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in Tax Matters**

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Assistance in the collection of taxes**Summary*

This note presents the work done at the December 2003 meeting of the United Nations Ad Hoc Group of Experts on International Cooperation in Tax Matters on the topic of assistance in the collection of taxes. It suggests that the Committee continue that work by addressing the following questions:

- a) whether an Article on Assistance in the Collection of Taxes should be added to the UN Model Convention;
- b) if yes, whether that Article should be drafted in accordance with the draft produced during the December 2003 meeting.

* The present paper was prepared by the Secretariat of the Organisation for Economic Co-operation and Development. The views and opinions expressed are those of the OECD Secretariat and do not necessarily represent those of the United Nations.

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I. Work of the Ad Hoc Group of Experts on International Cooperation in Tax Matters

1. The matter of assistance in the collection of taxes was discussed at the 11th meeting of the Ad Hoc Group of Experts on International Cooperation in Tax Matters (held on 15-19 December 2003) on the basis of note ST/SG/AC.8/2003/CRP.2 ("*L'assistance internationale au recouvrement des creances fiscales*") prepared by M. Nouredine Bensouda, Director General of Taxation, Morocco.

2. According to the note by Mr. Bensouda:

[TRANSLATION] "It is generally agreed that State fiscal sovereignties, when not conflicting, have no contacts and that enforceable claims issued by one fiscal sovereignty for the recovery of unpaid taxes have no legal force outside its fiscal tax territory.

This constitutes a strict limitation to the taxing power of each State as regards its own borders, which facilitates international tax avoidance and evasion. These have become more important over the last two decades and have taken various and variable forms, in particular through the arrangement of bankruptcy as regards tax claims.

This is why the fight against international tax avoidance and evasion now constitutes an essential priority for tax administrations and international organizations that deal with international tax issues. Since unilateral measures in this area may be unsuccessful, it is essential that bilateral or multilateral tax cooperation be implemented between tax administrations."

3. The note also provided an historical background on how assistance in collection has been dealt with in bilateral treaties, in previous work of the League of Nations, the OECD and the United Nations. Concerning the latter, it was noted that:

[TRANSLATION] "At the eighth meeting of the Ad Hoc Group of Experts on International Cooperation in Tax Matters (hereinafter "Group of Experts") held in December 1987, it was agreed, at the request of many experts, to include in the commentary on Article 26 of the Model Convention of the United Nations (MC-UN) a provision on assistance in collection, leaving it to Contracting States the decide whether or not to include it during the negotiations of bilateral treaties."

4. The note finally analyzed the various aspects that would need to be addressed in an Article on assistance in collection of taxes and made recommendations on these, in particular

- the scope of assistance in collection
 - tax claims covered
 - nature of the tax claims
 - characteristics of the tax claims
 - persons covered

- the procedural aspects of assistance in collection
 - the request for assistance
 - the provision of assistance

5. The discussions that proceeded on the basis of that note at the December 2003 meeting of the Group of Experts were summarized in paragraphs 10-15 of the report of the Secretary-General on the meeting (note E/2004/51 "Eleventh meeting of the Ad Hoc Group of Experts on International Cooperation in Tax Matters"). These paragraphs are reproduced in Annex 1. According to paragraph 15 of that report:

"15. The Group of Experts established a focus group (Belgium, Chile, France and Morocco) at the meeting to prepare a recommendation with respect to the adoption of an assistance-in-collection article. The focus group prepared some draft language for the Model Convention and for the Commentary. It was decided that the members of the Group of Experts should exchange views on the draft, with the expectation that the matter would be taken up at the next meeting of the Group of Experts."

6. As indicated in that paragraph, the focus group, which was chaired by Mr. Bensouda, produced a draft Article for the Model Convention as well as the introduction for a Commentary on that Article. These were included in note ST/SG/AC.8/2003/CRP.2/Add.1 and read as follows:

Draft 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 Article 1.** 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 covered by this Convention**, insofar as the taxation hereunder 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.

**Commentary on
Draft Article 27 on Assistance in the Collection of Taxes**

A – General Considerations

1. Most members of the Group of experts expressed the wish to up-date the United Nations Model convention, by introducing a provision with the aim of providing, on a mutual basis, assistance in the collection of taxes covered by the convention. While a few members from developed and developing countries complained that, for constitutional, juridical or judiciary reasons, they could not afford such an assistance, some members from developing countries held the point that, for lack of administrative and technical capacities, it would be difficult for them to assist, in anyway, their treaty partners, in the collection of taxes.

2. The Group of Experts decided to add a new article 27 to the United Nations Model convention, reproducing article 27 of the OECD Model convention with substantive changes, aiming at presenting a more restrictive scope of application of the assistance in the collection of taxes. This outcome was the result of the lack of consensus on a common text for this provision. As a consequence, the existing articles 27, 28 and 29 of the United Nations Model convention are reclassified articles 28, 29 and 30.

B – Commentaries on the paragraphs of Article 27

[...]

II. Proposal for the Committee of Experts on International Cooperation in Tax Matters

7. Given the work already done at the last meeting of the Ad Hoc Group of Experts, the Committee may want to deal with the matter of assistance in the collection of taxes by addressing the following questions:

- a) whether an Article on Assistance in the Collection of Taxes should be added to the UN Model Convention;
- b) if yes, whether that Article should be drafted in accordance with the Focus Group's draft reproduced above.

8. The Commentary on an eventual Article on assistance in collection on taxes should be relatively easy to draft once, and if, the wording of a new Article is agreed to. If the Article takes the form of the above draft, which is substantially similar to Article 27 of the OECD Model, that Commentary could reproduce the relevant parts of the Commentary on the OECD Model and explain the differences.

ANNEX 1 : Excerpt from note E/2004/51 (report of the Secretary-General on the Eleventh meeting of the Ad Hoc Group of Experts on International Cooperation in Tax Matters

"II. Mutual assistance in the collection of tax debts and protocol for mutual assistance procedures

9. The Group of Experts reviewed the existing United Nations, OECD and European Union agreements and mechanisms for mutual assistance in tax matters. The central question raised was whether a provision similar to article 27 of the OECD Model Convention, dealing with assistance in collection, should be included in the United Nations Model Tax Convention.

10. The Group of Experts noted that, traditionally, mutual assistance in tax matters has been provided for in the exchange of information article (article 26) in income tax treaties. The fundamental issue in any tax system is the collection of taxes. It is natural, therefore, to consider cooperation on collection.

11. During the discussion, a question arose as to whether mutual assistance should be limited only to taxes covered by the convention or should extend to all taxes of the contracting states, including local taxes and social security. One approach would be to postpone requests for collection assistance until all internal remedies have been exhausted. In any event, requests for collection must be accompanied by the proper paperwork. Precautionary measures, such as seizures, must not interfere with normal business conduct. It might be desirable to allow assistance in collection on a voluntary basis before a full exhaustion of remedies, when the administrative costs of assistance are small and the costs of exhausting remedies are large.

12. It was suggested that assistance in the collection of taxes might be limited solely to taxes covered by a tax convention or might be extended to other taxes. Whether a country should agree to a broad assistance-in-collection provision would depend in part on its capacity to provide assistance.

13. It was noted that some countries may have serious constitutional problems in collecting foreign tax debts. Therefore, the proposed addition of article 27 to the United Nations Model Convention must clearly establish what sorts of debts can be collected. In many cases, domestic laws must be changed to permit the collection of foreign tax debts. Other members suggested that constitutional issues generally be covered during the treaty negotiations.

14. The Group of Experts established a focus group (Belgium, Chile, France and Morocco) at the meeting to prepare a recommendation with respect to the adoption of an assistance-in-collection article. The focus group prepared some draft language for the Model Convention and for the Commentary. It was decided that the members of the Group of Experts should exchange views on the draft, with the expectation that the matter would be taken up at the next meeting of the Group of Experts."