available at www.oecd.org/tax/automatic-exchange/.

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FIGURE 3. Spontaneous exchange of information



Shifting (BEPS) OECD project are committed to spontaneously exchanging tax rulings related to preferential regimes, transfer pricing decisions, permanent establishment and others under BEPS Action 5.¹¹

- A **simultaneous tax examination** is an arrangement between two or more jurisdictions to examine, at the same time, the tax affairs of a person or persons in which they have a common or related interest. Each jurisdiction conducts such examination from its own territory but with the main objective of exchanging any relevant information obtained with the other jurisdiction(s). At the request of a jurisdiction, two or more jurisdictions may therefore

consult together for the purposes of determining cases and procedures for a simultaneous tax examination.

- Countries may opt for a **tax examination abroad** which involves the representatives of the CA of one jurisdiction being allowed by the CA of the requested jurisdiction to be present at the appropriate part of a tax examination in the requested jurisdiction. However, the CA of the requested jurisdiction makes all the decisions with respect to such examination including the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions to which such examinations shall adhere to. A tax examination abroad takes place in the context of a tax audit or investigation.

11. More information about BEPS Action 5 is available at www.oecd.org/tax/beps/beps-actions/action5.

- An **industry-wide EOI** does not concern a specific taxpayer but an economic sector as a whole, for instance the telecommunications industry or the oil and gas industry. It involves the representatives of the partner jurisdictions meeting to discuss the way in which a particular economic sector operates, the financing schemes, the way prices are determined, the tax evasion trends identified, etc.

The EOIR standard¹² and the AEOI standard¹³ are the two internationally agreed standards for EOI. The Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum)¹⁴ monitors and supports the effective implementation of these two international standards.

1.2.2. Service of documents

Mutual administrative assistance in tax matters may also occur through the service of documents. This form of assistance is essentially intended to ensure that documents (e.g. notices of assessment, reminders of tax obligations and court decisions) formally reach a concerned taxpayer who is located in another jurisdiction. It involves an obligation on the CA of a requested jurisdiction to use its domestic powers to ensure that tax notices and legal documents are served on persons resident within their jurisdiction at the request of another jurisdiction. This form of assistance may precede and is often intended to support CBAR.

1.2.3. Measures of conservancy

A tax authority may request a foreign tax authority to adopt precautionary measures on its national territory in order to secure the future recovery of a tax claim. Measures of conservancy may be adopted even if the tax claim might still be contested or if it is not yet the subject of an enforceable instrument. This form of assistance is often used if there are concerns that a debtor may take steps to frustrate recovery of the debt, for instance if the same debtor has previously sought to avoid domestic collection through different evasive measures. Measures of conservancy is possible under Article 12 of the MAAC.

12. The EOIR standard is available at www.oecd.org/tax/transparency/documents/terms-of-reference.pdf.

13. The AEOI standard is available at www.oecd.org/tax/exchange-of-tax-information/standard-for-automatic-exchange-of-financial-account-information-in-tax-matters-second-edition-9789264267992-en.htm.

14. More information about the Global Forum on Transparency and Exchange of Information for Tax Purposes is available at www.oecd.org/tax/transparency.

1.2.4. Cross-border assistance in the recovery of tax claims

The challenges posed to tax authorities by globalisation and its attendant effects – increased cross-border economic transactions and the mobility of people, capital and assets – are not limited to understanding the taxable income or activities. They also concern the recovery of tax claims, as tax authorities do not have the power to enforce the collection of tax claims beyond their national borders.

For instance, a taxpayer that has been assessed to owe taxes in Jurisdiction A may reside in Jurisdiction B and hold all of its assets in Jurisdiction B and/or Jurisdiction C. As a result, the tax authority of Jurisdiction A may be unable to collect the tax claim using its domestic legal powers in case the taxpayer does not voluntarily comply with the assessment. In this scenario, the tax authorities of Jurisdiction B and Jurisdiction C are best placed to recover the tax claims pursued by the tax authority of Jurisdiction A pursuant to a request for assistance to recover tax claims from Jurisdiction A. CBAR is therefore essential to enable Jurisdiction A to enforce its assessment and recover the tax claim in such a cross-border context.

CBAR is a form of international co-operation in tax matters which allows jurisdictions to assist each other to recover a tax claim if it remains fully or partly outstanding after exhausting all appropriate domestic legal powers and administrative procedures for recovery. This form of co-operation is established through an international agreement that provides for such assistance. It may include measures not only against the taxpayer but also against any person who, in accordance with the domestic legal framework of the jurisdiction that requests the assistance, may be liable for payment of the tax. This is therefore an important tool for a tax authority to overcome its territorial limitation for the recovery of tax claims in a cross-border context.

1.3 RELEVANCE OF CROSS-BORDER ASSISTANCE IN THE RECOVERY OF TAX CLAIMS

The inability of a tax authority to recover outstanding taxes may have several consequences. For example, it may:

- have an impact on revenue collection as all the taxes due are not collected because there are no assets/income available within the jurisdiction from which outstanding taxes may be recovered.

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- undermine the fairness of the tax system and lower tax morale if taxpayers can move their assets/income abroad to avoid paying outstanding tax claims. This affects the culture of voluntary compliance and may ultimately reduce revenues collected.
- lower the morale of tax officials who cannot collect all taxes which have been assessed in accordance with law because the taxpayer has no assets/income available in the jurisdiction which can be targeted for recovery.
- undermine public trust in the fairness of the tax system if taxpayers who are internationally mobile can relocate their assets/incomes to avoid the tax authorities' recovery efforts.

CBAR is therefore an important part of international co-operation in tax matters as it enables jurisdictions to help each other to recover all assessed taxes irrespective of the location of the tax debtor or its assets/income.

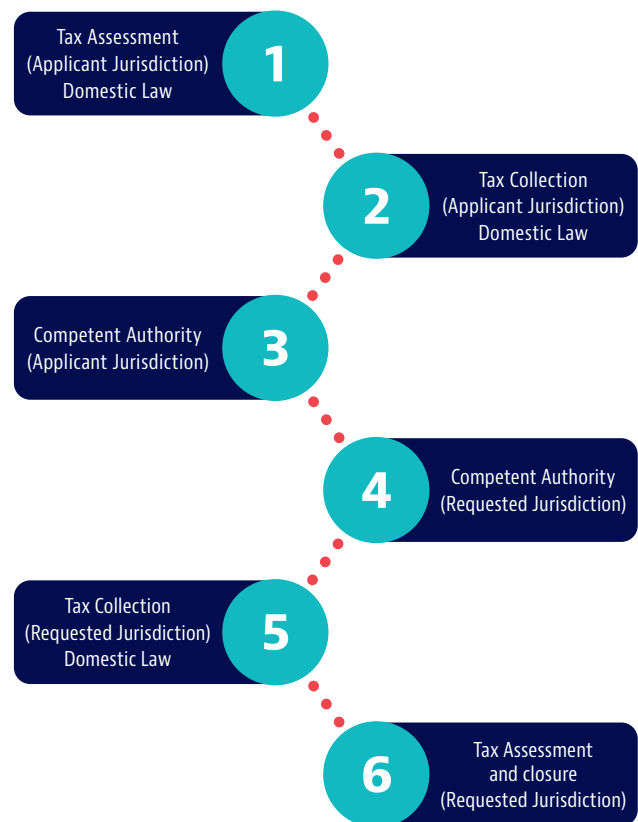
2. Cross-border assistance in the recovery of tax claims: key elements

CBAR involves a series of steps with technical requirements that must be met by a jurisdiction seeking assistance. There are also conditions attached to and limits to provide CBAR which a jurisdiction should consider before making a request. This chapter highlights the key steps in CBAR, the conditions for providing assistance and limits to the obligation to provide assistance. It also outlines the synergies between CBAR and other forms of mutual assistance in tax matters, as well as the importance of establishing a function for CBAR.

2.1. KEY STEPS IN CROSS-BORDER ASSISTANCE IN THE RECOVERY OF TAX CLAIMS

CBAR involves a number of steps that are supported by the domestic and international legal framework of a jurisdiction as shown in Figure 4.

FIGURE 4. Steps in cross-border assistance in the recovery of tax claims



Source: OECD (2020), *Forum on Tax Administration: Enhancing International Tax Debt Management*, Paris. www.oecd.org/tax/forum-on-tax-administration/publications-and-products/enhancing-international-tax-debt-management.htm.

Cross-border assistance in the recovery of tax claims: key elements

The key steps in CBAR are as follows:¹⁵

- **Step 1:** A tax authority issues a tax assessment to a taxpayer according to its domestic laws and administrative/procedural rules calling for the payment of the assessed taxes.
- **Step 2:** In the absence of voluntary payment, the tax authority will attempt to recover the outstanding tax using its domestic tax laws, policies and procedures. All appropriate measures available under the domestic laws and administrative procedures must be exhausted before a request for CBAR is made to another jurisdiction.
- **Step 3:** Where efforts to recover the tax debt in full or in part is unsuccessful at the domestic level, the tax authority determines whether it is appropriate to request another jurisdiction for assistance under an international agreement that is in force between the two jurisdictions. This may take place if: (i) the tax debtor remains in the jurisdiction but has assets in another jurisdiction or; (ii) the tax debtor is no longer in the jurisdiction and has assets in another jurisdiction. If a choice is made to pursue CBAR, the CA of the requesting jurisdiction will submit a request to the CA of the requested jurisdiction.

A request for CBAR entails the use of staff and dedication of resources in the requested jurisdiction. The requesting jurisdiction is expected to demonstrate that all appropriate domestic measures for collection and recovery have been exhausted. Additionally, the requesting jurisdiction may provide information on the availability of assets in the requested jurisdiction (e.g. funds in bank accounts or the identification of other assets held in the requested jurisdiction) that may be targeted for recovery.
- **Step 4:** The CA of the requested jurisdiction assesses the request for assistance and determines if it is appropriate taking into account whether an international agreement is in place to provide the legal basis for this form of administrative assistance between the two jurisdictions, whether the request is within the scope of that international legal instrument, whether the request meets the conditions in that international legal instrument as well as any

administrative agreement for CBAR that may be in place between the two jurisdictions. A request may be accepted or declined, in full or in part.

- **Step 5:** The requested jurisdiction applies its own domestic laws, policies and procedures to recover the outstanding tax for the requesting jurisdiction, as if it was its own debt.
- **Step 6:** The requested jurisdiction reports to the requesting jurisdiction on the recovery measures undertaken and the final results. If the recovery was successful, the amounts recovered are remitted to the requesting jurisdiction.

2.2. CONDITIONS FOR PROVIDING CROSS-BORDER ASSISTANCE IN THE RECOVERY OF TAX CLAIMS

Any request for CBAR must meet specific conditions that may be outlined in the international agreement governing the request. Such conditions may also be stipulated in administrative agreement or memorandum of understanding (MoU) agreed between the CAs of the requesting and requested jurisdiction.

The international agreement governing the CBAR request may also require additional procedures to be undertaken before assistance may be provided. For example, DTCs with provisions modelled on Article 27 of the OECD Model Tax Convention or UN Model will require the CAs to settle the mode of application of the article governing CBAR by mutual agreement. This may be in the form of a MoU which, among other things, outlines the conditions under which either jurisdiction will honour a CBAR request and sets out the practical modalities of the cooperation. These may include the threshold beyond which a tax debt is considered significant enough to request assistance, division of costs associated with the recovery between the two jurisdictions as well as the procedures to be followed by both jurisdictions.

2.2.1. Documents to accompany the request

A CBAR request must be accompanied by supporting documents. Article 13 of the MAAC outlines the following documents that should be provided in support of a CBAR request:

- a declaration that the tax claim concerns a tax covered by the MAAC

15. OECD (2020), Forum on Tax Administration: Enhancing International Tax Debt Management, Paris, available at www.oecd.org/tax/forum-on-tax-administration/publications-and-products/enhancing-international-tax-debt-management.htm.

Cross-border assistance in the recovery of tax claims: key elements

- a declaration that the tax claim is not or may no longer be contested (unless otherwise agreed between the two jurisdictions).
- an official copy of the instrument permitting enforcement in the requesting jurisdiction
- any other document required for recovery.

A MoU may be entered into between the requesting and requested jurisdictions to provide further clarity on the documents to be included in support of the CBAR request.

2.2.2. Time limits

A request for CBAR must respect the statute of limitation period in the requesting jurisdiction. A CBAR request made after the expiry of the statute of limitation period is unlikely to be honoured as it will be contrary to domestic legislation.

Article 14 of the MAAC stipulates that any questions concerning any period beyond which a tax claim cannot be enforced shall be governed by the law of the requesting jurisdiction. The requesting jurisdiction is obliged to indicate the period for statute of limitation and outline any events that may suspend or interrupt this period from running.

In any case, under the MAAC, the requested jurisdiction is under no obligation to honour a CBAR request which is submitted after a period of 15 years from the date of the original instrument permitting enforcement.

2.2.3. Priority in requested jurisdiction

If the person subject to the CBAR request has outstanding taxes in the requested jurisdiction, the requested jurisdiction is entitled to first recover its own taxes.

As provided by Article 15 of the MAAC, a CBAR request will not have any priority specially accorded to tax claims of the requested jurisdiction even if the recovery procedure used is the one applicable to its own tax claims. For example, the CBAR request will not be accorded any preferential rights in bankruptcy or liquidation proceedings even if domestic tax claims are accorded such rights in the requested jurisdiction.

2.2.4. Deferral of payment waiver or remission of outstanding taxes

A jurisdiction that receives a CBAR request may allow the person subject to recovery to pay by instalments or defer payments if its laws or administrative practice permit it to do so in similar circumstances.

However, Article 16 of the MAAC obligates the requested jurisdiction to first inform the requesting jurisdiction before accepting payment by instalment or deferral of payments.

Unless otherwise provided for in MoU, the requested jurisdiction cannot accept a compromise of the tax claim or remit/waive the claim in part or in full without the prior approval of the requesting jurisdiction.

This matter may then be elaborated in the MoU entered into by the two jurisdictions to streamline their co-operation.

2.2.5. Legal challenges to the validity of tax claim

Proceedings relating to CBAR that concern the existence or the amount of the tax claim or the instrument permitting its enforcement, shall be brought only before the appropriate body of the requesting jurisdiction.¹⁶ Such a legal challenge will suspend the CBAR request pending the outcome of the litigation. In the interim, the requesting jurisdiction may request the foreign counterpart to take measures of conservancy to safeguard recovery.

2.3. LIMITS TO THE OBLIGATION TO PROVIDE CROSS-BORDER ASSISTANCE IN THE RECOVERY OF TAX CLAIMS

There are limits to the obligation to provide all forms of administrative assistance as outlined in the international legal agreement relied upon when requesting assistance. These limits also apply to CBAR. Box 1 provides a summary of such limits under Article 21 of the MAAC.¹⁷

16. See Article 23(2) of the MAAC and Article 27(6) of the OECD Model Tax Convention and the UN Model.

17. See OECD (2020), *A Toolkit for Becoming a Party to the Convention on Mutual Administrative Assistance in Tax Matters*, available at www.oecd.org/tax/transparency/documents/Convention-on-Mutual-Administrative-Assistance-in-Tax-Matters-Toolkit-en.htm.

Cross-border assistance in the recovery of tax claims: key elements

Box 1. Limits to the obligation to provide assistance in tax recovery under the convention on mutual administrative assistance in tax matters

Article 21 of the MAAC lists the limits to providing all forms of assistance possible under the MAAC which also applies to assistance in the recovery of tax claims. It stipulates that a jurisdiction is under no obligation:

- to carry out measures at variance with the laws or administrative practice of either Party, or which would be contrary to public policy (*ordre public*)
- to provide administrative assistance where it considers that the taxation by the applicant Party is contrary to generally accepted taxation principles or to the provisions of a bilateral tax treaty that may be in force between the applicant and requested parties
- to provide administrative assistance that results in discriminatory treatment of a national of the requested Party as compared with a national of the applicant Party who are in the same circumstances
- to provide administrative assistance if the applicant Party has not pursued all reasonable measures available under its own laws or administrative practice.

Article 21 also specifically stipulates that a jurisdiction is under no obligation to provide assistance in the recovery of tax claims where the administrative burden on the requested Party is disproportionate to the benefits to be derived by the applicant Party.

Source: Convention on Mutual Administrative Assistance in Tax Matters

2.4. SYNERGIES BETWEEN CROSS-BORDER ASSISTANCE IN THE RECOVERY OF TAX CLAIMS AND OTHER FORMS OF MUTUAL ADMINISTRATIVE ASSISTANCE

CBAR does not operate in isolation and can benefit from synergies with other forms of international cooperation in tax matters namely EOI, service of documents and measures of conservancy.

2.4.1. Exchange of information and cross-border assistance in the recovery of tax claims

CBAR may only succeed where the tax authority can trace the tax debtor's address, assets or income located abroad which may then be targeted for recovery. Therefore, EOI may play a critical role as it can enable jurisdictions to identify the address, income or assets of tax debtors for example, through a request sent to another jurisdiction (i.e. EOIR). The identification of the tax debtors address may enable a jurisdiction to formally serve a tax debtor with assessment notices (for example using service of documents as discussed below) before initiating CBAR. The identification of assets or income may enable the requesting tax authority to take measures to preserve them before the tax debt crystallises formally (measures of conservancy) which may be a step before initiating CBAR.

The implementation of AEOI also makes it possible for participating tax authorities to identify financial assets of their tax debtors. For example, in 2021, 100 jurisdictions exchanged information on over 111 million financial accounts, with a total value of EUR 11 trillion.¹⁸

2.4.2. Service of documents and cross-border assistance in recovery claims

Recovery of tax claims is the last stage in the tax collection process. Service of documents facilitates a jurisdiction to formally notify its taxpayers of assessments issued against them when the taxpayers are located in a foreign jurisdiction. There may be several reasons for the location or relocation of a taxpayer in a foreign jurisdiction, including legitimate reasons. Service of documents allows taxpayers located or relocated to be informed of their outstanding tax claims in a foreign jurisdiction. It may lead to the taxpayers paying their outstanding taxes or the tax authority initiating a CBAR request. In the latter case, service of documents can pave the way to CBAR.

2.4.3. Measures of conservancy and assistance in the recovery of tax claims

Measures of conservancy and CBAR address distinct but complementary needs of tax authorities. In general, while CBAR covers enforceable and non-contested tax claims, measures of conservancy can in fact be used

18. OECD (2022), Raising the Bar on Tax Transparency: 2022 Global Forum Annual Report, p. 3 and 5, www.oecd.org/tax/transparency/documents/global-forum-annual-report-2022.pdf.

before the tax claim crystallises. Therefore, it may be used at an early stage to ensure the availability of recoverable assets while a tax assessment has not been concluded or is under litigation and may later be substituted with a request for CBAR once the assessment is final and enforceable or has been upheld by a tribunal or court of law.

2.5. IMPORTANCE OF ESTABLISHING A FUNCTION FOR CROSS-BORDER ASSISTANCE IN THE RECOVERY OF TAX CLAIMS

Given the important role that CBAR plays, the development and proper implementation of a function CBAR within the tax collection process may deliver numerous benefits to implementing jurisdictions. The benefits include:

- **Enhancing domestic resource mobilisation (DRM) by assuring the collection of a larger portion of the assessed taxes:** CBAR allows tax authorities to overcome territorial limitations for the recovery of tax claims from debtors who do not voluntarily pay duly assessed taxes. While tax authorities are naturally restricted to operate within their jurisdiction, the international character of this form of administrative assistance permits the recovery of outstanding tax claims from a tax debtor's capital and assets located abroad. This also contributes to

enhancing DRM towards the delivery of essential public services.

- **Tackling cross-border tax evasion and deterring future non-compliance:** CBAR helps to capture assets located abroad to satisfy unpaid tax claims. Contributing to a sustained recovery of tax debts, it provides a clear message to all taxpayers that avoiding or evading the payment of taxes by moving their residence, assets or income abroad will not protect them anymore from the tax authority's enforcement powers. This form of administrative cooperation empowers the tax authority with tools to pursue tax debtors wherever they are situated or wherever their assets or income is located to collect all taxes assessed and due. Thus, it has a dissuasive impact on persons intending to avoid or evade payment of duly assessed taxes through the relocation of their residence, assets or income abroad, including for legitimate reasons.
- **Increasing tax morale and public trust in the tax system:** With an improved recovery of tax claims, tax authorities demonstrate their ability to enforce their domestic legal framework even in a cross-border context. It increases overall tax morale and enhances the public trust in the tax systems that all persons with assessed taxes are followed up to ensure effective payment.

3. Establishing a function for cross-border assistance in the recovery of tax claims

The setup of a dedicated function is essential to be able to request and provide CBAR. This function serves as the main link between the domestic tax debt recovery function and foreign jurisdictions. Establishing an effective function requires some building blocks to be in place, including:

- a clear strategy for engaging in this form of co-operation
- a dedicated mission for this function
- an appropriate legal framework for CBAR
- a decision on where to position the function within the jurisdiction
- allocation of adequate resources to enable the function to fulfil its mission in an effective way.

3.1. DEVELOPING A STRATEGY FOR PARTICIPATION IN CROSS-BORDER ASSISTANCE IN THE RECOVERY OF TAX CLAIMS

A clear strategy is an essential starting point for a jurisdiction that seeks to participate in and benefit from CBAR. The objective of the strategy is to ensure that an effective framework is established to enable this form of administrative assistance. Such a framework includes an appropriate international and domestic legal framework, a conducive organisation structure, administrative tools and knowledgeable staff.

The strategy should include the following main components:

- Raising awareness on the possibilities offered by, and the way to use, the different forms of mutual administrative assistance in tax matters, including the possibility to:
 - notify taxpayers that reside in other jurisdictions of their obligations including assessment notices and demand for outstanding taxes.
 - use EOI to request information from other jurisdictions for purposes of confirming the address of the taxpayer, or identification of taxpayer assets/income abroad that could be targeted to recover outstanding tax claims.

Establishing a function for cross-border assistance in the recovery of tax claims

- if the jurisdiction is participating in AEOI, use the information received to identify domestic tax debtors who hold financial assets in foreign jurisdictions which may be targeted to recover the outstanding tax claims.
 - seek assistance from other jurisdictions to take precautionary measures, i.e. measures of conservancy, aimed at ensuring that identified assets are available for recovery after the tax claims have crystallised.
 - finally seek assistance from other jurisdictions to recover outstanding tax claims.
- Providing a clear framework for seeking assistance from and aiding other jurisdictions. In this regard, the strategy should outline measures aimed at:
- ensuring that the jurisdiction has an appropriate international legal framework to support CBAR.
 - ensuring that the jurisdiction has an enabling domestic legal framework that facilitates the implementation of the international legal framework to seek assistance from and to provide assistance to recover and remit taxes for other jurisdictions.
 - developing formalised domestic procedures for identifying situations in which CBAR may be sought including the process and criteria for selecting cases.
 - developing and implementing a formal structure for handling CBAR requests to and from other jurisdictions.
 - developing operational procedures and appropriate systems for monitoring the handling of CBAR requests to and from other jurisdictions.
 - deploying knowledgeable and well-trained staff to manage the function for CBAR, including continuous training on the in-country requirements for making a request and the principles and procedures governing the assistance.

The political support and technical commitment by the top management of the ministry of finance and/or the tax authority is essential to increase the ownership

of this strategy and to ensure that it is pursued and implemented by all relevant officials.

Awareness-raising activities should be promoted to ensure the strategy is familiar to officials of the ministry of finance and/or tax authority, particularly by officials involved in the recovery of domestic tax claims, the personnel involved in the function for CBAR and the EOI unit.

This strategy for participation in CBAR should form part of and be linked to the jurisdiction's overall strategy for the recovery of outstanding taxes.

3.2. DEFINING THE MISSION OF THE FUNCTION FOR CROSS-BORDER ASSISTANCE IN THE RECOVERY OF TAX CLAIMS

The main role of the function for CBAR is to coordinate all domestic requests for assistance to be submitted to foreign jurisdictions and to provide effective assistance to foreign partners seeking the same from the jurisdiction. The form or the organisation of the function may be dependent on the model adopted by the jurisdiction, but it can be broadly divided into policy, operational and communication components.

3.2.1. Policy roles

Most jurisdictions have a dedicated office at the level of the tax authority or ministry of finance, that handles tax policy matters in relation to international tax (e.g. the tax policy department, the tax treaties department or the international cooperation department).

The function for CBAR may be responsible for the policy work or support the policy related task assumed by such an office. The policy tasks performed by the function for CBAR may include:

- advocating for an appropriate international and domestic legal framework for CBAR
- contributing to the negotiation of the international legal instruments for CBAR
- negotiating and signing MoUs between the jurisdiction (tax authority/ministry of finance) and other jurisdictions to streamline co-operation for CBAR

Establishing a function for cross-border assistance in the recovery of tax claims

- contributing to the formulation of an appropriate domestic legal framework
- interpreting and ensuring a good understanding and implementation of legislation, regulations and guidance related to CBAR to officials of the tax authority/ministry of finance.

3.2.2. Communication roles

The function for CBAR is the main bridge between the jurisdiction and foreign jurisdictions. It therefore plays a key role in communicating the jurisdictions request to the CAs of foreign jurisdictions, following up the status of these requests and providing clarifications where needed. It is also responsible for receiving incoming CBAR requests and providing updates on the status of requests received.

In addition, this function is critical in enabling other officials of the ministry of finance/tax authority to better understand the principles governing CBAR, the conditions under which such assistance may be requested and the relevant procedures. Therefore, this function is responsible for disseminating information regarding CBAR within the ministry of finance/tax authority and coordinating all stakeholders to:

- raise awareness of its existence and its potential to aid the domestic tax debt recovery functions to recover outstanding taxes in foreign jurisdictions.
- deliver appropriate trainings on the use of CBAR to other officials of the ministry of finance/tax authority.
- facilitate the work of other officials of the ministry of finance/tax authority by providing them with guidelines, forms and/or other tools to facilitate the handling of requests.

The function for CBAR is also responsible for communication with the domestic legal services to handle any litigation that may arise from requests sent to foreign jurisdictions. Where the information received pursuant to a request for CBAR raises the need to further investigate the activities of a taxpayer, the function is responsible for communication with relevant departments such as the investigation or audit departments who may launch inquiries into the taxpayers' activities.

3.2.3. Operational roles

CBAR is undertaken between CAs and processed through the dedicated function. The main activities undertaken by this function include the following:

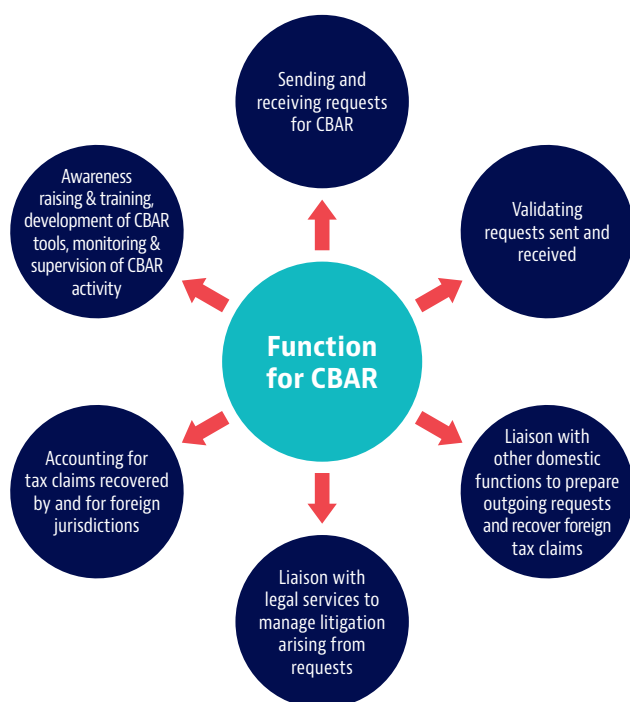
- the reception of requests from other functions of the ministry of finance/tax authority responsible for tax debt recovery or from treaty partners (i.e. foreign CAs)
- the validation of the requests initiated from within the jurisdiction (i.e. ministry of finance/tax authority) and from foreign CAs
- the processing and sending of outgoing requests to foreign CAs
- the processing of incoming requests for the recovery of foreign tax claims
- the sending of responses to other functions within the ministry of finance/tax authority and foreign CAs
- the liaison with other functions whenever the need arises (e.g. legal services function to handle litigation arising from requests sent to or received from foreign CAs or with tax audit or investigations departments for further action)
- the monitoring of the CBAR activities, including the generation of statistics and measuring the impact of CBAR on revenue collection.

Figure 5 summarises the different activities of the function for CBAR.

3.2.4. Other functions

In some jurisdictions, the same office may manage the EOI function, the function for CBAR and other functions related to international tax matters (e.g. negotiation of international agreements for co-operation in tax matters). Where these functions are bundled, the jurisdiction should ensure that the mission of the function for CBAR is well defined and that adequate resources (human, financial and technological) have been allocated for this function commensurate with its level of activity to enable it to carry out its mission in an effective manner.

FIGURE 5. **Simplified description of the operational activities of the function for cross-border assistance in the recovery of tax claims**



3.3. ESTABLISHING AN APPROPRIATE LEGAL FRAMEWORK FOR CROSS-BORDER ASSISTANCE IN THE RECOVERY OF TAX CLAIMS

International co-operation in tax matters is based on international agreements with a provision for facilitating mutual administrative assistance among tax authorities. CBAR must therefore equally be anchored in an international agreement and supported by an enabling domestic legal framework.

3.3.1. International legal framework

To participate in CBAR, a jurisdiction should have an international agreement that is in force that provides the legal basis for this form of cooperation. A jurisdiction cannot request or provide assistance if there is no international legal instrument providing a basis for such co-operation between itself and the requested or the requesting jurisdiction.

Primary legal basis for cross-border assistance in the recovery of tax claims

A legal basis for CBAR may take several forms such as:

- a **bilateral DTC** with a provision modelled on Article 27 of the OECD Model Tax Convention¹⁹ or the UN Model.²⁰ Annex A.1 and Annex A.2 respectively outlines the provisions for CBAR in the OECD Model Tax Convention and the UN Model.
- a **bilateral agreement restricted to CBAR**. Although this type of agreement for CBAR is not frequently used, there have been some similar examples in the past such as the “Convention between Belgium, the Grand Duchy of Luxembourg and the Netherlands on mutual assistance in the recovery of tax claims, signed at Brussels on 5 September 1952”.²¹
- a **global multilateral agreement** open to all jurisdictions such as the MAAC can also provide an international legal basis for CBAR.²² The MAAC was developed jointly by the OECD and the Council of Europe in 1988 and amended by a Protocol in 2010. It is the most comprehensive multilateral instrument available for all forms of tax co-operation to tackle tax evasion and avoidance. This co-operation includes all forms of EOI, service of documents, measure of conservancy and CBAR. The MAAC has over 145 participating jurisdictions.²³ The MAAC’s enabling provisions for CBAR and measures of conservancy are reproduced in Box 2.
- a **regional multilateral agreement** with a provision for CBAR for example:
 - the African Tax Administration Forum Agreement on Mutual Administrative Assistance in Tax Matters (ATAF AMATM)²⁴ included in Annex A.3.

19. More information on the OECD Model Tax Convention is available at www.oecd-ilibrary.org/taxation/model-tax-convention-on-income-and-on-capital-full-version_9a5b369e-en.

20. More information on the UN Model Tax Convention is available at www.un.org/development/desa/financing/what-we-do/ECOSOC/tax-committee/thematic-areas/UN-model-convention.

21. The text of the convention can be found among the treaties deposited or registered with the Secretariat of the United Nations (p. 19 to 31), available at <https://treaties.un.org/doc/Publication/UNTS/Volume%20256/v256.pdf>.

22. See OECD (2020), *A Toolkit for Becoming a Party to the Convention on Mutual Administrative Assistance in Tax Matters*, available at www.oecd.org/tax/transparency/documents/MAAC-toolkit_en.pdf.

23. Status of jurisdictions participating in the MAAC is available at www.oecd.org/ctp/exchange-of-tax-information/Status_of_convention.pdf.

24. ATAF Agreement on Mutual Administrative Assistance in Tax Matters is available at: https://events.ataftax.org/includes/preview.php?file_id=46&language=en_US.

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- the Andean Community Income and Capital Tax Convention (Andean Community's Decision 578)²⁵ included in Annex A.4.
- the European Union (EU) Directives relating to mutual assistance in the recovery of tax claims.

Box 2. Provisions for cross-border assistance in the recovery of tax claims in the MAAC

Article 11 – Recovery of tax claims

1. At the request of the applicant State, the requested State shall, subject to the provisions of Articles 14 and 15, take the necessary steps to recover tax claims of the first-mentioned State as if they were its own tax claims.
2. The provision of paragraph 1 shall apply only to tax claims which form the subject of an instrument permitting their enforcement in the applicant State and, unless otherwise agreed between the Parties concerned, which are not contested. However, where the claim is against a person who is not a resident of the applicant State, paragraph 1 shall only apply, unless otherwise agreed between the Parties concerned, where the claim may no longer be contested.
3. The obligation to provide assistance in the recovery of tax claims concerning a deceased person or his estate, is limited to the value of the estate or of the property acquired by each beneficiary of the estate, according to whether the claim is to be recovered from the estate or from the beneficiaries thereof.

Article 12 – Measures of conservancy

At the request of the applicant State, the requested State shall, with a view to the recovery of an amount of tax, take measures of conservancy even if the claim is contested or is not yet the subject of an instrument permitting enforcement.

Source: Convention on Mutual Administrative Assistance in tax Matters, available at www.oecd.org/tax/the-multilateral-convention-on-mutual-administrative-assistance-in-tax-matters-9789264115606-en.htm

Box 3 provides an overview of CBAR within the EU which is more advanced in using this form of administrative co-operation.

Where a jurisdiction is party to more than one international legal agreement which provides a basis for CBAR, there may be an overlap. The jurisdiction should therefore choose the most appropriate agreement to use in line with their particular circumstances, such as the date of entry into force, the taxes covered and the conditions for granting CBAR.²⁶ The jurisdiction may adopt guidelines on the choice for legal agreement to be used in these instances.

Memorandum of understanding

An international legal agreement that facilitates CBAR cannot contain all the practical details for providing and receiving this form of assistance. For example, in recognition of this, Article 27(1) of both the OECD and UN Model Tax Conventions and paragraph 6 of the related commentaries provide that the CAs may, by mutual agreement, settle the mode of application of the CBAR provision.

In practice, the CAs of jurisdictions co-operating on CBAR often enter into a MoU to streamline their cooperation. The OECD has developed template MoUs for CBAR based on Article 27 of the OECD Model Tax Convention (Annex B.1)²⁷ and on the MAAC (Annex B.2)²⁸ which may serve as a guide for jurisdictions developing a MoU.

A MoU for CBAR should cover all practical aspects of the co-operation comprehensively.²⁹ Box 4 provides an example of a jurisdiction's policy for concluding MoUs.

26. For example, the Article 27 of the MAAC provides as follows:

"1 The possibilities of assistance provided by this Convention do not limit, nor are they limited by, those contained in existing or future international agreements or other arrangements between the Parties concerned or other instruments which relate to co-operation in tax matters.

2 Notwithstanding paragraph 1, those Parties which are member States of the European Union can apply, in their mutual relations, the possibilities of assistance provided for by the Convention in so far as they allow a wider co-operation than the possibilities offered by the applicable European Union rules."

27. See Module 3: Model Memorandum of Understanding on Assistance in Tax Collection based on Article 27 of the OECD Model Tax Convention on Income and on capital, www.oecd.org/tax/exchange-of-tax-information/49102492.pdf.

28. See Module 4: Model Memorandum of Understanding on Assistance in Tax Collection based on the MAAC, www.oecd.org/tax/exchange-of-tax-information/oecdmanualonassistanceinthecollectionoftaxes.htm.

29. The OECD Manual on Assistance in Tax Collection provides a non-exhaustive list of items that may be included in a MoU for CBAR. For more see www.oecd.org/tax/exchange-of-tax-information/oecdmanualonassistanceinthecollectionoftaxes.htm.

25. See 2004 Andean Community Income and Capital Tax Convention (English Translation) available at <http://internationaltaxtreaty.com/download/bolivia/dtc/Andean%20Community-DTC-May-2004.pdf>.

Box 3. Cross-border assistance in the recovery of tax claims in the European Union

In the EU, CBAR between Member States is governed by two main legal instruments, namely the Directive 2010/24/EU of 16 March 2010³⁰ and the European Commission Implementing Regulation N° 1189/2011 of 18 November 2011 (European Commission, 2011)³¹ as amended by the Implementing Regulation N° 2017/1966 of 27 October 2017.³²

The legal framework for CBAR between EU Member States provides precise and exhaustive rules with relatively limited flexibility for the Member States in order to ensure legal certainty and to avoid asymmetries.³³

- Directive 2010/24/EU makes it mandatory to use a specific uniform instrument for enforcement measures in the requested Member State (Uniform Instrument Permitting Enforcement) and a uniform standard form for notification of instruments and decisions relating to the claim (Uniform Notification Form). These are intended to resolve the problems of recognition and translation of instruments emanating from another Member State which may have led to practical difficulties. In addition, there is a general obligation for EU Member States to communicate requests and documents in a digital form and via an electronic network established by the European Commission³⁴.
- The amended Commission Implementing Regulation (EU) N° 1189/2011 lays down detailed rules in relation to certain provisions of Council Directive 2010/24/EU including the practical arrangements and the time periods for communication between the requested

and the requesting jurisdictions. In addition, it also establishes models for the standard form that should accompany requests for notification, the instrument permitting enforcement in the requested Member State and specific rules regarding the electronic exchanges between the Member States.

- Directive 2010/24/EU also extended the possibilities for requesting CBAR of tax claims or the adoption of precautionary measures in another Member State. In effect, it is possible to send a request for CBAR to recover a tax claim even though the domestic means of recovery have not yet been fully exhausted in situations where:
 - it is obvious that there are no assets for recovery in the applicant Member State or that recovery procedures will not result in the payment in full of the claim; and the applicant authority has specific information indicating that the person concerned has assets in the requested Member State.
 - recourse to recovery procedures in the applicant Member State would give rise to disproportionate difficulty.

Source: Council Directive 2010/24/EU of 16 March 2010, Commission Implementing Regulation (EU) N° 1189/2011 of 18 November 2011, Commission Implementing Regulation (EU) N° 2017/1966 of 27 October 2017 and OECD (2020), *Forum on Tax Administration: Enhancing International Tax Debt Management*, Paris. www.oecd.org/tax/forum-on-tax-administration/publications-and-products/enhancing-international-tax-debt-management.pdf.

30. Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures, *Official Journal of the European Union* L 84/1, <http://data.europa.eu/eli/dir/2010/24/oj>.

31. Commission Implementing Regulation (EU) No 1189/2011 of 18 November 2011 laying down detailed rules in relation to certain provisions of Council Directive 2010/24/EU concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures, *Official Journal of the European Union* L 302/16, http://data.europa.eu/eli/reg_impl/2011/1189/oj.

32. Commission Implementing Regulation (EU) No 2017/1966 of 27 October 2017 amending Implementing Regulation (EU) No 1189/2011 as regards the communication of assistance requests and the follow-up to those requests, *Official Journal of the European Union* L 279/38, http://data.europa.eu/eli/reg_impl/2017/1966/oj.

33. See OECD (2020), *Forum on Tax Administration: Enhancing International Tax Debt Management*, Paris. www.oecd.org/tax/forum-on-tax-administration/publications-and-products/enhancing-international-tax-debt-management.pdf. See paragraphs 94-98, pages 30-31.

34. The electronic platform is the e-Forms Central Application (e-FCA), which is developed and maintained by the European Commission. This platform is in use since 2019. Prior to the introduction of the e-FCA, electronic forms were already in use since 2012. Communication between Member States is facilitated through the secured Common Communication Network (CCN), developed by the Commission for all transmissions by electronic means between competent authorities in the area of customs and taxation.

Establishing a function for cross-border assistance in the recovery of tax claims

Box 4. Japan's practice for concluding memorandum of understanding for the operation of cross-border assistance in the recovery of tax claims

Japan is a Participating Jurisdiction to the MAAC which allows CAs to enter into agreements for settling rules and procedures for assistance in collection (see Article 11.1).

Japan has also entered into DTCs which include provisions on assistance in the collection of taxes modelled on Article 27 of the OECD Model Tax Convention on Income and on Capital. The most recent DTCs entered into by Japan also state that contracting states can settle agreement on rules and procedures for assistance in the collection.

As paragraphs from 246 to 250 in Commentary on the MAAC and paragraphs from 7 to 9 in the Commentary on Article 27 of the OECD Model Tax Convention describe, the Agreements with other CAs regarding assistance in the recovery of taxes are expected to deal with, inter alia, practical issues such as:

- documentation that should accompany a request
- costs that would be incurred by the requested state in satisfying a request
- applicable exchange rate that a requested state would use in the conversion of the amount subject to a CBAR request into the currency of a requested States
- how any amount collected should be remitted to an applicant state.

Source: National Tax Administration, Japan

Communication

Communication is an important aspect of international co-operation in tax matters. Therefore, the MoU should cover all aspects of communication between the two jurisdictions including:

- **Mode of communication between the CAs:** The MoU should outline the preferred mode of communication between the CAs taking into account the need to maintain confidentiality of information and documentation exchanged pursuant to a request for assistance.

- **Language used in documents:** The MoU should state the language preferred by the CAs when receiving a request. It should also indicate the language governing all information and particulars communicated between CAs in relation to a request and whether an official translation shall be required for all documents that are not in the agreed language.
- **Time limits for responding to a request:** The MoU should indicate the time to be taken by the requested jurisdiction to accept or decline a CBAR request as well as, where necessary, periodic progress reports.³⁵

Information regarding the request

The MoU should outline the requirements that must be fulfilled before a CBAR may be accepted by the requested jurisdiction. This should cover:

- **Taxes and years covered:** The MoU should outline the taxes which may be subject to a CBAR request and the years in respect of which a request may be made as provided in the international agreement to be used by the two jurisdictions. For example, a MoU to operationalise assistance under the MAAC may include the taxes the jurisdiction has listed as covered in its Annex A to the MAAC subject to any reservations that may have been entered by the counterpart under Article 30(1)(a) and (b) of the MAAC.³⁶
- **Minimum amount:** The MoU should indicate the minimum amount of taxes which is considered significant enough to request and provide assistance.³⁷ Ideally, before entering into the MoU, the jurisdictions' CBAR strategy should determine a threshold which it considers significant for purposes of requesting assistance, recognising the costs associated with the recovery. In addition, this amount should be stated in the CBAR manual to guide officials appropriately.
- **Currency and exchange rates:** A jurisdiction will usually recover taxes in its domestic currency.

35. See Paragraph 9 of the Commentaries on Article 27 of both the OECD Model Tax Convention and the UN Model.

36. For example, as noted in paragraph 14 of the Commentaries on Article 27 of both the OECD and UN Model Tax Convention, it is useful to clarify the extent to which the Article governing CBAR applies to revenue claims arising before the convention enters into force.

37. See Paragraph 9 of the Commentaries on Article 27 of the UN Model.

Establishing a function for cross-border assistance in the recovery of tax claims

The MoU should set out the currency in which the requesting jurisdiction will express the recoverable amount. In addition, the MoU should also clarify the exchange rate to be used in converting the amount of the tax claims subject of the CBAR request into the domestic currency and converting any amounts recovered into the foreign.³⁸

- **Unrecoverable claims:** The MoU should outline the conditions under which a claim may be deemed as unrecoverable by the requested jurisdiction and the procedures to be followed when the requested jurisdiction determines that the tax claim is unrecoverable.

Documentation to accompany the request

The international legal instrument governing the CBAR request, for example Article 13 of the MAAC, may already provide details on what documents should accompany the request. However, it may be more efficient to provide additional information in the MoU including³⁹:

- **Instrument permitting enforcement in the requested jurisdiction:**
 - The MoU should require that an official copy of the instrument permitting the recovery (including a translation, where necessary) be included.
 - The CAs may further agree that the instrument permitting enforcement in the requesting jurisdiction shall, where appropriate and in accordance with the provisions in force in the requested jurisdiction, be accepted, recognised, supplemented or replaced as soon as possible after the date of the receipt of the request for assistance by an instrument permitting enforcement in the requested jurisdiction.⁴⁰

38. See Paragraph 9 of the Commentaries on Article 27 of both the OECD Model Tax Convention and the UN Model. Within the EU, Article 18(2) of Commission Implementing Regulation (EU) N° 1189/2011 of 18 November 2011 provides that "The exchange rate to be used for the purposes of the recovery assistance shall be the last exchange rate published in the Official Journal of the European Union before the date the request is sent".

39. Paragraph 7 of the Commentaries on Article 27 of both the OECD Model Tax Convention and the UN Model also lists some documents that the CAs may agree to be provided together with the request.

40. See Paragraph 7 of the Commentaries on Article 27 of both the OECD Model Tax Convention and the UN Model.

- **Mandatory declarations:** the MoU should require the requesting jurisdiction to confirm that:

- The claim concerns a tax covered by the legal instrument governing the CBAR request. In the case of the MAAC it should not be a tax for which the requested jurisdiction has entered a reservation against providing assistance.
- The tax claim is not contested or, where it is directed to a person who is not a resident of the requesting jurisdiction, a declaration that the tax claim may not be contested.⁴¹
- The tax claim is enforceable and owed by a person who cannot, under the laws of the requesting jurisdiction, prevent its collection.⁴²
- The requesting jurisdiction has pursued all measures available in its own territory to recover the tax claim, except where recourse to such measures would give rise to disproportionate difficulties.
- The request is in conformity with the laws and administrative practices of the requesting jurisdiction.
- The information in the request and in the attached documents is correct.

Applicable laws

The MoU should re-emphasise the laws applicable to the CBAR requests including:

- **Statutory limitation:** The MoU should specify that the law of the requesting jurisdiction will govern the time beyond which a claim may no longer be collected (i.e. statute of limitation – the lapse of time limit during which the requesting jurisdiction could recover the tax claim)⁴³ as well as the acts undertaken by the requested jurisdiction to enforce recovery that would have the effect of suspending or interrupting the statute of limitation in the requesting jurisdiction.

41. See Article 11(2) of the MAAC.

42. For more details see Paragraphs 15-18 of the Commentaries on Article 27 of both the OECD Model Tax Convention and the UN Model.

43. For example, see Article 14(1) of the MAAC which provides that "questions concerning any period beyond which a tax claim cannot be enforced shall be governed by the law of the applicant State. The request for assistance shall give particulars concerning that period."

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- **Dispute resolution mechanisms:** Disputes arising from the application of the international agreement would ordinarily be dealt with under the provision of the agreement. The MoU should clarify the dispute resolution mechanisms provided for in the international agreement governing the request. The MoU should also clarify that proceedings regarding the existence or validity or the amount subject of the CBAR request may only be brought before the courts of the requesting jurisdiction.

Calculation on interest, payment methods, recovery of costs and transfer of payments

The MoU should provide guidance on matters pertaining to the amount subject to the request including:

- **Modification of the amount subject of the request:** The amount stated in the CBAR may change during the time the requested jurisdiction is providing assistance. For example, the requesting jurisdiction may reduce or increase the amount stated in the request. The MoU should clarify the consequences of the reduction or increase of the amount requested for recovery, including the treatment of sums that have already been recovered in excess of the amended amount.
- **Calculation of interest during the recovery period:** The MoU should specify how interest on the tax claim may be calculated during the recovery period, including whether the additional interest calculated by the requested jurisdiction should be automatically added to the amount of the tax claim subject to the CBAR request or whether a new request will be required for the recovery of interest calculated during the recovery period.
- **Deferral, payment by instalment and waiver of claims:** The MoU should indicate which jurisdiction has the responsibility for accepting deferral of payments, payment by instalment plans and waiving of any part of the tax claim.⁴⁴ It should also outline the conditions under which the requested jurisdiction may cease recovery.
- **Costs of recovery:** The MoU should define what is considered as a cost of recovery and outline which

jurisdiction will bear the ordinary costs (i.e. costs expected to be incurred in the normal domestic proceedings) and extraordinary costs (i.e. costs incurred when a particular type of procedure, which is not ordinarily used in the requested jurisdiction, is used at the request of the requesting jurisdiction, or supplementary costs of experts, interpreters or translators, cost of judicial and bankruptcy proceedings) incurred in providing assistance.

The usual practice is to provide that in the absence of an agreement specific to a particular case, ordinary costs incurred in providing assistance to the requesting jurisdiction will not be reimbursed while extraordinary costs will be borne by the requesting jurisdiction unless otherwise agreed between the CAs.⁴⁵

The MoU should also provide that the requesting jurisdiction be informed of the extraordinary costs as well as an estimate to enable the requesting jurisdiction decide whether the recovery should proceed.

Finally, it should be clear how costs will be shared where the request is suspended or withdrawn by the requesting jurisdiction or where the requested jurisdiction determines that the recovery action cannot continue.

- **Transfer of payments to the requesting jurisdiction:** The MoU should clarify how sums recovered, including interest, will be transferred to the requesting jurisdiction, the currency in which the transfer will be denominated and the time within which the transfer should be undertaken following collection by the requested jurisdiction.⁴⁶

Confidentiality

CBAR requests are subject to the same confidentiality rules that govern EOI.⁴⁷ The MoU should reiterate that the confidentiality of information exchanged pursuant to a CBAR request is subject to the confidentiality requirements of the legal instrument underpinning the request exchange.

44. Article 16 of the MAAC provides that any request for deferral of payment or payment by instalment may be allowed, if the requested country's laws or administrative practice permits it to do so in similar circumstances, but the agreement of the requesting state shall first be obtained.

45. See Paragraph 8 of the Commentaries on Article 27 of both the OECD Model Tax Convention and the UN Model.

46. *ibid.*

47. See Paragraph 5 of the Commentaries on Article 27 of both the OECD Model Tax Convention and UN Model which provide that: "Article 26 applies to the exchange of information for purposes of the provisions to this article. The confidentiality of information exchanged for purposes of assistance in collection is thus ensured."

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Reservations against providing cross-border assistance in the recovery of tax claims

In the case of multilateral agreements which provide for different forms of administrative assistance in tax matters (e.g. the MAAC), some forms of assistance can be open to reservations. Jurisdictions may enter reservations against providing specific forms of assistance in general, or in respect of specific taxes for example in relation to service of documents, measures of conservancy and CBAR.⁴⁸ When a reservation is entered in respect of CBAR in the recovery of tax claims, it prevents the jurisdiction from providing but also from requesting this form of assistance. To effectively participate in this form of administrative assistance, a jurisdiction with a reservation should review its policy towards CBAR and consider lifting or modifying the reservation.

3.3.2. Domestic legal framework

National law, policy or administrative considerations in some jurisdictions may not allow, severely restrict (e.g. to countries that have similar tax systems or tax authorities or as to the taxes covered) or request justification for assistance in collection of foreign tax claims.⁴⁹

In addition, reciprocity is an essential principle of mutual administrative assistance in tax matters. With regards to CBAR, this means that a jurisdiction seeking to benefit from this form of international cooperation should also be able to provide assistance to recover foreign tax claims. This requires that the jurisdiction must have an appropriate legal and administrative/operational framework that is effectively used to recover domestic taxes.

Moreover, a CBAR request must meet specific conditions before it may be honoured by the foreign jurisdiction.

48. All the reservations and declarations made by jurisdictions Party to the MAAC are available at www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=127&codeNature=0. A synoptic table of reservations made under the MAAC by countries is also available on demand from the Global Forum Secretariat.

49. See footnote to Article 27 in the OECD Model and the UN Model which provide that: "In some countries, national law, policy or administrative considerations may not allow or justify the type of assistance envisaged under this Article or may require that this type of assistance be restricted, e.g. to countries that have similar tax systems or tax administrations or as to the taxes covered. For that reason, the Article should only be included in the Convention where each State concludes that, based on the factors described in paragraph 1 of the Commentary on the Article, they can agree to provide assistance in the collection of taxes levied by the other State".

For example, jurisdictions requesting assistance must demonstrate that:

- the tax claim can be enforced pursuant to a legal instrument within its own jurisdiction. This requires that the assessment procedure is completed according to the domestic law and administrative procedures.
- it has exhausted all domestic measures available for the recovery of the tax claim. The only exception to this requirement is where exhausting all domestic measures would lead to disproportionate difficulties on the part of the requesting jurisdiction. This is meant to ensure that the requesting jurisdiction does not unreasonably shift its tax debt recovery burden to another jurisdiction.
- the request is in conformity with its own domestic law and administrative practice, including being compliant with the statute of limitation if it is applicable to the recovery of tax claims.

For purposes of CBAR, a jurisdiction's domestic legal and administrative framework should consider the following points:

- **Recovery of foreign tax claims:** The recovery of foreign tax claims may not be possible if the domestic legal framework does not allow it. A jurisdiction intending to use CBAR should therefore ensure there is an appropriate legal basis that allows it to seek assistance to recover outstanding taxes in foreign jurisdictions and to render assistance to foreign jurisdictions to recover foreign taxes. Box 5 reproduces the provisions in Lesotho's domestic legislation facilitating CBAR.
- **Remittance of taxes recovered on behalf of foreign jurisdictions:** Generally, the domestic taxes collected is deposited into a consolidated fund which is not controlled by the function in charge of collecting/recovering taxes. It may be necessary to legally empower the function for CBAR to remit the taxes recovered on behalf of foreign jurisdictions.
- **Suspension or interruption of the statute of limitation:** Most jurisdictions have a time limit beyond which outstanding taxes may not be recovered and this may be an impediment to effective CBAR. A jurisdiction should there outline in domestic legal framework, the circumstances under which the statute of limitation may be:

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- suspended in the context of CBAR. For example, this may include (i) any act involving acknowledgement of tax debt on the part of taxpayers or (ii) prosecution of the taxpayer and (iii) fraud, gross or wilful offences.
- interrupted in the context of CBAR. For example, (i) the payment of part of the claim, (ii) the presentation of guarantees relating to the claim, or (iii) the signing of a payment schedule.

Box 5. Lesotho: provision in the domestic legal framework enabling the recovery of foreign tax claims

Income Tax Act

Section 112: Double Taxation Agreements

- (1) The Minister may, on behalf of the Government of Lesotho, enter into, amend, or terminate a double taxation agreement with the Government of another country.
- (2) Where a double taxation agreement provides for a **reciprocal assistance in the collection of taxes** and the Commissioner General has received a request from the competent authority in a country pursuant to that agreement for the collection from any person in Lesotho of an amount due by that person under the income tax laws of that country, the Commissioner General may, by notice in writing, require the person to pay to the Commissioner General on a date specified in the notice the amount owing for transmission by the Commissioner General to the competent authority in that other country.
- (3) If a person fails to comply with a notice under subsection (2), the amount in question may be recovered for transmission by the Commissioner General to the competent authority in that other country as if it were a tax payable by that person under this Act.
- (4) In this section, "double taxation agreement" includes an agreement with a foreign government providing for reciprocal administrative assistance in the enforcement of tax liabilities.

Source: Income Tax Act, Lesotho

The operational manual for handling of CBAR requests should outline how taxes recovered on behalf of foreign jurisdictions should be handled including providing guidance on mechanisms for:

- recording and accounting for the taxes recovered on behalf of foreign jurisdictions in the tax authority's books
- remittance of the taxes recovered, most likely to a foreign banking institution or central bank of a foreign jurisdiction
- recovery of collection costs incurred by the requested jurisdiction.

3.4. ESTABLISHING AN ADMINISTRATIVE FRAMEWORK FOR CROSS-BORDER ASSISTANCE IN THE RECOVERY OF TAX CLAIMS

A jurisdiction that is engaging in CBAR should establish effective systems and processes to enable it to provide effective assistance. The jurisdiction should identify relevant domestic actors, organisational structures and resource requirements that are necessary for it to honour its commitments to provide assistance as well as facilitate its officials to request assistance in an effective manner.

3.4.1. The competent authority for cross-border assistance in the recovery of tax claims

The CAs are the government officials charged by the applicable international instrument with the responsibility of handling CBAR. In general, the CAs would be the ministers in charge of finance or their duly authorised representatives, which, depending on the specific organisation within each jurisdiction, may be the officials of the ministry of finance or the tax authority.

There are three main possibilities with regard to the organisation of the CA for CBAR:

- In some jurisdictions, for example Tunisia (see Box 6), a specific CA would be designated for the purposes of CBAR separate from the CA designated for EOI for tax purposes, mutual agreement procedure or other matters.
- In other jurisdictions, for example South Africa (see Box 8), the same CA may be responsible for CBAR in

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addition to the responsibilities as the CA for EOI for tax purposes, mutual agreement procedure or other matters.

- In some jurisdictions, for example Norway (see Box 7) and France (see Box 9), there is a specific CA for CBAR who also handles all EOI matters related to CBAR.

Box 6. Tunisia: specific competent authority for cross-border assistance in the recovery of tax claims

In Tunisia, two separate administrations attached to the Ministry of Finance have competencies in tax matters:

- The Directorate General of Taxes (*Direction Générale des Impôts – DGI*) is responsible for the assessment, investigation, control and verification of taxes, duties, fees and other fiscal levies.
- The General Directorate of Public Accounting and Recovery (*Direction Générale de la Comptabilité Publique et du Recouvrement – DGCPR*) is responsible for the recovery of tax debts. The DGCPR is also responsible for the recovery of other public debts.

The DGCPR is in charge of CBAR. Within the DGCPR, the Recovery Unit is responsible for managing incoming and outgoing requests, in coordination with the external services (Regional Treasury of Finance and Local Treasury of Finance). However, EOI in relation to CBAR is dealt with by the EOI unit of the DGI.

While the Director General of the DGI is the competent authority for EOI, the Director General of the DGCPR is the competent authority for CBAR. They may delegate their powers in this respect to any appropriate person.

Source: Tunisia

3.4.2. Positioning of the function for cross-border assistance in the recovery of tax claims

The existence of an effective function for CBAR greatly influences the ability of a jurisdiction to efficiently render and receive assistance to and from its foreign partners. A jurisdiction without a formalised function

Box 7. Norway: same competent authority handling exchange of information for tax purposes and cross-border assistance in the recovery of tax claims

In Norway, the Ministry of Finance is the CA in all matters regarding CBAR.

The CA powers for questions regarding the application of the CBAR provisions in international agreements have been delegated to the Directorate of Taxes and the Legal Staff in the Collection Division.

The CA regarding all individual incoming and outgoing CBAR requests and the competence to exchange debt collection information in accordance with the EOI agreements has been delegated to one dedicated group in the Norwegian Tax Administration, the International Tax Recovery Assistance Group (*Bistandsinnkrevning*), which is part of the Collection Division.

The International Tax Recovery Assistance Group (*Bistandsinnkrevning*) is responsible for both EOI and CBAR.

Source: Norwegian Ministry of Finance

for CBAR may struggle to honour its commitments to provide assistance under the relevant international agreements.

Jurisdictions should consider multiple factors in determining where the function should be placed. These include:

- who is the primary CA for CBAR and whether the CA functions have been delegated to another agency or authority
- the size of the jurisdiction and the existing administrative/organisational structures for collection and recovery of taxes
- the intended mission of the function.

Although there is no “one size fits all” approach for determining where to position the function, the following are the three most adopted models by jurisdictions.

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1. The ministry of finance manages the function for CBAR. Within the ministry of finance, the said function may be managed by either:
 - the EOI unit (if it is positioned within the ministry of finance)
 - the domestic tax debt recovery function (if it is positioned within the ministry of finance)
 - a dedicated unit for CBAR
2. The tax authority manages the function for CBAR. Within the tax authority, the said function may be managed by either:
 - the EOI unit (if it is positioned within the tax authority)
 - the domestic tax debt recovery function (if it is positioned within the tax authority)
 - a dedicated unit for CBAR
3. A separate tax recovery authority managing the function for CBAR.

Wherever the function is placed, the effectiveness of the assistance in practice should determine the decision in favour of one model or the other. As such, jurisdictions should consider some critical factors.

Model 1: the ministry of finance manages the function for cross-border assistance in the recovery of tax claims

In some jurisdictions, the function for CBAR is managed by the ministry of finance. The decision to place the function within the ministry of finance can be influenced by different factors, such as:

- **The size of the jurisdiction:** In small jurisdictions, the tax function is not always carried out by a fully-fledged tax authority but rather by a unit, division, or department within the ministry of finance. As a result, all tax related activities would be connected to the ministry of finance including CBAR.
- **The tax system:** In some jurisdictions, the tax function is more focused on indirect taxes than direct taxes and this may be handled by the ministry of finance. Such jurisdictions may therefore place the function for CBAR within the ministry of finance as well.
- **The functions of the tax authority:** In some jurisdictions, although there is a fully fledged tax authority some policy and/or international tax issues are handled by the ministry of finance.
- **The location of the EOI unit:** In some jurisdictions, the EOI unit is placed within the ministry of finance. Due to the close linkages between the function for CBAR and the roles of the EOI unit, jurisdictions which have the EOI unit in the ministry of finance may opt to also place the function for CBAR in the ministry of finance.
- **The location of the domestic tax debt recovery function:** In some jurisdictions, the domestic tax debt recovery function is managed by the ministry of finance. It may therefore be efficient for the function for CBAR to be also located within the ministry of finance to enhance co-ordination.

Positioning the function for CBAR within the ministry of finance under the circumstances described above may provide synergies and efficient linkages with other functions, for example the EOI unit or the domestic tax debt recovery function already located within the ministry of finance.

A jurisdiction should consider the factors outlined in Table 1 when deciding whether to position the function for CBAR within the EOI unit, the domestic tax debt recovery unit or even as a dedicated unit within the ministry of finance.

Irrespective of the model adopted, if a jurisdiction positions the function for CBAR within the ministry of finance, the jurisdiction should take into account the following factors for it to be effective:

- The ministry of finance should understand the importance of CBAR and give it the appropriate level of priority.
- There should be knowledgeable staff and adequate resources dedicated to the said function at the ministry of finance, which should reflect the level of activity (i.e. number of requests sent and received).
- There should be a good framework for communication and co-operation with other parts of the ministry of finance and/or the tax authority. This is especially important where the recovery of taxes is undertaken by a different unit of the ministry of finance or by the tax authority or where EOI is

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Table 1. **Positioning the function for cross-border assistance in the recovery of tax claims in the ministry of finance**

Position of the CBAR function	Factors influencing the position of the CBAR function
EOI unit positioned in the ministry of finance manages CBAR function	<p>Where the EOI unit is already located within the ministry of finance, the jurisdiction may position the CBAR function within the EOI unit considering the following:</p> <ul style="list-style-type: none"> ● the EOI unit may have already established an organisational framework for co-operating with foreign jurisdictions. It may therefore be efficient to use the existing administrative/organisational framework for EOI for CBAR purposes. ● the EOI unit may already have staff with relevant experience, training and skills in international taxation matters. Locating the CBAR function within the EOI unit may leverage existing skills within the EOI unit. ● the EOI unit may have already established a good framework for collaborating with the tax authority (if it is separate from the ministry of finance and is in charge of collection and recovery of tax debts) which the CBAR function can leverage. ● the EOI unit may have already established a strong framework for protecting the confidentiality of information exchanged for tax purposes that can be easily extended to documents exchanged under a CBAR request.
Domestic tax collection and recovery function at ministry of finance handles the CBAR function	<p>A jurisdiction whose domestic tax debt recovery function is located within the ministry of finance should consider expanding its responsibilities to include CBAR. The domestic tax debt collection/recovery unit may be experienced in the use of domestic laws and procedures for recovery of taxes. Positioning the CBAR function in this unit may enable it to leverage the experience, training and skills of officials tasked with recovering domestic taxes as well as existing administrative/organisational frameworks to provide assistance to foreign partners.</p> <p>Box 6 provides the example of Tunisia where the unit overseeing recovery of domestic taxes at the ministry of finance also manages the CBAR function.</p>
Dedicated unit at ministry of finance manages the CBAR function	<p>In some jurisdictions, a stand-alone unit housed within the ministry of finance (whether as a division of the tax authority or as a distinct division at the ministry of finance) manages the CBAR function.</p> <p>The decision to establish a stand-alone division at the ministry of finance may be influenced by the desire to give prominence to the CBAR function and separate it from the activities of the domestic tax recovery and EOI unit.</p>

Source: Global Forum Secretariat

managed by a different unit within the ministry of finance or the tax authority. As such, the function for CBAR should be clearly identified in the organogram of the ministry of finance and its missions and roles should be clearly stated. In addition, there should be documented procedures for communication between the relevant units of the ministry of finance and/or the tax authority, particularly the office managing the recovery of domestic taxes and the EOI unit. To that end, a documented standard operating procedure

should set out the process flow, the accountable and responsible roles and agreed performance measures.

- The ministry of finance should have effective powers for the recovery of taxes. This includes effective access powers allowing it to gather information, directly or indirectly, that facilitates the identification of assets or income to be targeted for recovery. As an alternative, it should establish efficient linkages with the tax authority for the recovery of foreign tax claims.

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- Confidentiality of information exchanged pursuant to a request for assistance to recover tax claims must be preserved throughout the process of exchange (including where the tax authority is in charge of collecting information).

Model 2: the tax authority manages the function for cross-border assistance in the recovery of tax claims

The function for CBAR is relevant for ensuring that all the jurisdiction makes use of its international legal agreements to collect taxes with the assistance of foreign tax authorities after exhausting all recovery measures available under its domestic law and administrative practice.

Where the tax authority is responsible for administering tax laws, it will be uniquely positioned to understand the potential of CBAR in enhancing DRM. A jurisdiction that has mandated the tax authority to administer its tax laws, including cooperating with foreign jurisdictions on tax matters should consider positioning the function for CBAR within the tax authority.

The decision to place the function for CBAR within the tax authority can be driven by several factors, such as:

- **The functions of the tax authority:** In jurisdictions with a fully-fledged tax authority, responsible for the assessment, collection and recovery of taxes as well as related policy matters, it may be appropriate to locate the function for CBAR within the tax authority. Where the said function sits within the ministry of finance, and the tax authority is in charge of the recovery of taxes, the ministry of finance may ultimately rely on the tax authority to recover taxes.
- **The location of the EOI unit:** The function for CBAR may need to co-ordinate with the EOI unit (for example, for requesting other jurisdictions to serve documents confirming taxes assessed and other related documents, or to send EOI requests to confirm the residence of the person owing taxes or to establish the existence of revenues or assets which may be targeted for recovery).

Box 8. South Africa: Exchange of information unit managing the function for cross-border assistance in the recovery of tax claims

The function for CBAR is carried out by the EOI Unit in collaboration with the Specialised Debt Collection Unit within the larger Debt Management function of the South African Revenue Service (SARS).

For CBAR, the function of the EOI Unit is to provide both a governance/oversight and administrative function. The EOI Unit verifies that an appropriate bilateral or multilateral legal instrument is in place that includes an article enabling SARS to collect taxes beyond the boundaries of South Africa, with the assistance of the other Jurisdiction and for SARS to collect, in South Africa, taxes owed to the foreign jurisdictions. The EOI Unit is also responsible for ensuring that CBAR requests from foreign partners meet the requirements of the international agreements.

Administratively speaking, the EOI Unit is responsible for facilitating requests by corresponding with the Requesting or Requested Jurisdiction, as well as keeping and maintaining a register on the progress of requests and ensuring that all confidentiality and data safeguard measures are maintained.

The Specialised Debt Unit is responsible for collecting the foreign debts as if these are debts due to SARS and keeping the EOI Unit informed of the collection progress.

The function for CBAR is organised in South Africa as follows:

- The EOI Unit includes a delegated CA for EOIR, spontaneous EOI and CBAR and another delegated CA for AEOI. The Unit receives and sends all CBAR requests from and to foreign jurisdictions.
- The EOI Coordinator receives CBAR requests either via encrypted email or registered mail, and the coordinator is responsible for dating, classifying and registering incoming requests on the SARS Case Management System

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which is hosted on the SARS EOI secure server. In the case of hardcopy requests, the hard copies are scanned and electronically filed in the linked electronic folders. The hardcopies are then shredded using a cross-shredder. Requests are acknowledged by the Coordinator.

- The EOI Manager provides guidance on which EOI Operational Specialist should be assigned a particular request.
- The EOI Operational Specialist then validates the request which includes ensuring that there is a legal instrument in place and if so, that the request conforms to both the international legal instrument and domestic legislative requirements. If the request satisfies all the necessary requirements, the Operational Specialist proceeds with processing the request. This process includes:
 - confirming that the taxpayer is present in South Africa
 - determining whether or not the taxpayer is known to SARS
 - if not, tracing the taxpayer's current contact details, address, employment status and assets in South Africa.
- All this information together with the request is then allocated to the International Debt Collections within the Debt Management Unit.
- Should the request not meet either of the legislative requirements, the EOI Operational Specialist will draft the correspondence confirming the same for signature by the delegated CA.
- The EOI Unit also manages all requests originating from SARS and destined to foreign jurisdictions.

EOI for the purposes of CBAR in the recovery of tax claims only takes place between the duly appointed CAs.

Under SARS' Debt Management Model, the Debt Management value chain is organised into three debt collection functions, i.e.:

- Regions: Collection of debt within 90 days
- Centralised Services: Debt comprising of escalations from the regions of cases older than 91 days but less than 365 days
- Specialised Targeted Hard Enforcement: Specialised Debt Collection is classified in the third category and includes International Debt Collections.

Upon receiving a request, the International Debt Collections is required to check on the SARS system if the taxpayer has a South African (domestic) tax debt. If so, SARS must recover the domestic debt first. The International Debt Collections team will issue a formal letter of demand notifying the taxpayer of any outstanding South African taxes and/or returns. International Debt Collections will follow the same domestic process for the debt due to the foreign jurisdiction from notifying the taxpayer of the foreign debt in terms of domestic legislation, to applying for a warrant of execution (*ex parte* application) to a competent court to authorise SARS to search the persons premises, with the aim to attach and sell the taxpayer's assets. Where the taxpayer is willing to comply after being notified, SARS would encourage the taxpayer to pay the tax claim directly to the requesting jurisdiction using the payment details provided. Where the taxpayer does not honour the notification, SARS will proceed with hard enforcement actions, i.e. apply for a warrant of execution at court. Any proceeds recovered from the sale of the assets will be paid into the SARS central foreign account and the funds will be transmitted by SARS to the requesting jurisdiction using the payment details it has provided.

Similarly, where a domestic debt collector establishes that a South African taxpayer has moved to another jurisdiction and has left a tax debt behind in South Africa or has assets in another jurisdiction, SARS may send an EOI request to the CA of the other jurisdiction via the EOI Unit, to determine if the said taxpayer is indeed in other jurisdiction and whether or not the taxpayer has assets available before a CBAR request is issued, international legislation permitting.

Source: South African Revenue Service

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- **The location of tax debt recovery unit:** As the requested jurisdictions is required to treat the foreign taxes subject of a CBAR request as if it was its own, the requested jurisdiction will make use of its domestic legal framework and administrative practice to recover the foreign tax claim. Where this function is located within the tax authority, it may be synergetic to locate the function for CBAR within the tax authority.

EOI unit at the tax authority manages the function for cross-border assistance in the recovery of tax claims

In jurisdictions where the function for CBAR is hosted within the tax authority, this function may be positioned within the EOI unit. This decision can be driven by different factors such as:

- **The location and role of the (delegated) CA:** if the delegated CA is the same for EOI and CBAR, it may streamline communication with foreign CAs.
- **The coordination with the EOI unit:** the function for CBAR may need to work closely with the EOI unit for example:
 - to request information from a foreign jurisdiction to determine the address of the taxpayer prior to effecting service of documents
 - to request information from a foreign jurisdiction to determine if there are assets/income held by or for the tax debtor in the foreign jurisdiction prior to making a request for measures of conservancy
 - to request information to determine the availability of assets held by or for the tax debtor that may be targeted for recovery

Therefore, placing the said function within the EOI unit may ensure a more effective coordination.

- **The experience of the EOI unit in implementing the international agreements and the confidentiality provisions:** As the EOI unit focuses on international taxation matters and is in permanent communication with partner jurisdictions, the staff of the EOI unit may have experience and expertise in multiple topics relevant for the function for CBAR. Placing this function within the EOI unit may ensure that

the expertise and support of the EOI staff is readily available and will benefit the day-to-day activities of the function for CBAR.

- **A good collaboration framework with other parts of the tax authority:** the EOI unit will usually have established processes for collaborating with other parts of the tax authority for example to access information which may be useful for asset tracing for purposes of recovering foreign tax claims.

For these reasons locating the function for CBAR within the EOI unit rather than in another part of the tax authority may facilitate this function to perform all its activities in an efficient manner. Box 8 provides the experience of one jurisdiction in using the EOI unit to manage the function for CBAR as well as the coordination with the domestic tax collection/recovery unit.

The tax debt recovery unit manages the function for cross-border assistance in the recovery of tax claims

In some jurisdictions, the function for CBAR may be located within the domestic tax recovery function of the tax authority. This can be driven by several factors, such as:

- **Jurisdiction size and experience:** In jurisdictions with limited use of CBAR, it may be appropriate to locate the related function within the tax debt recovery function to efficiently use available resources and prevent significant organisational changes.
- **Expertise of the tax debt recovery function:** The unit managing the recovery of taxes has the expertise and experience in using the domestic legal tools and administrative procedures to recover domestic taxes. As the jurisdiction will employ the same tools and framework to recover foreign tax claims, it may be efficient to have the same function recovering both domestic and foreign tax claims.
- **Making CBAR a key part of tax debt recovery:** Positioning the function for CBAR in the domestic tax debt recovery function may raise the profile of this function for senior management, and tax auditors operating in the field and debt collection officials. It may also make it immediately evident to the officials that after exhausting domestic measures to recover the tax claims, they should consider, in appropriate circumstances, the possibility to request assistance to recover the taxes abroad.

Establishing a function for cross-border assistance in the recovery of tax claims

Jurisdictions with limited or no experience in CBAR may consider mandating the domestic tax debt recovery function to handle any CBAR requests.

A dedicated unit within the tax administration manages the function for cross-border assistance in the recovery of tax claims

In some other jurisdictions, although the function for CBAR is placed within the tax authority, it is managed neither by the EOI unit nor by the domestic tax debt recovery unit. In those jurisdictions, the function for CBAR is managed by a dedicated unit. One of the factors that may explain this model is the big size and the complexity of the tax authority's operations which renders it necessary to have a specialised unit in charge of handling specific recovery functions, including CBAR. Box 9 provides an example of a jurisdiction where the CBAR function is placed under the responsibility of a dedicated unit within the tax authority which is separate from the EOI unit and the domestic tax debt recovery unit.

Table 2 outlines the factor that should be taken into consideration to ensure the efficiency and effectiveness of the function for CBAR within the tax authority.

Model 3: the tax recovery authority manages the function for cross border assistance in the recovery of tax claims

In some jurisdictions, the tax authority is responsible for the collection of debt but once enforcement measures are needed to recover a debt, the debt is transferred to a separate recovery authority. This tax debt recovery authority may manage the function for CBAR. The decision to position this function within the tax debt recovery authority can be driven by the domestic division of responsibilities between 'collection' tasks and 'recovery' tasks. Collection tasks entails the use of non-coercive channels such as engagement with tax debtors to encourage payment before due date. Recovery powers entails the use of coercive enforcement powers for example issuance of agency notices to persons who hold or may hold moneys due to the tax debtor to pay it to the tax authority, lien on bank accounts or property, insolvency proceedings among others. CBAR would fall under the second category. Box 6 provides an example of a jurisdiction where the CBAR function is placed under the responsibility of a tax recovery authority distinct from the tax authority.

To ensure the efficiency and effectiveness of a stand-alone agency managing the function for CBAR, the following should be taken into account:

Box 9. France: a dedicated unit within the tax authority manages the function for cross-border assistance in the recovery of tax claims

In France, the function for CBAR is managed at the national level by the Treasury's Special Claims Department (*Direction des Créances Spéciales du Trésor - DCST*) which is part of the tax administration (the Directorate General of Public Finance (*Direction générale des finances publiques - DGFIP*)). Since its creation in 2010, the DCST has been the single point of entry for processing incoming and outgoing CBAR requests.

CBAR requests from France to foreign jurisdictions

The DCST is the sole contact for the tax administration (DGFIP) in CBAR matters. It is therefore contacted directly by the local offices when they want to send request for CBAR to foreign jurisdictions.

The DCST analyses, validates and sends the request to the requested jurisdiction via a channel determined upstream. It also takes care of the follow up, using its internal IT tracking system.

Upon completion of the CBAR, the sums recovered by the requested jurisdiction are transferred to the DCST, which is responsible for remitting them to the local office which initiated the CBAR request.

CBAR requests from foreign jurisdictions to France

The DCST is also the sole interlocutor for foreign CAs wishing to submit requests for CBAR to France. The requests are analysed, validated and integrated into the DCST's internal IT tracking system. The debtor is then contacted to pay the due sums. If the debtor does not pay the debt, enforcement measures for recovery are initiated directly by the DCST, which acts as the public accountant and is responsible for remitting the sums recovered to the requesting jurisdiction.

Source: *Direction générale des finances publiques (DGFIP)*, France

- where the CBAR function does not manage EOI requests needed to effect CBAR, the efficient coordination mechanisms should be established with the EOI unit wherever it is located (whether at the ministry of finance or the tax authority).

Establishing a function for cross-border assistance in the recovery of tax claims

Table 2. **Factors to be considered when positioning the function for cross-border assistance in the recovery of tax claims in the tax authority**

Position of the CBAR function	Factors to consider to maximise the efficiency and effectiveness of the CBAR function
<p>In the EOI unit</p>	<p>Where the CBAR function is established within the EOI unit, the jurisdiction should consider the following to make it efficient and effective:</p> <ul style="list-style-type: none"> ● If care is not taken, there is a danger that the CBAR function may be overshadowed by the EOI function. Therefore, appropriate resources should be allocated to the EOI unit to ensure that it properly carries out both functions. In addition, specific trainings on CBAR should be provided to the EOI unit staff or knowledgeable staff in this area should be allocated within the EOI unit. Finally, the place of the CBAR function within the EOI unit as well as its missions and roles should be clearly stated. ● Unless it is empowered to recover taxes, the CBAR function has to liaise with the domestic tax debt recovery function which will exercise the powers in the domestic legal framework to recover the foreign tax claims. Therefore, appropriate communication channels should be established with the domestic tax debt recovery function. ● CBAR processes should be documented. These should encompass the interactions between the processes for CBAR and EOI within the same unit, as well as with other functions of the tax authority. To that end, a documented standard operating procedure should set out the process flow, the accountable and responsible roles and agreed performance measures. ● Confidentiality of information must be preserved throughout the process of CBAR (including where other functions of the tax authority are concerned).
<p>In the tax debt recovery unit or office</p>	<p>Where the tax debt recovery function manages the CBAR function, the efficiency and the effectiveness of this function usually requires that the following factors are fully considered and in place:</p> <ul style="list-style-type: none"> ● The tax debt recovery function should understand the importance of providing assistance in recovery of foreign tax claims and give it the appropriate level of priority (in addition to its role to recover domestic tax claims). It is essential that jurisdictions take the necessary steps to recover foreign tax claims as if they were their own tax claims. ● There should be knowledgeable staff and adequate resources dedicated to the CBAR function. These officials must understand the working of the international legal instruments as it concerns CBAR. In addition, the staffing level should reflect the level of activity (i.e. number of requests sent and received to provide CBAR). ● There should be good framework for communication and co-operation with the EOI unit for purposes of making use of EOI as a complementary tool. A documented standard operating procedure should set out the process flow, the accountable and responsible roles and agreed performance measures in the engagements between the EOI unit and tax debt recovery function. ● The confidentiality of information exchanged pursuant to a CBAR request must be preserved throughout the assistance process.

Establishing a function for cross-border assistance in the recovery of tax claims

Position of the CBAR function	Factors to consider to maximise the efficiency and effectiveness of the CBAR function
As a dedicated unit	<p>Where the CBAR function is managed by a dedicated unit which is separate from the EOI unit and the domestic tax debt recovery unit, the jurisdiction may consider the following factors to ensure the efficiency and the effectiveness of this function:</p> <ul style="list-style-type: none"> ● There should be good framework for communication and co-operation with the EOI unit for purposes of making use of EOI as a complementary tool. ● Unless it is empowered to recover taxes, the CBAR function has to liaise with the domestic tax debt recovery function which will exercise the powers in the domestic legal framework to recover the foreign tax claims. Therefore, appropriate communication channels should be established with the domestic tax debt recovery function.

Source: Global Forum Secretariat

- It may require the jurisdiction to recruit and train staff to perform tasks which are similarly performed in the EOI unit or the domestic tax debt recovery unit and this might represent a disproportionate burden for small jurisdictions.

Box 10 contains a checklist of essential building blocks that a jurisdiction should consider when establishing a function for CBAR.

3.5. RESOURCES FOR MANAGING THE FUNCTION FOR CROSS-BORDER ASSISTANCE IN THE RECOVERY OF TAX CLAIMS

For the function for CBAR to be efficient and effective, adequate resources must be devoted to support its activities, failing which it may not be able to process requests to other jurisdictions as well as recover foreign tax claims for other jurisdictions.

The resources allocated to this function may be an indicator of whether the senior management officials are informed about the importance and the benefits of CBAR as a means of ensuring that all duly assessed taxes are collected, irrespective of the location of the person who owes the taxes or their assets or income.

Resources allocated to the function for CBAR must take into account its current level of activities as well as trends in using this form of administrative assistance within the jurisdiction. For this purpose, it is essential for this function to closely monitor its activities and

maintain reliable statistics.

The buy-in of the senior management team is critical to implement and maintain a well-resourced function for CBAR which operates in an efficient manner. As a result, it should be given such priority as the jurisdiction's first step towards participating in CBAR. The resources that may be involved for consideration can be classified into organisational, technical, human and financial resources.

3.5.1. Organisational resources

Setting up a function for CBAR requires the relevant organisation (ministry of finance, tax authority or authority enforcing the recovery of taxes) to dedicate appropriate facilities, which include adequate office space in line with the jurisdiction's level of activity. The allocation of office space should also take into account the need to ensure the confidentiality of information exchanged pursuant to a CBAR request. The Global Forum's Confidentiality and Security Management Toolkit provides further guidance on ensuring the confidentiality and protecting information received under international agreements for EOI.⁵⁰

In addition to ensuring adequate office space, the jurisdiction should set up structures, processes and procedures for managing this function. A step-by-step

50. OECD (2020), *Confidentiality and Information Security management Toolkit*, www.oecd.org/tax/transparency/documents/confidentiality-and-information-security-management-toolkit.htm.

Establishing a function for cross-border assistance in the recovery of tax claims

Box 10. Checklist for establishing a function for cross-border assistance in the recovery of tax claims

Jurisdictions establishing such a function for CBAR should give careful consideration to the following building blocks:

1. Adequate, up-to-date and appropriate information is availed to senior management to support decision making on requirements for the establishment of the function and its placement.
2. A centralised office is identified for positioning the function, taking into account the jurisdiction's specific context. In general, the function should have clear synergies with the tax debt recovery function and the EOI unit.
3. Strict confidentiality and data safeguards measures are in place at the office where the function is positioned, including the following:
 - secure premises in place to house the function and all documents and information exchanged pursuant to a CBAR request, such as restricted card reader and/or biometric readers, closed-circuit television and alarm monitoring devices
 - locks in place to keep hard copies of records/documents with access restricted to the function staff, while electronic files are stored in a separate server solely accessible by function staff.
 - encrypt and decrypt tools used to protect and enhance confidentiality
 - the function premises are not accessed by any non-authorized staff, with access to non-staff only authorized through prior approval.
4. All CBAR requests are separated from day-to-day official taxpayer documents, screened and filed away or disseminated in line with the confidentiality guidelines and procedures.
5. Delegation of the CA powers for CBAR from the minister of finance to the head of the tax authority and to some of the officials handling actual function for CBAR on a daily basis (e.g. the head of the said function) is undertaken and is in writing.
6. A manual/guide is in place to provide guidance on managing CBAR requests, with model templates addressing communication with partner jurisdictions made available to staff. Internal training is provided to staff of the function focused on tax debt recovery, international taxation, international co-operation and confidentiality.
7. A business continuity plan is in place to maintain the activities of the function and staff matters such as leave and out of office programmes should be managed to ensure some staff are available to manage the function activities at any one time during the year. This includes using a single generic governmental email address accessible to all the function staff.
8. Relevant equipment such as computers, landline phones, printers, a scanner, a shredder etc., are available within the function.
9. A case tracking database (may be as simple as an Excel spreadsheet or a more complex software, depending on the jurisdiction's volume of requests for assistance in recovery of tax claims) is in place for recording and tracking requests received and those made. The database helps in monitoring cases and keeping them in sight.
10. Business strategy and performance measures/indicators to monitor the tasks are set out at the beginning of every financial year.

Source: Global Forum Secretariat

manual⁵¹ to guide staff on handling of CBAR requests should be adopted. The manual should include the process to be followed for requests sent and received by the jurisdiction and especially the following:

- preparing and sending a request
- receiving, validating and accepting or declining the request
- recovery of the foreign tax claim
- processing of payments to the foreign jurisdiction

51. See Manual on the Implementation of Assistance in Tax Collection, approved by the OECD Committee on Fiscal Affairs on 26 January 2007, www.oecd.org/tax/exchange-of-tax-information/oecdmanualonassistanceinthecollectionoftaxes.htm.

Establishing a function for cross-border assistance in the recovery of tax claims

- closing the request for assistance
- providing feedback to treaty partners.

The processes for CBAR must also be known throughout the relevant organisation managing the function (ministry of finance, tax authority or tax debt recovery authority). The jurisdiction should raise awareness amongst concerned staff on the potential of CBAR for the jurisdiction and processes to be followed when requesting assistance.

In addition, the business process dedicated to CBAR should be put in place and set up in such a way that there should be no disruption whenever current staff are re-assigned roles in other functions or leave the organisation.

Finally, the jurisdiction should communicate its CA for CBAR within its organisation (ministry of finance, tax authority or tax debt recovery authority) and to its foreign counterparts. This information may be communicated internally during awareness raising sessions for officials, through bulletins/newsletters and on the organisation's intranet. External communication may be achieved through updating the Global Forum's secure CA database, on the organisations website and regular contact with the jurisdiction's most important partners.

3.5.2. Technical resources

The function for CBAR should have technical resources such as computers, printers/copiers, paper shredders and storage facilities as well as relevant software that will be used for managing information flows on CBAR request in a confidential manner.

Appropriate facilities for communicating with foreign partners should be established. This includes access to international phone lines and conferencing facilities for virtual meetings. A dedicated generic and governmental email address for the allocated personnel and for communication with treaty partners may allow that any information concerning requests is accessible to relevant officials only and ensuring its confidentiality and appropriate use.

The jurisdiction should also consider putting in place a system for monitoring CBAR requests sent and received to ensure that they are handled efficiently. This could

be a simple Excel tracking tool or a more sophisticated database depending on the numbers of requests sent and received by the jurisdiction.

3.5.3. Financial resources

A jurisdiction should budget for sufficient financial resources to cover the various costs involved in requesting and providing assistance to recover taxes, including:

- office space and overheads incurred in running the office including phone, internet and postal costs
- information technology resources securing the physical offices with access and monitoring technology, securing electronic communications as well as the creation and maintenance of monitoring tools and databases
- costs incurred to defend challenges to the validity of taxes that are subject of a CBAR request sent to foreign jurisdictions
- costs incurred by the requested jurisdiction to recover taxes subject of a CBAR request
- costs of translating documents to accompany the CBAR request
- training on CBAR and other relevant skills, as well as costs for participating in regional and/or international events on CBAR.

Depending on the model adopted to establish a function for CBAR, the senior management of the relevant government agency should ensure that a specific budget for this function is provided for. This function should constantly monitor the requests being sent and received and request additional funding to support its level of activities.

3.5.4. Human resources

The efficiency and effectiveness of the function for CBAR is dependent on the quality of the human resources allocated to it. The jurisdiction must therefore take great care in appointing officials with the relevant traits and skills as the delegated CA for CBAR as well as the personnel who manage the function on a day-to-day basis. Specific competencies could be integrated into

Establishing a function for cross-border assistance in the recovery of tax claims

the jurisdiction's competency framework that guides the recruitment of staff for the tax authority or relevant departments of the ministry of finance (see Annex C).

Performance indicators to monitor the function for CBAR should be set out at the beginning of every financial

year. These annual measures must be in line with the guidelines as documented in the jurisdiction's related manual and should be captured as part of the annual performance considerations which may relate to the impact of CBAR. Annex D provides a list of indicators for measuring the performance of the function for CBAR.

Annexes



Annex A: Provisions for cross-border assistance in the recovery of tax claims in Model Tax Conventions

Annex A.1: Provision for cross-border assistance in tax recovery in the OECD Model Tax Convention on Income and Capital

Article 27 – assistance in the collection of taxes

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.
2. The term “revenue claim” as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.
3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.
4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first mentioned State or is owed by a person who has a right to prevent its collection.
5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.
6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

- 7.** Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be:
- a)** in the case of a request under paragraph 3, a revenue claim of the first mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
 - b)** in the case of a request under paragraph 4, a revenue claim of the first mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection
- the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.
- 8.** In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:
- a)** to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - b)** to carry out measures which would be contrary to public policy (*ordre public*);
 - c)** to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
 - d)** to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

Source: OECD Model Tax Convention on Income and Capital

Annex A.2: Provision for cross-border assistance in the recovery of tax claims in the UN Model Double Taxation Convention between Developed and Developing Countries

Article 27 – assistance in the collection of taxes

- a) The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.
- b) The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.
- c) When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.
- d) When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.
- e) Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.
- f) Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.
- g) Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be
 - (a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
 - (b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

- h)** In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:
- (a)** to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - (b)** to carry out measures which would be contrary to public policy (*ordre public*);
 - (c)** to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
 - (d)** to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

Source: UN Model Double Taxation Convention between Developed and Developing Countries

Annexes

Annex A.3: Provision for cross-border assistance in the recovery of tax claims in the African Tax Administration Forum Agreement on Mutual Administrative Assistance in Tax Matters

Article 7: Assistance in Collection

1. The Requested Party shall, upon request, lend assistance to the Requesting Party in the collection of revenue claims.
2. The term “revenue claim” as used in this Article means an amount owed in respect of taxes that are covered by this Agreement, as well as interest, duty increases, surcharges, late-payment penalties and costs of collection or conservancy related to such amount in terms of its domestic laws, insofar as the taxation thereunder is not contrary to any other instrument entered into between the Requesting Party and the Requested Party.
3. When a revenue claim of a Contracting Party is enforceable under the laws of that Party and is owed by a person who, at that time, cannot, under the laws of that Party, prevent its collection, that revenue claim shall, at the request of the Competent Authority of that Party, be accepted for purposes of collection by the Competent Authority of the Requested Party. That revenue claim shall be collected by that Requested Party in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that Requested Party.
4. When a revenue claim of a Contracting Party is a claim in respect of which that Party may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of that Party, be accepted for purposes of taking measures of conservancy by the Competent Authority of the Requested Party. The Requested Party shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of the Requested Party even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned Party or is owed by a person who has a right to prevent its collection.
5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Requested Party for purposes of paragraph 3 or 4 shall not, in that Party, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that Party by reason of its nature as such. In addition, a revenue claim accepted by a Requested Party for the purposes of paragraph 3 or 4, shall not in that Party, have any priority applicable to that revenue claim under the laws of the Requesting Party.
6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Requesting Party shall not be brought before the courts or administrative bodies of the Requested Party.
7. Where, at any time after a request has been made by a Requesting Party under paragraph 3 or 4 and before the Requested Party has collected and remitted the relevant revenue claim to the Requesting Party, the relevant revenue claim ceases to be
 - (a) in the case of a request under paragraph 3, a revenue claim of the Requesting Party that is enforceable under the laws of that Party and is owed by a person who, at that time, cannot, under the laws of that Party, prevent its collection, or
 - (b) in the case of a request under paragraph 4, a revenue claim of the Requesting Party in respect of which that Party may, under its laws, take measures of conservancy with a view to ensure its collection

the Competent Authority of the Requesting Party shall promptly notify the Competent Authority of the Requested Party of that fact and, at the option of the Requested Party, the Requesting Party shall either suspend or withdraw its request.

- 8.** In no case shall the provisions of this Article be construed so as to impose on a Contracting Party the obligation:
- (a)** to carry out administrative measures at variance with the administrative practice of that or of the Requesting Party;
 - (b)** to carry out measures which would be contrary to public policy;
 - (c)** to provide assistance if the Requesting Party has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
 - (d)** to provide assistance in those cases where the administrative burden of that Party is clearly disproportionate to the benefit to be derived by the Requesting Party.

Source: ATAF Agreement on Mutual Administrative Assistance in Tax Matters

Annexes

Annex A.4: Provision for cross-border assistance in the recovery of tax claims in the Andean Community Income and Capital Tax Convention (Decision 578)

Article 21: Assistance in collection processes

Member Countries shall assist each other in the collection of taxes owed by a certain taxpayer by acts that are final or executory under the law of the requesting Country.

Requests for assistance may only be made if the property of the tax debtor located in the creditor Member Country is insufficient to cover the amount of tax liability owed.

Unless otherwise agreed by the competent authorities of the Member Countries, it shall be deemed that:

- (a)** The ordinary costs incurred by a Member Country that has committed to providing the assistance shall be borne by that Country.
- (b)** Extraordinary costs incurred by the Member Country that has committed to providing the assistance shall be borne by the applicant Member Country and shall be payable regardless of the amount to be recovered in its favour.

This Article shall be interpreted in accordance with the domestic legislation of Member Countries.

Source: Andean Community Income and Capital Tax Convention (Decision 578)

Annex B: Model Memorandum of Understanding

Annex B.1: OECD Model memorandum of understanding on assistance in tax collection based on Article 27 of the OECD Model Tax Convention on Income and Capital

Introduction

The present Module provides a model Memorandum of Understanding (MOU) which can be used as a working agreement between tax administrations which are able and wish to provide each other assistance in tax collection. The model MOU assumes that the legal instrument providing for assistance in collection of taxes is a bilateral tax treaty provision based on Article 27 of OECD Model Tax Convention on Income and on Capital. States basing their mutual assistance on other legal instruments or modified versions of Article 27 will have to modify the model MOU accordingly. Likewise, differences in domestic legislation will require modifications of this model. All the issues included in the present model MOU are discussed in the OECD Manual on the Implementation of Assistance in Tax Collection. A separate model MOU has been developed for assistance in collection of taxes based on the Convention on Mutual Administrative Assistance in Tax Matters.

Memorandum of Understanding between the Competent Authorities of (State A) and (State B) Concerning Assistance:

In accordance with the terms of the [Tax Convention between (State A) and (State B)], the undersigned competent authorities hereby agree that the following procedures will apply to mutual assistance concerning the recovery of revenue claims arising within the respective States.

Competent Authorities

Requests for assistance and related correspondence will be sent to:

- a) In State A: [complete]
- b) In State B: [complete]

Taxes Covered

Requests for recovery may concern the following taxes as provided for by the [Tax Convention between (State A) and (State B)]:

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

Confidentiality

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

[Insert confidentiality terms of the tax treaty; any relevant domestic rules]

Documentation that should accompany a request

The following documentation will accompany a request for assistance:

An official copy of the instrument permitting enforcement. In the case of requests:

- by State A, this will consist of ...
- by State B, this will consist of ...

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

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

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

Minimum Amount

The Competent Authorities will not request or provide assistance in recovery where the tax claim is less than (figure and currency A) or (figure and currency B).

Currency and Exchange Rates

The applicant State will express the amount of the claim to be collected in the currency of the applicant State and the currency of the requested State. The exchange rate to be used will be the exchange rate quoted:

- a) In State A:
- b) In State B:

Years Covered

Requests for assistance under the present MOU can be made in respect of revenue claims that were finally determined after (DDMMYY).

Time Limits

The time limits beyond which a claim may no longer be collected are governed by the law of the applicant State. For options on suspension of time limit, see part I of the Manual on the Implementation of Assistance in Tax Collection.

Age of Claims

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

Calculation of Interest in the Collection Period

Option 1: The applicant State shall calculate and regularly provide an update to the requested State, of the amount of interest accrued after the request has been accepted for collection by the requested State. Such updates should be added to the claim to be collected and need not be the subject of a new request.

Option 2: The applicant State shall calculate the amount of interest accrued after the request has been accepted for collection. After having received the collected money, the applicant State can make a new request for assistance concerning only the additional interest provided the additional interest exceeds the minimum amount.

Option 3: The requested State shall calculate interest during the collection period, applying its own interest rate, and add it to the amount to be collected.

Option 4: The requested State shall calculate interest during the collection period applying the interest rate of the applicant State, and add it to the amount to be collected.

Deferral, Payment by Instalments and Waiver of Claims

1. The requested State has responsibility for consideration and acceptance of deferral and payment by instalments.
2. The requested State shall not accept a compromise of the claim or remit/waive the claim in part or in full without the approval of the applicant State. The requested State may have to cease collection of the foreign claim under the following conditions:
 - a) The taxpayer has been granted a debt settlement arrangement under the law of the requested State;
 - b) The taxpayer is a company that is undergoing liquidation or is in administration due to insolvency;
 - c) ...

Costs of Collection

Ordinary costs incurred in providing assistance shall be borne by the requested State and extraordinary costs incurred in providing assistance shall be borne by the applicant State according to prior agreement between the competent authorities of both States.

Ordinary costs are those expected in normal domestic collection proceedings and extraordinary costs are defined as those incurred when a particular type of procedure, which is not ordinarily used in the requested state, is used at the request of the other state, or supplementary costs of experts, interpreters or translators, costs of judicial and bankruptcy proceedings.

As soon as the competent authority of the requested State anticipates that extraordinary costs may be incurred, it will inform the competent authority of the applicant State and indicate the estimated amount of such costs, if possible. The applicant State will inform the requested State as soon as possible if it accepts such extraordinary costs.

Transfer of Payments to the Applicant State

Any sum recovered by the requested State, including where applicable the interest, will be transferred to the applicant State in the currency of the requested State.

1. The transfer will take place within [XX days] of the date on which recovery was effected.
2. Amounts collected by the requested State will be forwarded to:
 - a) In State A: (name of bank, SWIFT-code or IBAN-code, account number, name of account holder, etc.)
 - b) In State B: (name of bank, SWIFT-code or IBAN-code, account number, name of account holder, etc.)

When an amount is transferred, the competent authority of the requested State will advise the competent authority of the applicant State.

Time Limits for Responding to a Request

The competent authorities agree to provide acknowledgement of the receipt of the request for assistance within [XX days]. The competent authorities agree to report back on any progress in collection actions within [XX months]

Communication between the Competent Authorities

The competent authorities agree to communicate by secure electronic means of communications when possible. They also agree, in case of urgency, to correspond by telephone subject to confirmation in writing.

Language

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

The following documents must be accompanied by a translation in the language of the requested State:

- a) Requests made to State A:
- b) Requests made to State B:

Potential Modifications to the Request

Upon receipt by the requested State, in writing or in electronic form, of a notification by the applicant State of an amendment to the amount of the revenue claim, where that amendment leads to a reduction in the amount of the

claim, the requested State will continue action to recover the claim but such action will be limited to the amount still outstanding.

If at the time the requested State is informed of the reduction in the amount of the claim, an amount exceeding the amount still outstanding has already been received, but the transfer procedure has not yet been initiated, the requested State will repay the amount overpaid to the person entitled thereto.

Upon receipt by the requested State, in writing or in electronic form, of a notification by the applicant State of an amendment to the amount of the revenue claim, where that amendment leads to an increase in the amount of the claim, then:

- a) the additional request will as far as possible be dealt with by the requested State at the same time as the original request;
- b) where, in the view of the requested State, consolidation of the additional request with the original request is not possible, the requested State will be required to comply with the additional request only if it concerns an amount not less than the minimum amount referred to above.

Uncollectible Claims

When the competent authority of the requested State determines that a revenue claim is uncollectible, the competent authority will return the request with a report, providing details on why the claim is uncollectible.

Withdrawal of a Request

If the request for assistance in collection becomes devoid of purpose, the competent authority of the applicant State shall immediately notify, by telephone or fax, the competent authority of the requested state that the request is being withdrawn. This shall be followed by a written notification from the competent authority of applicant State. The competent authority of the requested State will acknowledge, in writing, the withdrawal of the request.

Inventory/Feedback

1. Each State will annually inform the other of the number of requests for information and recovery sent and received each year, the amount of the claims involved and the amounts collected.
2. The competent authorities may consult with each other at any time with the aim of ensuring effective implementation of this Memorandum.

Dispute Resolution Mechanisms

The competent authorities will consult, as necessary, in the event of any litigation resulting from the application of the assistance in collection program. Proceedings with respect to the existence, or validity or the amount of a revenue claim of an applicant State shall only be brought before the courts or administrative bodies of that applicant State.

Effective Date and Modifications

1. This Memorandum becomes effective [on signature] on [the later of the two signature dates].

Annexes

2. This Memorandum may be modified at any time by agreement between the competent authorities.
3. This Memorandum is concluded for an indefinite period of time. It may be terminated by written notification by either competent authority.
4. This Memorandum will be evaluated [XX years] after the date of entry into effect.

Source: Model Memorandum of Understanding on Assistance in Tax Collection Based on Article 27 of the OECD Model Tax Convention on Income and on Capital available at www.oecd.org/tax/exchange-of-tax-information/49102492.pdf

Annex B.2: OECD Model memorandum of understanding on assistance in tax collection based on the Convention on Mutual Administrative Assistance in Tax Matters

Introduction

The present Module provides a model Memorandum of Understanding (MOU) which can be used as a working agreement between tax administrations which are able and wish to provide each other assistance in the recovery of tax claims. The model MOU assumes that the legal instrument used as the basis of providing assistance in the collection of taxes is the Convention on Mutual Administrative Assistance in Tax Matters (hereafter the Convention). Differences in domestic legislation may require modifications of this model. All the issues included in the present model MOU are discussed in the OECD Manual on the Implementation of Assistance in Tax Collection. A separate model MOU has been developed for collection assistance based on a bilateral tax convention.

Memorandum of Understanding between the Competent Authorities of (State A) and (State B) Concerning Assistance in the Recovery of Tax Claims:

In accordance with the terms of the Convention, the undersigned competent authorities hereby agree that the following procedures will apply to mutual assistance concerning the recovery of tax claims arising within the respective States.

Competent Authorities

Requests for assistance and related correspondence will be sent to:

- a) In State A:
- b) In State B:

Taxes Covered

Requests for recovery concern taxes covered by the Convention:

- a) In State A, taxes listed in State A's Annex A to the Convention, provided that State B does not reserve the right not to provide assistance in the recovery of all or certain taxes listed according to Article 30-1-b of the Convention or certain tax claims according to Article 30-1-c of the Convention.
- b) In State B, taxes listed in State B's Annex A provided that State A does not reserve the right not to provide assistance in the recovery of all or certain taxes listed according to Article 30-1-b of the Convention or certain tax claims according to Article 30-1-c of the Convention.

Confidentiality

The confidentiality of the information exchanged for purposes of assistance in the recovery of tax claims is governed by Article 22 of the Convention.

[The competent authorities may want to agree on whether the conditions of secrecy applying in the Party supplying the information are more restrictive.]

Documentation that should accompany a request⁵²

The following documentation will accompany a request for assistance:

1. An official copy of the instrument permitting the enforcement of the tax claim. In the case of requests

- by State A, this will consist of ...
- by State B, this will consists of ...

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

- The tax claim concerns a tax covered by the Convention for which the requested State has not made a reservation to provide assistance in the recovery of tax claims.
- The tax claim is not contested

or, where it is directed to a person who is not a resident of the applicant State, the tax claim may not be contested, (**unless otherwise agreed by way of an international arrangement concluded between authorities empowered to commit the state under the internal constitutional order, as provided for in Article 11 paragraph 2**).

- The tax claim is enforceable under the laws of the applicant State.
- The applicant state has pursued all measures available in its own territory to collect the claim, except where recourse to such measures would give rise to disproportionate difficulty.
- The request is in conformity with the laws and administrative practices of the applicant State;
- The information in the request and in the attached documents is correct.

The instrument permitting enforcement in the applicant state shall, where appropriate and in accordance with the provisions in force in the requested state, be accepted, recognised, or supplemented as soon as possible after the date of the receipt of the request for assistance, by an instrument permitting enforcement in the latter State.

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

Minimum Amount

The Competent Authorities will not request or provide assistance in recovery where the tax claim is less than (figure and currency A) or (figure and currency B).

52. If the tax claim concerns a deceased person or his estate, the applicant State should inform the requested state about the limit of the recoverable amount and provide details of the value of the estate or the property acquired by each beneficiary of the estate as Article paragraph 3 of the Convention stipulates that the amount of tax recovered from each of the persons benefiting from the estate against whom a claim can still be made shall not exceed the value of his portion of the estate.

Currency and Exchange Rates

The applicant State will express the amount of the claim to be collected in the currency of the applicant State and the currency of the requested State. The exchange rate to be used will be the rate quoted:

a) In State A:

b) In State B:

Years Covered

Requests for assistance under the present MoU can be made in respect of tax claims that were finally determined after (DDMMYY).

Time Limits

1. The time limits beyond which a claim may no longer be collected are governed by the law of the applicant State.
2. Acts of collection carried out by the requested State in pursuance of a request for assistance, which, according to the laws of that State, would have the effect of suspending or interrupting the period mentioned in paragraph 1, will also have this effect under the laws of the applicant State. The requested State will inform the applicant State about such acts.
3. In any case, the requested State is not obliged to comply with a request for assistance which is submitted after a period of XX years from the date of the original instrument permitting enforcement.

Calculation of Interest in the Collection Period

Option 1: The applicant State shall calculate and regularly provide an update to the requested State of the amount of interest accrued after the request has been accepted for collection. Such updates should be added to the claim to be collected and need not be the subject of a new request.

Option 2: The applicant State shall calculate the amount of interest accrued after the request has been accepted for collection. After having received the collected money, the applicant State can make a new request for assistance concerning only the additional interest provided the additional interest exceeds the minimum amount.

Option 3: The requested State shall calculate interest during the collection period, applying its own interest rate, and add it to the amount to be collected.

Option 4: The requested State shall calculate interest during the collection period applying the interest rate of the applicant State, and add it to the amount to be collected.

Deferral, Payment by Instalments and Waiver of Claims

1. The requested State has responsibility for consideration and acceptance of deferral and payment by instalments. It shall first inform the applicant State.

2. The requested State shall not accept a compromise of the claim or remit/waive the claim in part or in full without the approval of the applicant State. The requested State may have to cease collection of the foreign claim under the following conditions:

- a) The taxpayer has been granted a debt settlement arrangement under the law of the requested State;
- b) The taxpayer is a company that is undergoing liquidation or is in administration due to insolvency.

Costs of Collection

Ordinary costs incurred in providing assistance shall be borne by the requested State and extraordinary costs incurred in providing assistance shall be borne by the applicant state, **(unless the two states have entered into a bilateral agreement, whether general or in specific cases, on the sharing of costs)**.

Ordinary costs are those expected in normal domestic collection proceedings and extraordinary costs are defined as those incurred when a particular type of procedure, which is not ordinarily used in the requested state, is used at the request of the other state, or supplementary costs of experts, interpreters, or translators, costs of judicial and bankruptcy proceedings.

As soon as the competent authority of the requested State anticipates that extraordinary costs are likely to be incurred, it will inform the competent authority of the applicant State and indicate the estimated amount of such costs, if possible. The applicant State will inform the requested State as soon as possible if it accepts such extraordinary costs.

Transfer of Payments to the Applicant State

Any sum recovered by the requested State, including where applicable the interest, will be transferred to the applicant State in the currency of the requested State.

The transfer will take place within [XX days] of the date on which recovery was effected.

Amounts collected by the requested State will be forwarded to:

- a) In State A: ... (name of bank, SWIFT-code or IBAN-code, account number, name of account holder, etc.)
- b) In State B: ... (name of bank, SWIFT-code or IBAN-code, account number, name of account holder, etc.) When an amount is transferred, the competent authority of the requested State will advise the competent authority of the applicant State.

Time Limits for Responding to a Request

The competent authorities agree to provide acknowledge receipt of requests for assistance within [XX days].

The competent authorities agree to report back on any progress in collection actions within [XX months].

Communication between the Competent Authorities

The competent authorities agree to communicate by secure electronic means of communications when possible. They also agree, in case of urgency, to communicate by telephone, subject to confirmation in writing.

Language

Option 1: All information and particulars communicated between the competent authorities in relation to a request for assistance will be conveyed in English or French: the official languages of OECD and of the Council of Europe.

Option 2: All information and particulars communicated between the competent authorities in relation to a request for assistance will be conveyed in [XX] language.

The following documents must be accompanied by a translation in the language of the requested State:

- a) Requests made to State A:
- b) Requests made to State B:

Potential Modifications to the Request

1. Upon receipt by the requested State, in writing or in electronic form, of a notification by the applicant State of an amendment to the amount of the tax claim, where that amendment leads to a reduction in the amount of the claim, the requested State will continue action to recover the claim but such action will be limited to the amount still outstanding.
2. If at the time the requested State is informed of the reduction in the amount of the claim, an amount exceeding the amount still outstanding has already been received, but the transfer procedure has not yet been initiated, the requested State will repay the amount overpaid to the person entitled thereto.
3. Upon receipt by the requested State, in writing or in electronic form, of a notification by the applicant State of an amendment to the amount of the tax claim, where that amendment leads to an increase in the amount of the claim, then:
 - a) the additional request will as far as possible be dealt with by the requested State at the same time as the original request;
 - b) where, in view of the requested State, consolidation of the additional request with the original request is not possible, the requested State will be required to comply with the additional request only if it concerns an amount not less than the minimum amount referred to above.

Uncollectible Claims

When the competent authority of the requested State determines that a tax claim is uncollectible, the competent authority will return the request with a report, providing details on why the claim is uncollectible.

Withdrawal of a Request

If the request for assistance in collection becomes devoid of purpose, the competent authority of the applicant State shall immediately notify, by telephone or fax, the competent authority of the requested state that the request is being withdrawn. This shall be followed by a written notification from the competent authority of applicant State. The competent authority of the requested State will acknowledge, in writing, the withdrawal of the request.

Inventory/Feedback

1. Each State will annually inform the other of the number of requests for information and recovery sent and received each year, the amount of the claims involved and the amounts collected.
2. The competent authorities may consult with each other at any time with the aim of ensuring effective implementation of this Memorandum.

Dispute Resolution Mechanisms

Contracting States may consult, under the provisions of Article 24, to overcome any difficulty they may encounter. The competent authorities will consult, as necessary, in the event of any litigation resulting from the application of the assistance in collection program.

Proceedings with respect to the existence, or validity or the amount of a tax claim of an applicant State shall only be brought before the courts or administrative bodies of that applicant State.

Effective Date and Modifications

1. This Memorandum becomes effective [on signature] on [the later of the two signature dates].
2. This Memorandum may be modified at any time by agreement between the competent authorities.
3. This Memorandum is concluded for an indefinite period of time. It may be terminated by written notification by either competent authority.
4. This Memorandum will be evaluated xx years after the date of entry into effect.

Source: Model Memorandum of Understanding on Assistance in Tax Collection Based on the Convention on Mutual Administrative Assistance in tax Matters available at www.oecd.org/tax/exchange-of-tax-information/49102501.pdf

Annex C: Ideal knowledge and skills for the function for cross-border assistance in tax recovery



To ensure the effective operation of a function for CBAR, senior management must recruit knowledgeable and skilful staff in the areas of tax debt recovery, international taxation and/or international co-operation. In addition, permanent capacity-building opportunities must be provided to the staff. The jurisdiction should consider deploying or recruiting staff with the following knowledge and skills:

1. Good understanding of the network of multilateral and bilateral agreements on tax matters in effect for the jurisdiction, as well as the domestic tax policy on international co-operation in tax matters.
2. Knowledge on the practical working of international legal instruments as it concerns CBAR. This will ideally include, as may be the case in the jurisdiction, the MAAC, regional instruments and bilateral international agreements that include the provision of CBAR.
3. Good understanding of the domestic laws, regulations and procedures available for the collection and recovery of tax claims within the jurisdiction.
4. Knowledge of the practical working of collection and recovery efforts within the jurisdiction.
5. Knowledge on confidentiality measures to ensure the protection of all communication received and sent to partner jurisdictions within the procedure for the recovery of tax claims.

Annex D: Performance indicators for the function for cross-border assistance in the recovery of tax claims



The following indicators may be considered when measuring the performance of the function for CBAR:

- The number of requests sent
- The number of requests received
- The time taken to respond to requests
- The amount of tax claims recovered through CBAR for foreign jurisdictions pursuant to an incoming request
- The amount of tax claims recovered by foreign jurisdictions pursuant to an outgoing request
- The quality of outgoing request for CBAR, measured through the number of requests for clarification or the number of rejections from the requested jurisdictions
- The level of satisfaction of the main CBAR partners

These targets may be used for reviewing the performance of the function and adapting the jurisdiction's strategy and mission for the function for CBAR

Annex E: Useful resources

Relevant information on international standards on tax transparency and exchange of information

- Global Forum on Transparency and Exchange of Information for Tax Purposes: www.oecd.org/tax/transparency
- Technical assistance available from the Global Forum on Transparency and Exchange of Information for Tax Purposes: www.oecd.org/tax/transparency/what-we-do/
- Key publications and documentation of the Global Forum: www.oecd.org/tax/transparency/documents/key-publications-and-documents.htm
- Global Forum documents available to tax authorities upon request: www.oecd.org/tax/transparency/documents/documents-available-to-tax-authorities-upon-request.htm
- Country monitoring by the Global Forum: www.oecd.org/tax/transparency/country-monitoring/
- E-learning in taxation: www.oecd.org/tax/tax-global/self-paced-training.htm

International legal instruments facilitating assistance in recovery of tax claims

- OECD (2017), *Model Tax Convention on Income and on Capital: Condensed Version 2017*, OECD Publishing, Paris, https://doi.org/10.1787/mtc_cond-2017-en.
- UN (2021), *United Nations Model Double Taxation Convention Between Developed and Developing Countries 2021*, UN, New York, https://financing.desa.un.org/sites/default/files/2023-05/UN%20Model_2021.pdf
- OECD and Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, available at dx.doi.org/10.1787/9789264115606-en
- The text of the Amended Convention in English, French, German (unofficial translation), Spanish (unofficial translation) and Portuguese (unofficial translation) available at www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm
- The Revised Explanatory Report to the Convention on Mutual Administrative Assistance in Tax Matters as Amended by 2010 Protocol available at www.oecd.org/ctp/exchange-of-tax-information/Explanatory_Report_ENG_%2015_04_2010.pdf

Annexes

General information on the Convention on Mutual Administrative Assistance in tax Matters

- Flyer on the Convention on Mutual Administrative Assistance in Tax Matters available at www.oecd.org/tax/exchange-of-tax-information/ENG_Convention_Flyer.pdf (also available in French and Spanish)
- Chart of participating jurisdictions (signatures and entry into force) available at www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf
- List of declarations, reservations and other communications available at www.coe.int/en/web/conventions/full-list/-/conventions/treaty/127/declarations?module=declarations-bytreaty&numSte=127&codeNature=0

Publications and guides on tax debt management and assistance in collection of tax claims

- OECD Manual on Assistance in the Collection of Taxes available at www.oecd.org/ctp/exchange-of-tax-information/oecdmanualonassistanceinthecollectionoftaxes.htm
- OECD Model Memorandum of Understanding on Assistance in Collection of Tax Claims available at www.oecd.org/ctp/exchange-of-tax-information/49102492.pdf and www.oecd.org/ctp/exchange-of-tax-information/49102501.pdf
- OECD (2014), *Working Smarter in Tax Debt Management*, OECD Publishing. <http://dx.doi.org/10.1787/9789264223257-en>
- OECD (2019), *Tax Debt Management Maturity Model*, OECD Tax Administration Maturity Model Series, OECD, Paris. www.oecd.org/tax/forum-on-tax-administration/publications-and-products/tax-debt-management-maturity-model.htm
- OECD (2020), *Forum on Tax Administration: Enhancing International Tax Debt Management*, Paris available at www.oecd.org/tax/forum-on-tax-administration/publications-and-products/enhancing-international-tax-debt-management.htm
- CIAT/GIZ/IDB (2016), *Manual on Tax Collection and Recovery*, Inter-American Center of Tax Administrations, German Agency of International Cooperation and Inter-American Development Bank available at www.ciat.org/Biblioteca/DocumentosTecnicos/Ingles/2016_manual_tax_collection_recovery.pdf
- OECD, *Building Effective Frameworks for Cross-Border Assistance in the Recovery of Tax Claims in African Countries* available at www.oecd.org/tax/transparency/documents/cross-border-assistance-recovery-of-tax-claims-african-countries.pdf

Other Global Forum toolkits and guides

- Global Forum Secretariat, OECD (2012), *Keeping It Safe – Joint OECD and Global Forum Guide on the Protection of Confidentiality of Information Exchanged for Tax Purposes*, available at www.oecd.org/tax/transparency/documents/global-forum-keeping-it-safe.pdf
- Global Forum Secretariat, OECD (2012), *Keeping it Safe – The OECD Guide on the Protection of Confidentiality of Information Exchanged for Tax Purposes*, available at www.oecd.org/ctp/exchange-of-tax-information/keeping-it-safe-report.pdf
- OECD (2020), *A Toolkit for Becoming a Party to the Convention on Mutual Administrative Assistance in Tax Matters*, available at www.oecd.org/tax/transparency/documents/MAAC-toolkit_en.pdf
- OECD (2020), *Confidentiality and Information Security Management Toolkit*, available at www.oecd.org/tax/transparency/documents/confidentiality-ism-toolkit_en.pdf
- OECD (2020), *Establishing and Running an Effective Exchange of Information Function: A joint Global Forum and ATAF Toolkit*, available at www.oecd.org/tax/transparency/documents/EOI-Unit-toolkit_en.pdf
- OECD (2021), *Model Manual on Exchange of Information for Tax Purposes*, available at www.oecd.org/tax/transparency/documents/EOI-manual.pdf

Annex F. Donors of the Global Forum capacity-building programme

Since 2011, the Global Forum has delivered a capacity-building programme to support the implementation of the two global standards on transparency and exchange of information by its developing members and effective use of the information exchanged. Our activities are empowering jurisdictions in their fight against tax evasion and other illicit financial flows, and ultimately helping them enhance their domestic resource mobilisation.

Our capacity-building programme has developed and expanded over the years. Today, more than half of the Global Forum members are developing countries. The programme aims to ensure that developing jurisdictions are not left behind, and fully benefit from the remarkable progress achieved in transparency and administrative co-operation in the past decade. To that end, the Global Forum Secretariat works closely with regional and global partner organisations.

Through awareness raising at political level, training of thousands of officials, the development of tools (e.g. toolkits, e-learning) and high-standard technical assistance, the dynamic of change is progressing and more developing jurisdictions are reaping the benefits of a more transparent tax world.

The Toolkit for establishing a function for cross-border assistance in the recovery of tax claims will support developing countries in their efforts to implement and benefit from an effective cross-border assistance in tax recovery. The Global Forum Secretariat stands ready to assist them at any stage of this journey.

The delivery of the Global Forum's capacity-building programme is only made possible thanks to the financial support and the trust of our donor partners.

Financial contributions provided by:



European Union



France



Germany



Japan



Ministry of Foreign Affairs

Netherlands



Norway



Senegal



Sweden



Switzerland



United Kingdom



For more information:

 www.oecd.org/tax/transparency

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