

FORUM ON TAX ADMINISTRATION

**Tax Debt Management Network**

# Enhancing International Tax Debt Management



Community of Interest Series

# **Enhancing International Tax Debt Management**

Tax Debt Management Network



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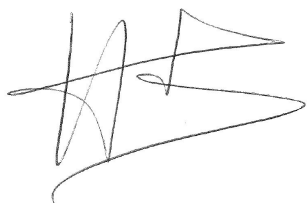
# Preface

As Chairs of the Forum on Tax Administration (FTA) Tax Debt Management Network, it is a great pleasure to present the Network's report on *Enhancing International Tax Debt Management*.

While most taxpayers pay their tax on time, there is still a significant amount of tax debt reported by most FTA members, amounting to around EUR 820 billion based on the figures reported in the OECD Tax Administration 2019 report. Taking quick and effective action to prevent and to recover tax debt is vital both for protecting public revenues as well as for maintaining trust in the efficiency and fairness of the tax system. This is something brought into further relief by the current COVID-19 crisis and its impact on both taxpayers and public finances.

A particular challenge in the field of tax debt management can be the recovery of debts owed in one jurisdiction where the debtors and/or the assets are located in another jurisdiction, referred to in this report as "international tax debt". As a result of the significant increase in the transparency of financial accounts globally, particularly as a result of the adoption of the OECD Common Reporting Standard, information relevant to the collection of international tax debt is now more visible than ever before. However, practical and legal difficulties to cross-border assistance in recovery still exist which may lead to some potentially collectible debt having to be written-off. These issues, which can also be the result of domestic shortcomings, are explored in this report together with recommendations for future collaboration. We believe that action on these recommendations will help tax administrations strengthen both domestic and international debt collection efforts, as well as address some of the issues that arise in cross-border insolvency cases, something that unfortunately might be expected to increase due to the current crisis.

Finally, we would like to take this opportunity to thank the Spanish tax administration for taking the initiative to launch the project leading to this report, as well as all of the members of the FTA Tax Debt Management Network who provided invaluable insights during all stages of this report. We would also like to thank our own colleagues in the General Administration for Collection and Recovery, in particular Michael Roekaerts, as well as the OECD Secretariat for their support. We very much look forward to continued cooperation among FTA members in taking forward the set of recommendations made in this report.



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# Table of contents

Preface	3
Abbreviations	6
Executive Summary	7
<b>1 Challenges to International Tax Debt Collection</b>	<b>9</b>
The changing landscape	9
Scale of international tax debt	11
Challenges in international tax debt management	12
<b>2 Domestic approaches to minimise international tax debt</b>	<b>16</b>
Adapting communications and engagement for taxpayers who are internationally mobile	17
Precautionary approaches for taxpayers at risk of leaving the jurisdiction	18
Examples of precautionary measures on assets	20
Examples of restrictions on overseas travel	21
Tracing tax debtors and assets	22
Direct approaches to tax debtors resident in another jurisdiction	25
<b>3 The legal and operational aspects of assistance in recovery</b>	<b>28</b>
Legal basis for mutual assistance	29
Multilateral Convention on Mutual Administrative Assistance in Tax Matters	29
Bilateral Treaties and the OECD Model Convention	30
Regional agreements	30
Requesting mutual assistance in tax debt collection	31
<b>4 Recommendations for future work</b>	<b>36</b>
Sharing of knowledge and best practices	36
Efficient exchange arrangements	37
Identification of tax debtors and assets	38
Effective use of Mutual Assistance in Recovery	38
Symmetries and Asymmetries in powers	39
References	40

## FIGURES

Figure 1.1 Percentage of average yearly recovered amounts compared to the average year amounts for which recovery assistance requests are received, 2013-2016	12
Figure 1.2. Steps in assistance in recovery	12
Figure 1.3. Challenges to effective international recovery	13
Figure 2.1. Powers to assist the enforcement of debt	19

## TABLES

Table 1.1. Concerns and Issues: Assistance in Collection	14
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# Abbreviations

<b>ACT</b>	Assistance in Collection of Taxes
<b>ATO</b>	Australian Taxation Office
<b>AUSTRAC</b>	Australian Transaction Reports and Analysis Centre
<b>CCN</b>	Common Communication Network
<b>CRS</b>	Common Reporting Standard
<b>CRA</b>	Canada Revenue Agency
<b>CTS</b>	Common Transmission System
<b>DPO</b>	Departure Prohibition Order
<b>EU</b>	European Union
<b>EUR</b>	Euro (currency)
<b>FTA</b>	Forum on Tax Administration
<b>GST</b>	Goods and Services Tax
<b>HNWI</b>	High Net Worth Individuals
<b>iCOV</b>	Infobox Criminal and Unaccountable Assets system
<b>IRAS</b>	Inland Revenue Authority of Singapore
<b>JITSIC</b>	Joint International Taskforce on Shared Intelligence and Collaboration
<b>JPY</b>	Japanese Yen
<b>MoU</b>	Memorandum of Understanding
<b>NOK</b>	Norwegian Krone
<b>NTA</b>	Norwegian Tax Administration
<b>PAN</b>	Permanent Account Number
<b>OECD</b>	Organization for Economic Co-operation and Development
<b>TRO</b>	Travel Restriction Order
<b>UNCITRAL</b>	United Nations Commission on International Trade Law
<b>UNF</b>	Uniform Notification Form
<b>UIPE</b>	Uniform Instrument Permitting Enforcement
<b>VAT</b>	Value Added Tax

# Executive Summary

Effectively managing the collection of tax debt is a high priority for all tax administrations as it secures vital revenues that fund domestic services. In a minority of cases, where the debtor and/or the assets of the debtor are located in another jurisdiction, tax debt collection can face significant obstacles, which may lead to the debts being written-off. This can undermine public trust in the fairness of the international tax system, with potential wider impacts on attitudes to voluntary tax compliance on which much of tax collection relies.

Cooperation and collaboration between tax administrations has become ever more critical in an age of globalisation and the field of debt collection is no exception. In many countries, taxpayers have become increasingly internationally mobile, being able to conduct business or transactions in multiple locations. As a result, in some situations the only assets available to service a tax debt may be located in another jurisdiction and outside of the direct legal reach of the administration where the debt is owed.

While these assets may often have not been visible in the past, over recent years, the ability to access information on financial assets held outside of the jurisdiction where the taxpayer is tax resident has increased markedly. In particular in 2019, under the Common Reporting Standard (CRS), information was exchanged between more than 100 Jurisdictions in respect of more than 80 million financial accounts, with a total value of over EUR 10 trillion (OECD, 2020<sup>[1]</sup>). The CRS has shown the extent of financial assets held out the jurisdiction of tax residence and has become an important source of information in some jurisdictions for tax debt collection purposes.

This report, which has been developed by the Forum on Tax Administration's (FTA) Tax Debt Management Network, looks at some of the main challenges currently facing international tax debt collection and makes a number of recommendations for further work by the Tax Debt Management Network. These challenges include a lack of reliable statistics to inform decision-making, potential difficulties that can be faced in tracing debtors and assets, as well as an apparent lack of experience and knowledge in some cases as to the processes and best practices for requesting assistance in recovery. Building on the OECD report *Working Smarter in Tax Debt Management* (OECD, 2014<sup>[2]</sup>), this report recommends a number of areas for further work by the FTA's Tax Debt Management Network to help improve international tax debt collection.

This report is divided into four chapters:

**Chapter 1** sets out in more detail what constitutes international tax debt and the nature of the challenges and limitations currently faced by some tax administrations.

**Chapter 2** explores some of the technical interpretation and operational issues that administrations have encountered, both as regards the exhaustion of domestic possibilities and in the making and receiving of requests for assistance in recovery.

**Chapter 3** looks at assistance in recovery, describing the legal basis for such assistance and the operational and organisations issues that jurisdictions may wish to take into account.



**Chapter 4**, drawing on the issues identified in this report, sets out a number of high level recommendations for further work by the Tax Debt Management Network, including the exploration of possible solutions to address some of these issues, where appropriate. The recommendations cover:

- The further sharing of knowledge and best practices on both assistance in recovery and insolvency measures;
- The use of standardised e-forms for requests for assistance in recovery;
- Ways to improve the identification of tax debtors and assets;
- Further research on the use of reservations and options for facilitating assistance in recovery
- Tools to assist in the operation of administrative assistance; and
- Collaborative work on analysing and assessing the scope and use of domestic tax debt management powers.

### Caveat

Tax administrations operate in varied environments, and the way in which they each administer their taxation system differs in respect to their policy, legal and legislative environment and their administrative practice and culture. As such, a standard approach to tax administration may be neither practical nor desirable in a particular instance. Therefore, this report and the observations it makes need to be interpreted with this in mind. Care should be taken when considering a country's practices to fully appreciate the complex factors that have shaped a particular approach. Similarly, the distinct challenges and priorities each administration is managing should be taken into account and may mean not all jurisdictions endorse the views of the report or the recommendations for further work.

# 1 Challenges to International Tax Debt Collection

## The changing landscape

1. Tax administrations globally are facing new challenges resulting from increases in the scale of international trade, the movement of capital/people and the rapid digitalisation of the economy. One of these challenges is an increase in situations where a tax debtor and/or the assets of that debtor are not located in the jurisdiction where a debt is owed. In this report, this situation is described as an “international tax debt”.

### Box 1.1. International tax debt scenarios

Tax debt, which is owed in jurisdiction A where there are no collectable assets, and:

1. The tax debtor remains in jurisdiction A but has assets in another jurisdiction; or
2. The tax debtor has moved to jurisdiction B and has assets in jurisdiction B; or
3. The tax debtor has moved to jurisdiction B and has assets in another jurisdiction(s).

2. Box 1.1 sets out a number of scenarios tax administrations may face when dealing with international tax debt. (This is not exhaustive as there may be other, more unusual cases.) These scenarios can come about by mistake or through deliberate action of a taxpayer, for example:

- Highly mobile taxpayers, such as cross border workers, retirees or even high net worth individuals (HNWI), may leave a jurisdiction without realising that there was an outstanding tax debt. This can often be a genuine error or oversight as the timing of tax assessments can be months after the taxpayer has relocated. In some such cases the taxpayer may simply not be aware that a tax debt is outstanding. There may also be language barriers which could result in a taxpayer not understanding the details of a debt notice served abroad.
- Deliberate action by a tax debtor to relocate themselves and/or their assets to another jurisdiction or jurisdictions in order to avoid paying the tax due, which could also involve the use of complex cross-border structures to avoid collection.
- Where a business located in jurisdiction B is selling goods or services to a person located in jurisdiction A, but any tax collected that should be paid to jurisdiction A by that business has not been transferred.

3. Whatever the underlying cause, where voluntary compliance cannot be achieved through direct contact with a debtor, then national powers to take direct action can be limited. In general, such powers only apply within a jurisdiction and debts are not directly enforceable in another jurisdiction under the longstanding rule that the courts of one country will not enforce the tax laws of another (the “revenue rule”).

4. In the past, the cost of tracing assets and tax debtors believed to be in another jurisdiction, together with the inability to enforce domestic obligations in other jurisdictions, has often led to such tax debts being written-off. While such debts could potentially be reactivated if the tax debtor returned or if assets were subsequently discovered, the statute of limitations often prevents recovery.

5. In recent years, tax administrations have also found that tax debts are more frequently contested. Time limits, although useful to avoid recovery requests for old claims where the likelihood of success is low, can unintentionally hamper mutual assistance in recovery where protracted legal claims are brought. In some administrations the time limits that determine the maximum age of a tax debt claim do not always take into account the duration of legal proceedings, objections, appeals, appeals in cassation and possibly other international courts. This can lead to a debt claim being ultimately irrevocably established only after many years have passed, in some cases beyond the recovery time limits of domestic and international frameworks.

6. For this reason some tax administrations have adapted domestic legislation to prevent statute of limitations applying to debt recovery. For example, in Belgium when transposing the European Union *Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures* (Council of the European Union, 2010<sup>[3]</sup>) into domestic law, a rule was introduced that means that any request for recovery or precautionary measures leads to a suspension of the limitation period. This applies where the request concerns a natural person domiciled outside Belgium or a legal person having its registered office, its main establishment or its seat of administration or management outside Belgium.

7. In recent years, there has also been a significant increase in the information available to tax administrations from other jurisdictions which could be used to assist in the collection of tax. This includes mechanisms such as exchange of information on request, spontaneous exchange of information and automatic exchange of information through the Common Reporting Standard (CRS). However, the ability of a tax administration to use such information for collection purposes will depend on that jurisdiction's domestic legal framework. For example, some tax administrations do not have the legal authority to use CRS information for collection purposes.

### Box 1.2. The Common Reporting Standard

The OECD *Standard for Automatic Exchange of Financial Account Information in Tax Matters*, so called Common Reporting Standard (CRS), developed in response to the G20 request and approved by the OECD Council on 15 July 2014, calls on jurisdictions to obtain information from their financial institutions and automatically exchange that information with other jurisdictions on an annual basis. It sets out the financial account information to be exchanged, the financial institutions required to report, the different types of accounts and taxpayers covered, as well as common due diligence procedures to be followed by financial institutions. (OECD, 2014<sup>[4]</sup>)

The first exchanges took place in September 2017 involving around 50 jurisdictions. A similar number of jurisdictions began exchange in September 2018 and currently over 100 jurisdictions now exchange information on financial accounts under the CRS annually.

8. In 2019, around 100 jurisdictions exchanged CRS information with respect to more than 80 million accounts, with a total value of over EUR 10 trillion (OECD, 2020<sup>[1]</sup>). Such large amounts of data can provide tax administrations with new routes to track and trace tax debtors and their assets. It is important to recognise that the exchange of CRS information is relatively new and most countries are only in their first or second year of exchanging information on such a large scale. As jurisdictions integrate CRS information into domestic systems they should consider allowing for the use of CRS information for debt collection purposes. In addition, consideration should be given to how the needs of tax debt management teams

can be built into any IT system design at an early stage ensuring that CRS information can be used effectively and efficiently.

## Scale of international tax debt

9. The amount of tax debt at risk from failure to collect international tax debt is not currently well measured. This matters because without reliable information administrations are unable to take fully informed decisions on resource allocation or prioritisation. There are three potential categories that should be considered for statistical analysis:

- where the tax debtor has left the jurisdiction where the debt is owed (and the tax debtor has no assets left in that jurisdiction that can be collected) and there is no knowledge of the debtor's current location;
- where the location of the tax debtor after relocating is known and there is no reason to believe that the tax debtor does not have sufficient assets in the new jurisdiction;
- where recovery assistance has already been sought and the outcomes.

10. For the first category, it would be helpful if there were statistics as to the total amount of tax debt owed in this situation. This would not be classified as potentially recoverable debt until the location of the tax debtor is known. However, knowing the scale, including the amount written-off, would allow jurisdictions to consider whether it might be cost-effective if more use was made of pre-emptive tools, such as precautionary measures or clearance certificates, or if more investment were to go into tracing tools, including options for facilitating greater exchange of information spontaneously between jurisdictions. Any such measurement of the amount of tax at risk should exclude tax debts for which domestic recovery actions are possible even without knowledge of the location of the debtor or of his/her assets. For example in the scenario where the debtor still has a bank account in the jurisdiction or still receives income from a person in the jurisdiction whom the jurisdiction can appoint as the withholding agent.

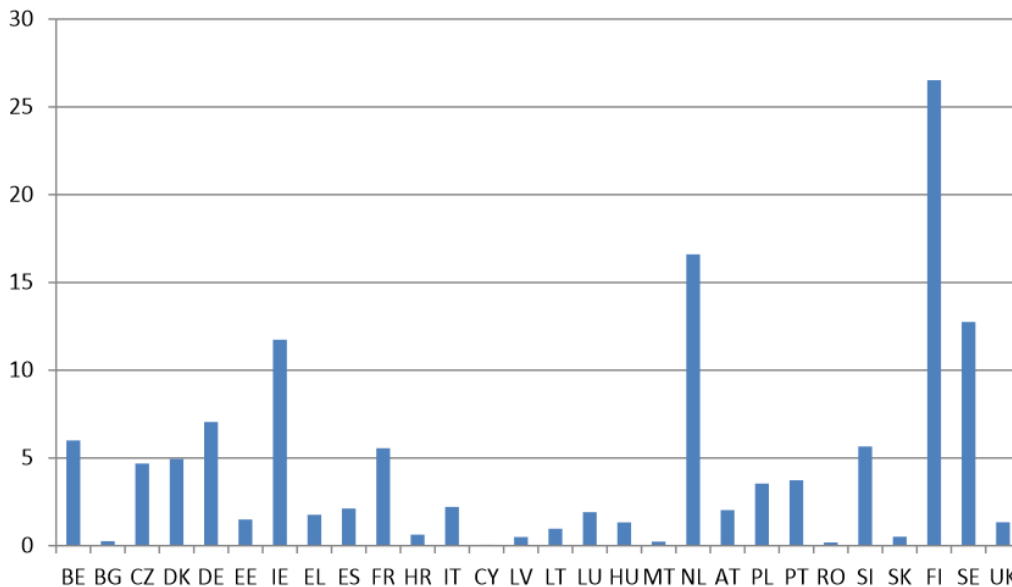
11. The second and third categories concern potentially recoverable tax debt, where the location of the tax debtor is known. Having better statistics would give a clearer picture of the scale of international tax debt that could potentially be collected if jurisdictions used their domestic powers and, where necessary, used assistance in recovery of debt mechanisms to their full extent. It would be useful to know, in particular, how much was written-off in these circumstances prior to any mutual assistance request and the main reasons behind such write-offs. In all of the categories it would be important to understand the tax type to help understand the nature of the tax debt, but also to minimise any overstatement of the debt as some jurisdictions cannot collect an international tax debt for a tax that they themselves do not impose.

12. There is some evidence of the amount of tax debt for which recovery assistance was sought and recovered within the European Union. The European Commission noted that between 2013 and 2016 around EUR 220 million was collected via requests between EU Member States under Council Directive 2010/24/EU (European Commission, 2017<sup>[5]</sup>). As can be seen in Figure 1.1, the average yearly amount recovered compared to the requests made was in general quite low. However, as was noted in the Commission's report, "the accuracy and reliability of these statistics is not complete", and they only provide "an approximate indication of the requested Member States' results" (European Commission, 2017<sup>[5]</sup>). For instance, amounts paid after a debtor was contacted, following a request for updated address information, are not included. It is also important to note that requests for assistance in tax collection is often a last resort, and usually involve cases that are older and more complex, where recovery could be more difficult.

13. When considering statistical analysis, it is important to reflect on what to measure, how to undertake the measurement and what the results will be used for. Furthermore, the measurement should take into account objective indicators such as the age of the claim, the type of debt and the type of tax debtor. Such analysis could also help tax administrations develop a better understanding of the costs and

benefits of using additional data sources, such as the CRS, for recovery purposes where that is not already possible.

**Figure 1.1 Percentage of average yearly recovered amounts compared to the average year amounts for which recovery assistance requests are received, 2013-2016**

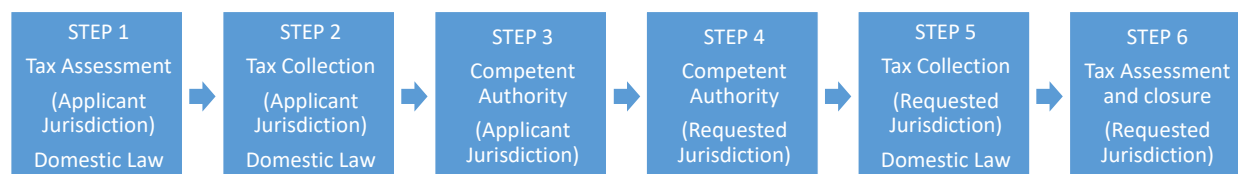


Source: European Commission (2017) *Report from the Commission on the operation of the arrangements established by Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures*, COM(2017) 778 final, [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/2017\\_report\\_mutual\\_tax\\_recovery\\_assistance\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/2017_report_mutual_tax_recovery_assistance_en.pdf) (accessed 10 November 2020).

## Challenges in international tax debt management

14. The process of engaging another jurisdiction to provide assistance in recovery is relatively straightforward subject to relevant international agreements and domestic law in the requested jurisdictions being in place.

**Figure 1.2. Steps in assistance in recovery**

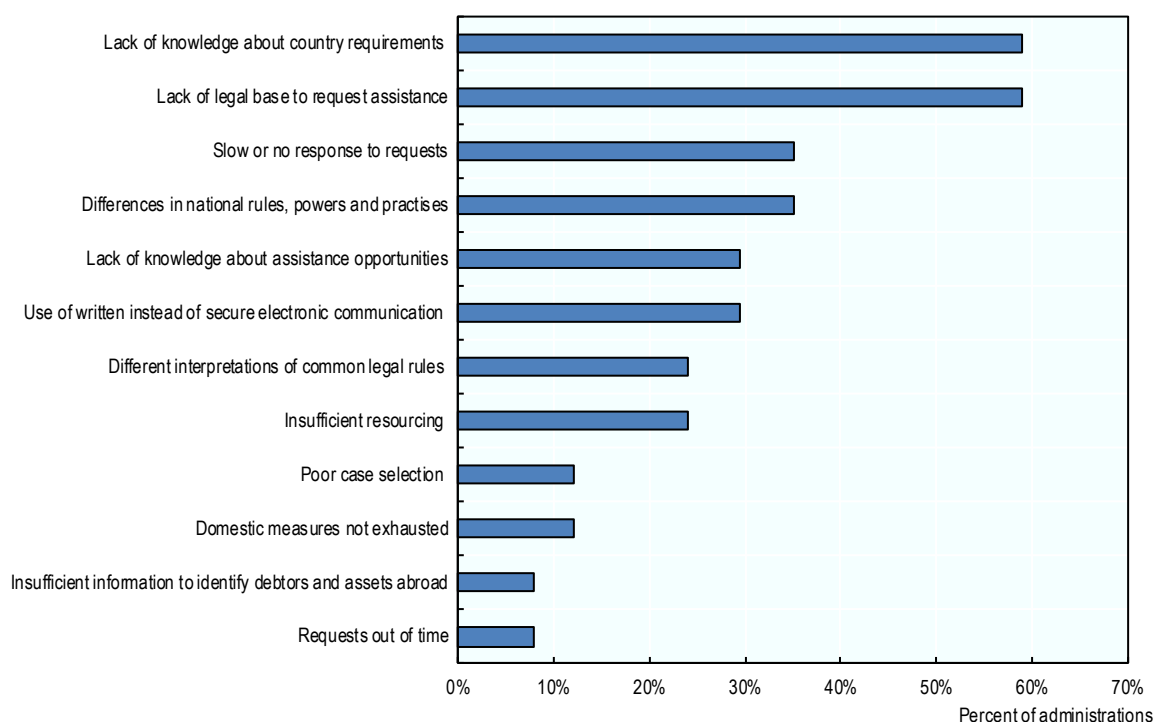


- **Step 1:** A tax administration issues an assessment to the debtor under its domestic laws if there is an unpaid self-assessed debt.
- **Step 2:** In the absence of voluntary payment the tax administration will attempt to collect the outstanding tax using domestic laws, policies and procedures. Efforts should be made to increase the level of compliance.

- **Step 3:** Where this is unsuccessful in full or part, the tax administration (the applicant jurisdiction) determines whether it is appropriate to request assistance in recovery under an international agreement. The request goes from its Competent Authority to the Competent Authority of the requested jurisdiction.
- **Step 4:** The requested jurisdiction via its Competent Authority assess and accepts the request for assistance in recovery as appropriate.
- **Step 5:** The requested jurisdiction applies its own domestic laws, policies and procedures to collect the outstanding tax for the applicant jurisdiction as if it was their own debt. This is subject to reciprocity. The requested jurisdictions can only apply its own laws to the extent that this are mirrored in the Applicant jurisdiction. There is wide variation in laws across all jurisdictions as seen in Figure 1.3. For some jurisdictions, there also may be constitutional constraints.
- **Step 6:** The requested jurisdiction reports on the measures taken and the final result. If the recovery was successful, the amounts recovered are transferred to the applicant jurisdiction.

15. There is, though, an underlying set of issues which can result in jurisdictions not making sufficient use of the international recovery assistance options available. Tax administrations participating in this report were asked whether their domestic legislation created difficulties in effectively implementing an assistance in recovery regime; and what they considered to be the most important factors which hampered the recovery process. The results are displayed in Figure 1.3.

**Figure 1.3. Challenges to effective international recovery**



Source: Forum on Tax Administration (FTA) Survey

16. Many of these issues raised by tax administrations arise both on the side of the applicant and of the requested jurisdictions. The main concerns raised by the administrations who participated in the Tax Debt Management Network survey that supported this report are set out below.

17. One general point to note, though, is that a request for assistance in recovery should only take place after all appropriate domestic measures have been taken and where the full amount owed has not been recovered. (This is covered further in Chapter 2.) For this reason, some tax administrations noted that they did not generally seek assistance as their domestic powers are often sufficient. (For example, a jurisdiction may have the domestic powers to prevent a person leaving the jurisdiction until such debt is paid.)

**Table 1.1. Concerns and Issues: Assistance in Collection**

Applicant jurisdiction	Requested jurisdiction
<b>Low prioritisation</b>	
<p>International recovery cases, when assessed alongside domestic cases, may be considered a lower priority as their perceived cost / benefit ratio may be lower.</p> <p>It could be argued that currently there is insufficient information in many cases to have a robust view on the cost / benefit of international tax debt collection. With limited resources currently allocated to this area it is unlikely that effective processes, procedures and working relationships needed for effective international collaboration are in place. Any cost / benefit assessment undertaken would therefore be based on the current processes and systems and therefore would not be an accurate reflection of what <u>could be</u> achieved in the area of international tax debt recovery.</p>	<p>International requests may be a low priority for a number of reasons:</p> <ul style="list-style-type: none"> <li>• the amount collected goes to another jurisdiction while the opportunity costs, and sometimes actual costs, are borne by the requested jurisdiction;</li> <li>• there may be an asymmetry in the domestic measures that can be taken in the applicant jurisdiction and the requesting jurisdiction to prevent or collect tax debt;</li> <li>• perceived lack of robust preventative measures in applicant jurisdiction;</li> <li>• in some cases the poor quality of requests.</li> </ul>
<b>Lack of resources</b>	
<p>If international recovery is given a low priority, then it is highly likely that it will not be well-resourced. This will often impact both the applicant and requested jurisdiction.</p>	
<b>Lack of knowledge</b>	
<p>A number of tax administrations reported that in some cases officials responsible for collecting a claim did not know the various options for requesting mutual assistance in recovery. This can be a consequence of lack of prioritisation and resources. Enhancing capacity for effective mutual assistance requires the building of knowledge and experience. While mutual assistance is not a particularly complex process, it is easy to get wrong given the different legal requirements and limitations in different jurisdictions. Without good practices and processes in place, requests for mutual assistance can be time consuming on the side of both the applicant and requested jurisdiction and less successful. It is also important to consider the possible reputational damage, if a jurisdiction is asked to take action inappropriately.</p>	<p>A number of tax administrations raised concerns about the quality of requests that they sometimes receive from applicant jurisdictions. This may result from</p> <ul style="list-style-type: none"> <li>• a lack of knowledge,</li> <li>• a lack of understanding about the powers and limitations for assistance in the requested jurisdiction,</li> <li>• inadequate information about the debtor, the assets or the actions requested</li> <li>• a lack of clarity about the status of the debt (in particular evidence as to its enforceability);</li> <li>• concerns with the underlying tax assessment which may be contested by the tax debtor.</li> </ul> <p>Furthermore, the poor quality can be the result of a lack of knowledge of the forms to be used (too many different types of forms further complicates this) and/or language problems. Again, this can lead to a lower priority being given to mutual assistance as poor quality requests will increase costs and reduce effectiveness.</p>
<b>Concern that domestic procedures have not been reasonably exhausted</b>	
<p>Jurisdictions should not shift the burden to another jurisdiction before exhausting all the recovery tools at its disposal. The</p>	<p>There is a concern that moral hazard can occur when an applicant jurisdiction does not adequately deal with the debt, and requested jurisdictions, with stretched resources and</p>

Applicant jurisdiction	Requested jurisdiction
<p>original general principle that all domestic recovery measures should be exhausted before requesting recovery assistance has gradually shifted towards an approach where the appropriate recovery procedure should have be implemented, i.e., the most cost-effective one which yields the best result with the least disproportionate difficulties for the debtor.</p> <p>Tax debtors should be notified in a timely way about their tax liability, ideally before they leave the applicant jurisdiction. Furthermore, tax administration should take swift enforcement actions when an existing debt is outstanding. In addition, in some jurisdictions the tax administration has the power to issue departure prohibition orders against tax debtors with outstanding tax debt.</p> <p>Once the debtor has left, as long as the debtor can be contacted easily, direct engagement will generally be more effective in reaching a resolution of the case. Trying to engage with the debtor directly will also support the case that all domestic avenues have been pursued. It will also help provide additional information as part of an assessment of the cost-effectiveness of other options and subsequent decision making by both Competent Authorities.</p>	<p>budgets, have to bear the applicant jurisdiction's burden of tax recovery in the name of mutual assistance.</p> <p>One common concern when a request for mutual assistance is received is whether the applicant jurisdiction has exhausted all reasonable domestic steps. Jurisdictions must therefore have a sufficient level of trust in each other.</p>
<b>Limitations on tax collection powers in domestic law</b>	
<p>Where tax debt powers in the applicant jurisdiction to enforce tax collection are not robust, recovery, both domestically and internationally, will be limited. This could lead to tax debtors locating assets in the applicant jurisdiction to exploit this as an opportunity. Weak collection powers can hamper collaboration with others as the applicant jurisdiction would not be well placed to provide international assistance if asked by another. Additionally any assistance a requested jurisdiction could offer under their domestic laws would be limited by the powers of the applicant jurisdiction.</p>	<p>A concern expressed by some tax administrations is that cases are passed to them for mutual assistance which they would not pass to others because of the availability of different powers in requested jurisdictions or the relative lack of use of powers in applicant jurisdictions. This can be seen as shifting burdens to requested jurisdictions. For example, in some jurisdictions, the tax administration has the powers to appoint collection agents (e.g. third parties such as banks) to transmit funds from the tax debtor's account to the tax authority to pay the outstanding tax debt. These powers may not be available, or may be used less often, in different jurisdictions.</p> <p>The problem can also be that certain jurisdictions may face difficulties providing assistance in tax collection due to limits in its own legal powers.</p> <p>The different use and availability of powers can result in an uneven distribution of requests with some tax administrations consistently receiving more requests than they make. This can have an impact on the willingness of the requested tax administration to prioritise such requests given the high resource costs.</p>

Source: FTA Tax Debt Management Network.

18. The combined impact of these issues can lead to tax administrations giving a low priority to international tax debt recovery on the applicant side, the recipient side or both. This can result in what might be, in some cases, significant amounts of tax debt being written-off which could have been recoverable were it given higher priority. Perceptions of unfairness that might arise from such outcomes could have important implications for attitudes towards tax compliance.



## 2 Domestic approaches to minimise international tax debt

19. This chapter explores the approaches that tax administrations have taken or might consider taking to help ensure that taxpayers pay their taxes before they or their assets leave the jurisdiction or before requests for mutual assistance are made.

20. At the domestic level, implementing effective early measures will be far more cost and time effective than seeking to collect tax downstream through the use of mutual administrative cooperation agreements. It is also a general principle of international cooperation that use of the mutual assistance instruments, whether bilateral or multilateral, is specifically intended for those cases where all appropriate tax debt collection means have been used in the applicant jurisdiction. This leads to a more efficient and effective use of mutual assistance instruments and a better and more balanced use of tax administration resources. Not exhausting appropriate domestic measures prior to requesting assistance is likely to have a significant impact on both the willingness and the ability of requested jurisdictions to provide assistance in recovery. There may, though, be a lack of clarity in some cases as to what constitutes appropriate tax debt collection efforts and how and when they are considered exhausted. This will, of course, vary from jurisdiction to jurisdiction depending on their domestic powers and their ability and willingness to use those powers.

21. In some cases it may not be sufficient that the applicant jurisdiction has exhausted all appropriate tax debt collection means domestically, for example where an applicant jurisdiction has a highly limited domestic legal and administrative framework for tax debt enforcement. In any request they will need to clearly set out what activity they can undertake and map this across to the requested jurisdiction's legal and administrative framework. This is to ensure that a jurisdiction, with wider collection powers, which has received the request minimises their burden in assessing its eligibility. Such information may be difficult to find and it may not be easily understood how the frameworks and powers compare.

22. A separate, more structural question, is to what extent those jurisdictions with limited domestic legal and administrative frameworks for tax debt enforcement should consider improving their recovery measures. The benefits would include improved domestic revenue protection, which in turn, would reduce the level and impact of international tax debt. It could also improve the coordination and application of assistance in recovery by providing better symmetry, reciprocity and administrative capacity. It should be noted that while the intention of this consideration is not to exclude jurisdictions, they remain important factors in preventing tax debt.

23. The principles set out in the OECD 2019 publication *Successful Tax Debt Management: Measuring Maturity and Supporting Change* (OECD, 2019<sup>[6]</sup>) apply across all types of tax debt, both domestic and international. The focus of those principles is that actions to support the payment of tax debt should happen as far upstream as possible. This ranges from consideration of withholding and greater real-time taxation, to the identification of, and engagement with taxpayers at greatest risk of not paying, and for early and continuous engagement with tax debtors after a tax debt has arisen. As set out in that publication, the probability of debt recovery reduces rapidly over time.

24. As regards the prevention and recovery of international tax debt, the actions that can be taken domestically include:

- adapting communications and engagement for internationally mobile taxpayers;
- precautionary approaches for taxpayers identified as at risk of leaving the jurisdiction;
- tracing tax debtors and assets;
- direct approaches to tax debtors resident in another jurisdiction;
- outsourcing of international tax debt collection;
- strengthening the domestic powers of tax collection in tax administration;
- increasing tax administration's ability to swiftly take effective action on tax debts domestically including the use of automation, and a willingness to exercise its available powers under its domestic law.

25. Tax administrations' experiences in these areas vary considerably, including the legal context that underpins their approaches, the available data and the methods and technology used. In some cases new and leading practices using multiple data sources, data analytics and behavioural insights are emerging and prompting other jurisdictions to examine these practices more closely.

### **Adapting communications and engagement for taxpayers who are internationally mobile**

26. In addition to the general tools of timely engagement with taxpayers as set out in the OECD 2019 publication, jurisdictions may wish to give consideration as to how to adapt these tools in the context of internationally mobile taxpayers (OECD, 2019<sup>[6]</sup>). This is an area where the use of behavioural insights and analytics might be particularly helpful. Examples of approaches that might be taken which could form part of a clear and comprehensive communication strategy towards tax debtors known to be abroad are:

- translating the key elements of assessment information, for example deadlines and payment options, into a number of languages;
- listing available language options for communication, whether between the competent authorities or the tax administration and taxpayers;
- asking taxpayers for alternative digital communication channels such as emails;
- making it possible for domestic call centres to communicate with international phone numbers;
- making it possible for payments to be made from a foreign bank account or foreign credit card, including payment plans;
- consideration of policy on penalties and interest in the case of taxpayers who may have moved abroad without fully understanding their obligations. Disproportionate fines and interest may increase incentives for those outside of a jurisdiction not to cooperate.

27. There may also be options to adapt wider engagement with internationally mobile taxpayers, depending on the analysis of the risks. A particular risk in some jurisdictions may be high-net worth individuals (HNWI) who may be able to relocate easily and may have assets and ties in a number of jurisdictions. A number of tax administrations now have special HNWI units which will often have relationship managers with knowledge of the international connections and assets of the individuals concerned. This level of understanding can help significantly in contacting a taxpayer who leaves with unpaid tax debts, as well as in identifying options for precautionary measures.

### Box 2.1. JITSIC HNWI Residency Project

The Joint International Taskforce on Shared Intelligence and Collaboration (JITSIC) are undertaking a project on high net worth individuals' residency (the HNWI Residency Project). Under this project spontaneous exchanges are taking place between participating jurisdictions with respect to HNWI individuals that have left one jurisdiction and have relocated to another jurisdiction. The project is currently using tracking/tracing tools in order to identify links between jurisdictions (i.e. where do HNWI mobile individuals go between jurisdictions in order to identify risks). It is hoped that the HNWI Residency Project will see an increase in spontaneous and specific exchanges of information that may help with the tracing of taxpayers and their assets.

28. In some jurisdictions there are business sectors or geographical locations where there are significant groups of workers, students or business owners from one particular jurisdiction. In this type of scenario it may be worth considering if there are information gaps that could be filled through engagement within the relevant community as to rights and obligations. Working through employers, or lenders in the case of businesses, may also be options.

29. In addition, it can be helpful to establish relationships with the tax administration of the jurisdiction where particular groups are most likely to go and to consider ways to facilitate appropriate information exchange which allow appropriate domestic measures to be exhausted before mutual assistance is sought.

### Box 2.2. Engagement by Inland New Zealand Revenue

In **New Zealand**, Inland Revenue used customer insight and intelligence-led analytics to support the collection of outstanding amounts of arrears from student loan borrowers and people liable to pay child support that were living outside New Zealand. The three tiered approach involved working with private sector collection agencies in Australia and the United Kingdom that helped trace debtors, undertake collection activity and provide legal services. As such it was able to secure payment from a group of hard-to-find taxpayers. Secondly by improving information exchange with the Australian Taxation Office to help contact student loan borrowers in Australia it was then able to work with them about their obligations. Finally a proactive marketing and advertising campaign allowed it to reach hard-to-find student loan borrowers living overseas.

*Source:* New Zealand – Inland Revenue Department (2017).

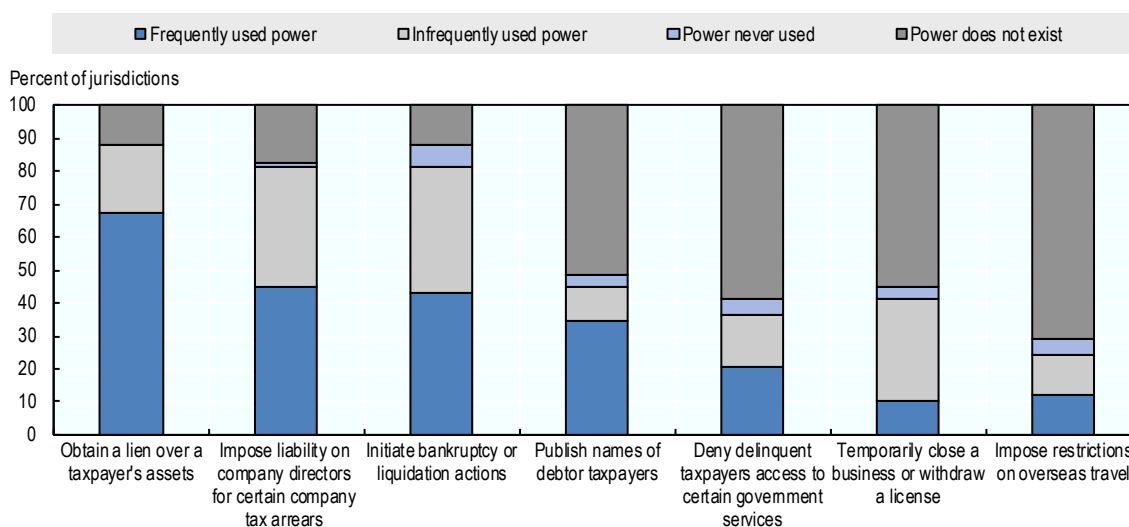
## Precautionary approaches for taxpayers at risk of leaving the jurisdiction

30. Whereas tax services and payment strategies are essential in successfully minimising tax debt arising, the tax administration also needs enforcement tools to support tax debt collection activities. These enforcement tools also function as a deterrent or preventative measure, particularly since the use of such tools will often lead to additional costs for the taxpayer on top of the tax debt, including monetary costs as well as potential impacts on credit ratings and reputation. The mere possibility that some of these domestic legal powers will be exercised encourages taxpayers to pay their tax on time.

31. While jurisdictions will often have different legal powers, it can be beneficial for tax administrations to share and exchange good practices. This will help others to consider the adequacy of their own domestic

powers and/or the extent to which existing powers are used compared to other jurisdictions, as well as how effective they are.

**Figure 2.1. Powers to assist the enforcement of debt**



Source: OECD (2019), *Tax Administration 2019: Comparative Information on OECD and other Advanced and Emerging Economies*, <https://doi.org/10.1787/74d162b6-en>, Figure 3.18.

32. While all these powers can play a role in preventing or minimising international tax debt in general, some of these legal powers are specifically aimed at addressing situations where mobile taxpayers might seek to leave the jurisdiction or to move their assets to other jurisdictions prior to settling their tax debts. This risk may be seen where:

- the taxpayer has previous history of selling or moving assets in order to avoid debts (and not just tax debts);
- the taxpayer is known to have ties to another jurisdiction, such as property, businesses and family ties, and is known to be internationally mobile (for example through frequent travel to, or stays in particular jurisdictions, and the wealth to be able to sustain a move). This may be seen as a more significant risk if the ties are to a jurisdiction where there is no agreement for mutual assistance in recovery;
- the taxpayer appears to be making preparations to move, for example by the systematic sale of assets and property held within the jurisdiction;
- the taxpayer has taken nationality in another jurisdiction;
- the taxpayer is currently located in another jurisdiction and selling assets within the jurisdiction of the debt.

33. In the survey undertaken for this report a number of Forum on Tax Administration (FTA) members reported using precautionary measures or restricting international travel when a serious risk is foreseen that (a) a debtor is planning to leave the jurisdiction and/or is relocating assets abroad; and (b) there is an appropriate suspicion that, as a consequence, waiting for the debt to become enforceable will sharply diminish the possibilities of recovery. Such restrictions must be proportionate and subject to a judicial control (cf. European Court of Human Rights case law).

34. This may be an area where more detailed analysis of actual flights of tax debtors and movement of assets may assist in developing an enhanced set of warning signs and potentially improving the evidentiary base for decision-making and/or court applications.

### Examples of precautionary measures on assets

35. In **Australia**, the Commissioner will generally apply to the court for a freezing order where it is concluded that actions of certain tax debtors to dispose of or deal with assets present an unacceptable level of risk to payment of the tax liability or the enforcement of a judgment. This can include assets held by third parties which are under the control of taxpayers or where assets have been transferred in sham transactions.

36. Freezing orders are only used in high risk cases where the amount of the debt is also significant, given the substantial costs of taking such action. This may vary depending on several factors, including the complexity of the matter and the extent of litigation required. To justify a freezing order there must be, in the view of the court, a real risk that in the absence of an injunction, any assets, wherever located, will be dealt with such that the debt cannot be recovered. Consequently, the Commissioner as an applicant for a freezing order must:

- demonstrate a good arguable case against the tax debtor. Although it is an advantage to have commenced legal recovery proceedings before embarking on an application for a freezing order, it is not an essential prerequisite. It will not always be possible to commence legal action because the assessed amounts due to the Commissioner may not be payable at the point in time when action to obtain a freezing order is commenced (That is, the amounts are payable at a future date). Where legal action has not commenced, it is to be expected that the court will require an undertaking that proceedings for recovery be commenced within a fixed time;
- provide evidence of the existence of assets owned by the tax debtor within the jurisdiction wherever possible. A freezing order may also be successful even where, with more diligence, something additional might be discovered. Commercial reality often requires an application for this relief to be brought quickly and without notice before detailed enquiries can be made, otherwise its very purpose could be frustrated. Where it is considered necessary, an application may be made to the court for an order requiring the tax debtor to file an affidavit of discovery of all of their assets and assets in which they have a contingent interest;
- provide grounds for believing that there is a risk of the assets being moved from the jurisdiction or dissipated so that if judgment is obtained, it may be impossible to enforce. Wherever possible, it should be shown that the tax debtor may be organising their affairs and assets so that any judgment obtained may be frustrated.

37. In **Canada**, most income tax debts are subject to collection restrictions for 90 days after a tax assessment is issued. The collection restrictions are extended further when a debtor challenges the tax assessment, and this restriction remains in place until a decision is made to confirm, vary or vacate the assessment. In some circumstances, there is an immediate risk to the collection of the tax debt if no measures are taken during the 90 day period, but this risk also extends throughout the period of time the tax assessment is being challenged. When there are reasons to believe that the tax debtor may liquidate their assets or transfer them beyond the domestic jurisdiction, the Canada Revenue Agency (CRA) may file an *ex parte* application to the Court to obtain an Order that removes all collection restrictions. This Order, commonly referred to as a Jeopardy Order, allows the CRA to immediately take actions to secure or collect the tax debt. The tax debtor has the right of recourse before the Court to demonstrate that there is no danger of loss for the CRA and that they have every intention of paying the amount owing once the collection restriction period no longer applies.

38. In circumstances where the CRA becomes aware that a tax debtor has left or is about to leave Canada, a legislative provision allows the demand for immediate payment of all amounts owed by a tax debtor, even when the amounts are subject to collection restrictions. This measure does not require an Order from the Court, as does the Jeopardy Order situations, but rather a formal request by letter from the CRA that the amounts owing must be paid immediately. If the payment is not made immediately, the CRA may take legal action to seize the tax debtor's goods and chattels. This provision does not apply to immovable property.

39. Finally, when a taxpayer emigrates from Canada, they are deemed to have disposed of certain types of property and to have immediately reacquired them for the same amount. The taxpayer may have to report a capital gain on the deemed disposition. In this situation, the taxpayer has either the option of paying the amount owing immediately or defer the payment by providing adequate security.

40. In **Belgium**, if the rights of the Treasury are at risk because of the situation or the behaviour of the debtor, the tax collector can declare the claims immediately payable. In addition to this, when the solvency of certain taxpayers is not assured by the existence of sufficient assets in Belgium, and there is reason to believe that these taxpayers will resort to strategies to evade the payment of tax debts, the taxpayer may be required to furnish a collateral or a personal guarantee.

41. When notified by the tax collector of the debts, notaries (and any other persons empowered to authenticate legal instruments) must warn the tax authorities in due time of any transaction involving the transfer (or encumbering) of real estate, a ship or a boat connected to the taxpayer. This notification is also considered to be a seizure of the amount that the notary is holding on behalf of the tax debtor.

42. The tax collector can also take precautionary measures directly without the prior approval of a judge to seize assets which are at risk of being disposed of. The debtor cannot dispose of the seized property for a period of three years. Such a precautionary seizure can be further renewed for a three year period. The tax collector can also take a legal mortgage on real estate. These power(s) are not unlimited and judicial control is possible.

43. In **Singapore**, an employer has to seek tax clearance with the Inland Revenue Authority of Singapore (IRAS) when its non-Singapore citizen employee ceases employment in Singapore or plans to leave Singapore for a more than three months. Employers who fail to file the tax clearance or notify IRAS one month before the non-citizen employee ceases employment may face penalties or prosecution action. Employers who fail to withhold monies upon seeking clearance may also be made personally responsible for any taxes that remains outstanding. Furthermore, IRAS is empowered under the domestic law to appoint third parties as agents of taxpayers for the recovery of tax. The agents are required to pay to IRAS the outstanding tax from any money that is due by them to the taxpayers. IRAS can also recover the tax from the agents if they do not comply. There is also an appeal mechanism should the third parties feel aggrieved by IRAS' appointment. This administrative measure enables IRAS to expedite the recovery of tax

### Examples of restrictions on overseas travel

44. In **Australia**, the Commissioner has the power to issue a Departure Prohibition Order (DPO). This can be done where there is strong indication that a taxpayer may depart for another jurisdiction without paying an outstanding tax debt or without making satisfactory arrangements for the debt to be paid. The DPO prohibits the taxpayer from leaving Australia, regardless of whether the taxpayer intends to return. The Australian Taxation Office (ATO) considers that DPOs are effective in engaging otherwise non-compliant taxpayers, being particularly relevant when the taxpayer is considered to have sufficient access to assets offshore, reducing their incentive to return to the jurisdiction. DPOs are generally only imposed in circumstances where there is a significant debt owing that represents a high risk to revenue.

45. In **South Africa**, taxpayers are required to obtain a tax clearance certificate as part of the requirements for emigrating. This certificate is only issued when the taxpayer is registered for tax and does not have any outstanding tax debt or outstanding tax return.

46. In **Norway**, the court can impose an exit permit restriction if the debtor is in the process of leaving the jurisdiction under circumstances where it is uncertain whether he or she will return. An exit permit restriction can only be granted when it is necessary to secure enforcement and the freezing of assets does not give the claimant sufficient security. It cannot be granted when, taking into account the nature of the case and its circumstances, it could be considered a disproportionate intervention. The exit permit restriction cannot be granted for a person who has no permanent address in Norway for a claim that cannot be brought before a Norwegian court.

47. In the **Netherlands**, if the tax collector does not have any means to enforce payment by a taxpayer still living in the Netherlands, but who is likely to move abroad, he may lodge a request for a passport alert at the Ministry of Interior affairs pursuant to Article 22 of the Passport Act. This is subject to a number of conditions:

- the taxpayer is negligent in paying tax and/or compulsory social security contributions;
- there must be reasons to suspect that by moving abroad the taxpayer is evading tax, for example withdrawing property from an attachment by the tax collector;
- the tax due must be EUR 5 000 or more. The inspector has to submit a written statement that the assessments are finally determined. The assessments also have to be realistically enforceable and the passport alert a reasonable measure to take to achieve tax debt collection.

48. A passport alert results in registration of the name of the tax debtor in a list. This list is available to all (governmental) organisations (municipalities, consulates, embassies, border police, etc.) that can issue or renew passports or extend the validity of already issued passports. On the basis of the passport alert, these organisations should deny passport applications and an already registered passport can also be declared invalid and revoked by the proper authorities. Once revoked, the taxpayer is not able to travel abroad (other than within the European Union under freedom of movement rights). These measures remain applicable until the outstanding tax debts are paid and the tax collector removes the passport alert.

49. In **India**, a resident Indian national emigrating or going abroad must submit a specific form, containing basic data like permanent account number, the purpose of travel and the estimated period of stay abroad, to the designated tax authority. If there is no Personal Account Number (PAN) or if the total income is not liable to tax, the resident should submit a self-declared certificate along with this form. However, persons, in respect of whom circumstances exist which, in the opinion of an income-tax authority, make it necessary for such person to obtain a tax clearance certificate, will be required to obtain such certificate. Also non-residents or foreigners who derived income in connection with business or employment from any source in India, must obtain a no-objection certificate before leaving the country. This certificate can be obtained if the employer or the person through whom the income was earned provides a guarantee to pay the taxes due by the person leaving India.

50. In **Singapore**, a tax debtor may be issued with a Travel Restriction Order (TRO) that imposes restrictions on overseas travel until the debt is fully settled. If the tax debtor had already left Singapore and subsequently re-enters, he or she would be informed on re-entry that tax debts would have to be settled before it was permissible to leave Singapore.

## Tracing tax debtors and assets

51. When the taxpayer has left the jurisdiction owing a tax debt, FTA members reported a number of different information sources to trace tax debtors.

52. Many cases of international tax debt may be inadvertent, for example where people have been unaware that there were outstanding payment obligations. In these cases the tax debtor will not have made efforts to hide their movements. In many of these cases, there may be information available on forwarding addresses from a number of sources, which may take more or less investigation depending on the official requirements to report emigration in a particular jurisdiction (and how well such requirements are followed). For example in some FTA jurisdictions, tax administrations are able to access the data held by border agencies on arrivals and departures.

### ***Registration and deregistration***

53. An important starting point for identifying potential cases where tax debtors have gone abroad is the taxpayer or population register, where inhabitants may be required to register where they live and report changes in personal circumstances.

54. This will usually be the first port of call when checking whether the tax debtor remains in the jurisdiction and can be verified by direct checks (for example by letter or phone contact) and by cross-checking with other sources such as other public bodies, employers and credit rating agencies. (A number of tax administrations report being able to directly access the databases of other public bodies which record names and addresses.) In most cases where the register contains out of date details, the tax debtor will have moved within the jurisdiction and further investigations will be required to find whether the tax debtor has left the jurisdiction. In some jurisdictions, there is also a requirement that someone moving abroad must record that fact with public authorities.

55. In **Belgium**, for example, any person who moves abroad must report this to the municipal authorities of the current place of residence at the latest the day before effectively moving. This change will be added to the personal file in the National Register. The Collection and Recovery Services have access to an internal database that contains the relevant personal information copied from the National Register.

56. The **Netherlands** has a very similar approach to registration. In effect, any person that is staying in the Netherlands for more than four months is obliged to register at the Civil Service Department of the municipality where he or she is going to reside within five days of arrival. On registration, the person will get a Citizen Service Number. Any person who is expecting to leave the Netherlands in less than twelve months and is planning to stay abroad for at least eight months must deregister at least five days before leaving the jurisdiction. Despite the fact that registration is compulsory, taxpayers increasingly often choose not to do so, either consciously or unconsciously. Imposing a fine for failing to register does not solve this problem.

57. Registers are only a starting point and there will always be tax debtors who are still within the jurisdiction but whose details are wrongly registered (whether deliberately or by error), tax debtors who have never registered and tax debtors who have left the jurisdiction, including those who have taken deliberate steps to hide this fact.

### ***Other sources of information***

58. In practice, FTA tax administrations use a suite of data sources to try and find debtors who have moved abroad. The following data sources were reported, subject to availability and personal data protection rules:

- contacting the debtor's employers and/or third parties who are known to be connected to the debtor to enquire whether they have contact information, including forwarding addresses or bank account details;



- contacting other government agencies which might have relevant information, in particular those who might be making continuing payments such as social security or pensions;
- checking if the debtor has declared/reported foreign income or assets in income tax returns, which, in addition to being a source of information for finding assets abroad, may indicate where the debtor may currently be living;
- where bank accounts are known, contacting banks about changes in address or large transfers to accounts in other jurisdictions, including from the closing of accounts;
- accessing the data of immigration and border protection functions in cases where they have records of arrivals and departures;
- internet searches, with special attention to information posted on social media and on the official webpage of the company or the entrepreneur. This can, of course, be particularly successful where the debtors are in the public spotlight;
- if the debtor is believed to hold any immovable property abroad, it is advisable to check if the Property Registration Office of that jurisdiction can be accessed freely or at a very low expense
- analysis of automatically exchanged information, including under the Common Reporting Standard. This may be both of use in tracing both the debtor and assets;
- within the EU, checking the VAT refunds that the debtor has requested in other EU countries in order to determine where the debtor has economic activity elsewhere;
- use of spontaneous exchange of information from another competent authority, for example where a property has been purchased by someone tax resident in another jurisdiction;
- information requested from another tax administration. If there is a legal basis to do so, a request for information can be sent to the jurisdiction of nationality/residence of the missing debtor in order to check if he/she has returned to it and/or holds assets there;
- use of private collection agencies that search for assets but also the whereabouts of a tax debtor.

59. In many cases, the best results will come from the use of multiple data sources, ideally through automated means as far as practicable. A number of FTA members already use automated or semi-automated systems which bring together targeted information from various data sources to support tax debtor profiling and risk assessment. Using such data sources may make it possible to provide a requested state with more specific information to increase the chances of successful recovery. In this respect, it may be a consideration for the Tax Debt Management Network to develop a toolkit of the main data sources used by FTA members for tracing tax debtors.

60. There may be other tools which might be effective on a multilateral basis, for example the production of lists of untraced tax debtors and potentially placing requirements on employers, financial institutions or other bodies to periodically check such lists as well as making them available to other tax administrations to aid spontaneous exchange of information. This may also merit further consideration by the Tax Debt Management Network.

### ***Using data from other Government departments***

61. In **Australia**, the ATO uses the data of the Department of Immigration and Border Protection which allows it to check the records of arrivals and departures of all those entering or leaving Australia. It is possible to check the date of the arrival/departure, the passport number of the person concerned, the jurisdiction that issued the passport, the port and vessel upon which the person arrived/departed and what, if applicable, visa they may be permitted entry with.

62. Where the ATO confirms that the debtors are no longer in Australia, but it is unable to determine the debtor's final destination, it may also conduct searches on the Australian Transaction Reports and Analysis Centre (AUSTRAC) database. The AUSTRAC database contains financial reports that include significant

cash transactions, transactions over certain thresholds, suspicious transactions, international funds transfer instructions and cross-border movements of physical currency and bearer negotiable instruments. If the debtor has been transacting internationally, for example repatriating funds to their jurisdiction of residence when departing Australia, the ATO may be able to find some lead through AUSTRAC as to the jurisdiction they are in. It may then send a request for information to that jurisdiction to confirm the actual address details.

### ***Asset discovery***

63. In the **Netherlands**, the Dutch Tax Administration (NTA) uses the Infobox Criminal and Unaccountable Assets system (iCOV) as an effective and fast way to look for assets. The iCOV tool combines a variety of data from Customs, Tax Administration, the Police, the Financial Intelligence Unit and the Prosecutor's Office. At the touch of a button it can do a thorough analysis of a person's financial position, including mortgage, loans, debts, heritage, donations, money transfer, car ownership, subsidies, shares and real estate. It also can draw a picture of persons, individuals and companies which are related to the tax debtor. This offers multiple potential avenues for further investigations.

64. In **Belgium**, natural persons are obliged to declare in their tax returns a number of assets which are held abroad, including: income of employment or pension from a foreign origin; ownership and rental income of real estate located in another jurisdiction; foreign interest and dividends; foreign bank accounts; foreign life insurance contracts.

65. In **Japan**, residents with overseas assets (deposits, securities, real estate, etc.) exceeding JPY 50 000 000 are obliged to declare through special tax returns the type of asset, quantity, value, and other necessary information. Penalty up to JPY 500 000 or 1 year imprisonment may be imposed for non-compliance and there was an actual case in which the punishment was applied.

### **Direct approaches to tax debtors resident in another jurisdiction**

66. FTA administrations reported that using a direct approach in contacting tax debtors who have moved to another jurisdiction can be a highly efficient way of recovering international tax debt. Direct approach strategies and activities can be broken down into three categories:

- direct communication with debtors abroad;
- the presence of tax administration officials abroad;
- outsourcing to private collection companies abroad (used by some tax administrations).

### ***Direct communication with debtors abroad***

67. Some FTA administrations reported directly communicating with tax debtors residing abroad using e-mail, telephone, postal services as well, on some occasions, making personal visits. These communications are undertaken by some administrations before requesting assistance in recovery, or in the absence of a mutual assistance provision in the treaty. Consideration needs to be given, though, as to whether a direct approach may lead to a tax debtor taking further actions to hide assets or otherwise frustrate recovery efforts.

68. The legal basis for service of documents is contained in international treaties, for example, in Article 17 of the Convention on Mutual Administrative Assistance in Tax Matters (the "Convention") (OECD/Council of Europe, 2011<sup>[7]</sup>). However, reservations could be made under Articles 30(1)(d) and (e) of the Convention. Many signatories to the Convention have in fact reserved their position to not assist another jurisdiction in the service of documents, and some jurisdictions do not have the domestic legal provisions which would allow them to do so. The direct service of documents without intervention of the

government of the country of residence of the tax debtor may sometimes involve the exercise of extraterritorial powers by the applicant jurisdictions in the requested jurisdiction. This may not be acceptable and a matter of concern for many jurisdictions.

69. The legal basis for conducting physical visits lies within Article 9 of the Convention, but again, many jurisdictions have reserved the right not to offer such assistance. Whether or not a requested jurisdiction would allow visits by the applicant jurisdiction is a legal issue for each jurisdiction to consider.

70. Many tax administrations undertake communication activities as a part of their standard automated or semi-automated tax debt collection processes to remind the tax debtors of their obligations to pay tax debts. This strategy can be very effective where the debtors concerned are compliant tax debtors who just forgot to pay tax due, or were unaware that there was any outstanding tax debt. These tax debtors often pay their tax after being made aware of a payment obligation.

71. One consideration in this regard is the usefulness of obtaining contact details that do not depend on the location of the tax debtor, in particular e-mail addresses or social media contact details. This allows approaches to be made at a point where the tax administration may not even be aware that it is an international tax debt recovery situation.

72. It is also helpful to develop a clear and comprehensive communication strategy towards tax debtors known to be abroad, which may differ from strategies for debtors remaining within the jurisdiction. For example, threats of penalties and enforcement actions may be less effective or even counter-productive in cases of international tax debt, at least at an early stage. Such a strategy can be developed by analysing the most effective communication channels and content of messaging, using behavioural insights, analytics and the experiences of others.

73. In **Norway**, the Norwegian Tax Administration increased international tax debt recovery in a sample case by between 10-30% after testing a new comprehensive communication strategy towards debtors abroad.

### ***Presence of tax officials in the new home jurisdiction of the debtor***

74. A further option for direct communication is through the physical interaction between tax officials with tax debtors in their new home jurisdiction. This is obviously a far more costly approach compared to remote interactions. So far only the Dutch NTA reports having used this approach.

75. The NTA reported that this method has been used with some success in close cooperation with the local tax administrations of foreign jurisdictions. The main success factors identified were that:

- it was a highly targeted and personalised approach to a specific group of tax debtors who were assessed to have the means to pay the debt;
- the work is performed by a small team of experienced tax debt collection specialists who can speak with the tax debtors in their own language;
- these specialists had decision-making powers in the case concerned.

76. Taking into account the costs associated with this direct approach and its far-reaching nature, a number of criteria had to be met before going down this route:

- a reasonable number of tax debtors in the particular jurisdiction had to owe a considerable amount of tax;
- there had to be strong indications that these debts could be substantially recovered;
- the new home jurisdiction of the tax debtor agreed with the direct presence approach, even if this would not be strictly necessary from a legal point of view since the officials did not exercise any of their domestic enforcing powers. The NTA only used the direct presence approach method with

jurisdictions with which there was an international treaty that provides for assistance in the recovery.

### Box 2.3. Norway: an international tax debt nudging trial

The Norwegian Tax Administration (NTA) conducted a small nudging trial from January to March 2017 using an outbound phone campaign through cold-calling and SMS for non-resident debtors for whom telephone numbers were held. This included 4 589 non-resident debtors with tax arrears for the 2015 income tax year. The group used in the trial paid NOK 1.2 million (EUR 130k) more than the control group (who were not called). The following behavioural insights for influencing behaviour were applied:

- **The Messenger:** experienced tax officers delivered the communications
- **Incentives:** the call explained the losses the taxpayer would face from failure to pay, even though he or she was a non-resident and or had already moved. (For example, informing them about assistance in recovery options)
- **Salience:** simple language was used, both short and to the point
- **Commitments:** experienced tax officers were service-minded and communicated politely during the first phone call. The purpose was to make the taxpayer commit to paying. A more direct approach was used during the second call, reminding the taxpayer of the agreement they had committed to. Those who did not answer received text messages.

Source: Norway – Norwegian Tax Administration (2020).

### ***Outsourcing to private collection companies abroad***

77. Tax debt collection is an area where tax administrations do not often outsource their activities to private collection companies. In most jurisdictions, tax debt collection is seen as an exclusive government task.

78. However, a small number of tax administrations do use commercial parties to complement their debt management strategies, applying strict conditions to ensure that outsourced debt collection services match the requirements that apply to the tax administration. While a small number of FTA member administrations outsource some elements of domestic tax debt (including Australia and New Zealand) only the Netherlands and Hungary appear to have outsourced some of their international tax debt collection activities.

79. In the case of the **Netherlands**, international tax debt collection is outsourced in some cases to private companies in cases where there was no legal instrument available for assistance in recovery of tax debt. Debtors are approached directly by local companies (mostly lawyers) to pay their outstanding debts (with communication in their own language). Where appropriate and possible under the legal system of the new home jurisdiction, legal proceedings will be initiated by these partners at the instigation of the Dutch tax administration.

80. In **Hungary**, it is possible to award contracts through public procurement for the collection of tax obligations of non-resident individuals abroad, as well as resident individuals spending over 183 consecutive days abroad in cases where it is not possible to apply for mutual administrative assistance in recovery.

81. Looking at the experiences and considerations for the outsourcing of international tax debt collection may be something the Tax Debt Management Network may wish to look at further, including the options for using commercial entities to help trace tax debtors and assets and to take legal proceedings where possible.

# 3 The legal and operational aspects of assistance in recovery

82. This chapter discusses mutual assistance frameworks that allow for international tax debt collection. It describes the legal basis for such assistance and the main considerations for the jurisdictions sending and receiving such requests as reported by Forum on Tax Administration (FTA) member administrations.

83. As discussed in the previous chapter, before seeking assistance from another jurisdiction, all appropriate domestic measures should have been exhausted. Of course there may be circumstances where decisions to request assistance are made where there remain some domestic possibilities, for instance where it is obvious that the assets in the applicant jurisdiction will not be sufficient to recover the whole debt and there are reasonable grounds to believe that the debtor may hold assets in another jurisdiction. In addition prior to considering whether any request is eligible for assistance a receiving jurisdiction will examine if there are limitations as regards to differences in domestic laws between the jurisdictions that would prevent the provision of assistance. In summary, the decision as to when to proceed to request assistance in recovery requires an evaluation of all the facts and circumstances of a case.

84. There are five main types of assistance in recovery requests:

- **Requests for notification:** this will often be the first stage in seeking recovery in cases where the tax debtor has moved from the jurisdiction where the debt is owed. The requested authority is asked to notify the debtor of documents from the applicant authority which relate to the recovery of a claim of the applicant authority. Many signatories to the Convention have in fact reserved their position to not assist another jurisdiction in the service of documents.

Such notification will often be a necessary stage in triggering domestic collection powers (for example where there are assets remaining in the jurisdiction where the debt is owed) or in moving to the further stage of requesting assistance in collection or recovery. It is up to the applicant authority to notify the tax debtor directly as long as the tax debtors' contact details have been obtained instead of having to rely on the requested authority. If necessary, the applicant authority may have obtained the tax debtor's correct address from the requested authority following a request for information.

In some cases notification by the applicant authority may also be a legal requirement for the applicant authority to proceed to assist with the request.

- **Requests for information:** this is a request for any information that is foreseeably relevant to the applicant authority in the recovery of its claims, for example information on assets held by the tax debtor. This will often be a prior stage to consideration of making a request for assistance in recovery. This is particularly relevant where the existence of assets is suspected but not known, or there is reason to believe that there are assets in multiple jurisdictions.
- **Requests for precautionary measures (measures of conservancy):** under certain circumstances, a request may be made to adopt precautionary measures, particularly if there are

concerns that the debtor may take steps to frustrate collection of the debt. For example, this may be the case if the debtor has already sought to frustrate domestic collection.

- **Requests for collection or recovery:** the requested authority is asked for assistance in recovering claims of the applicant authority. The requested authority does so making use of the powers and procedures provided for under its own laws, regulations or administrative provisions.
- **Requests for presence of officials in the other jurisdiction:** requests may be made for tax officials to be present in tax examinations abroad, subject to the domestic laws of the requested jurisdiction. This can be helpful in facilitating exchange of information on the debtor and consideration of options for recovery. It appears, though, to be relatively little used in the international tax debt context.

## Legal basis for mutual assistance

85. As foreign tax administrations cannot rely on their domestic powers to execute official acts within the territory of another jurisdiction to collect tax debt, jurisdictions around the globe rely on provisions allowing for mutual assistance in the collection and recovery of tax debt within international agreements. This may be a bilateral tax treaty, regional agreements or the Convention.

## Multilateral Convention on Mutual Administrative Assistance in Tax Matters

86. The Convention was developed jointly by the OECD and the Council of Europe in 1988 and amended by a Protocol in 2010. Section II (Articles 11-16) of the Convention covers assistance in recovery. The main effect of the Convention is that a jurisdiction takes upon itself the obligation, within certain limits (see article 21), to use the powers it has under its domestic law to recover taxes owed to another Party. As indicated in paragraph 1 of Article 11, the requested jurisdiction will proceed as if the tax claims concerned were its own tax claims, except in relation to time-limits which are governed solely by the laws of the applicant jurisdiction (Article 14), and in relation to priority (Article 15). (OECD/Council of Europe, 2011<sup>[7]</sup>)

87. The Convention sets out the general provisions for assistance in recovery, enabling the concerned jurisdictions to determine the specific terms on which they want to provide and request assistance in tax debt collection. The outcome of these discussions, for example as regards documentation that should accompany the request, minimum threshold amounts, time limits, allocation of costs, etc., is usually set out in a Memorandum of Understanding (MoU).

88. As of October 2020, 141 jurisdictions participate in the Convention, including 18 jurisdictions covered by territorial extension. A significant number of these jurisdictions have reserved the right not to provide assistance in recovery under the Convention. This project has not researched the reasons why these reservations were made.

89. A reservation made under the Convention does not necessarily mean as a matter of international law, though, that it cannot be used as a legal basis for such assistance. As set out in the Commentary to the Convention “Even where a Contracting State has entered a general reservation under Article 30 against providing administrative assistance to other Parties, for one particular type of tax or one form of assistance, that State is not prevented from providing such assistance in particular cases if it so wishes.” (OECD/Council of Europe, 2011<sup>[7]</sup>) Rather, domestic law and practice in relation to international treaties will determine the scope and application of the reservations. For instance, some countries may not be able to render assistance in recovery under their national law.

## Bilateral Treaties and the OECD Model Convention

90. The OECD *Model Tax Convention on Income and on Capital* (OECD, 2017<sup>[8]</sup>), provides a model for jurisdictions wishing to conclude bilateral tax conventions, playing a crucial role in removing tax related barriers to cross border trade and investment.

91. It is noted that the scope of many bilateral treaties (and the Model Tax Convention) is limited to direct taxes only, which was sufficient in the past. However, in the light of the increases seen in cross-border trade, it may be useful for jurisdictions to consider whether there are options to improve the cross-border collection of VAT/GST claims. Most bilateral treaties lack the possibility to provide recovery assistance for VAT/GST claims which can limit the ability of those who wish provide assistance in these cases.

92. Article 27 of the Model Tax Convention covers assistance in the collection of taxes. The model article sets out the general obligations and limitations of the contracting States that adopt this article in their bilateral treaties. It contains a lot of flexibility as regards how it is applied, providing that the “Contracting States may by mutual agreement settle the mode of application of this Article” (OECD, 2017<sup>[8]</sup>). The commentary to Article 27 provides a list of factors for jurisdictions to consider when deciding whether to include Article 27 in their bilateral treaties.

93. An OECD *Manual on the Implementation of Assistance in the Collection of Taxes* has been produced (OECD, 2007<sup>[9]</sup>). It provides officials dealing with assistance in tax collection with an overview of the interpretation of the provisions related to assistance in tax collection and some technical and practical guidance to improve the efficiency of such assistance. It gives a description of the steps in the process regarding the application of the assistance in tax collection and it provides guidance on the content of MoUs which are used to settle the mode of application of Article 27.

## Regional agreements

94. Within the European Union, the two main legislative instruments covering mutual assistance in tax debt collection are:

- Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (Council of the European Union, 2010<sup>[3]</sup>);
- Commission Implementing Regulation (EU) No 1189/2011 of 18 November 2011 (European Commission, 2011<sup>[10]</sup>) which was amended by Commission Implementing Regulation (EU) 2017/1966 of 27 October 2017 (European Commission, 2017<sup>[11]</sup>). This lays down detailed rules in relation to certain provisions of Council Directive 2010/24/EU. Among other things, these include the practical arrangements and the time periods for communication between the requested and the applicant authorities. 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.

95. The main changes introduced through Directive 2010/24/EU were that it created a uniform instrument to be used for enforcement measures in the requested Member State and a uniform standard form for notification of instruments and decisions relating to the claim. It also established a general obligation to communicate requests and documents in a digital form and via an electronic network.

96. In this regard, the UIPE (Uniform Instrument Permitting Enforcement) and the UNF (Uniform Notification Form) are intended to resolve the problems of recognition and translation of instruments emanating from another Member State, which would otherwise lead to difficulties.

97. Other new features of Directive 2010/24/EU were the spontaneous exchange of information on specific tax refunds (article 6) and presence of tax officials in another Member State (article 7). Directive 2010/24/EU also extended the possibilities for requesting assistance in the recovery or the adoption of precautionary measures in another Member State. In effect, it is possible to send a request for assistance in recovery 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 such 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 such procedures in the applicant Member State would give rise to disproportionate difficulty.

98. Compared to the Convention, the EU legislation on mutual assistance in tax debt collection provides precise and exhaustive rules with relatively limited flexibility for the Member States in order to ensure legal certainty and to avoid asymmetries.

### Box 3.1. The Nordic Approach

The Nordic countries include Denmark, Finland, Faroe Islands, Greenland, Iceland, Norway and Sweden. (The Faroe Islands and Greenland are self-governing countries within the Kingdom of Denmark, and are autonomous tax jurisdictions.) The Nordic countries have a well-established cooperation for taxation and recovery assistance.

The 1989 Nordic Convention on Mutual Administrative Assistance in Tax Matters provides for cooperation between the Nordic countries in the matter of recovery and exchange of information. The Nordic agreement does not cover requests of information in the recovery area. Therefore it has become more frequent to use EU Recovery directive when asking for information about a debtor. The scope of the agreement is administrative and includes notification of documents, information in tax matters, recovery of tax and transference of tax between states. General taxes and several excise duties are covered by the agreement. The contracting states are obligated to render assistance in the recovery of taxes and requests for precautionary measures. All natural persons are covered by the agreement without limitations, meaning that debtors need not be a resident of the state of the requested authority. Businesses and other legal persons are also covered. The agreement is drawn up in duplicate in all the Nordic languages, with each of these texts being equally authentic.

The Nordic recovery-cooperation reaches beyond the formal agreement itself and is based on a culture of openness, dialogue and working together on the same platform. The contracting states take turns in hosting meetings every other year where representatives from the tax administrations discuss relevant issues, experiences and best practices.

Source Norway – Norwegian Tax Administration (2019).

## Requesting mutual assistance in tax debt collection

### *Organisational aspects*

99. There seem to be two main organisational forms among FTA member administrations as regards the processing of requests and taking forward actions for wider assistance in collection and recovery:



- A collection unit that deals with the processing of both domestic and foreign tax debt cases, whether at national level, or at the appropriate territorial or regional level. This seems to be the most common model. Under this approach, all claims (domestic and foreign) owed by a debtor are treated in the same way. Some tax administrations see this as a balanced combination of centralisation (since the Competent Authority keeps an overview of mutual assistance and can assist any regional offices) and decentralisation, with the offices that deal with the requests being closer to the debtor than a central office.
- A separate central collection unit specialised in foreign claims. This approach can bring benefits in terms of centralised expertise in the particularities of dealing with requests from foreign jurisdictions. Care needs to be taken, though, to avoid duplication or legal difficulties where the same debtor owes both domestic and foreign claims so that the same debtor is not subjected to two separate treatments for respectively domestic and foreign claims.

100. Almost all surveyed FTA member jurisdictions make use of IT tools to register the incoming or outgoing requests, to file the correspondence and e-forms exchanged regarding each request, to record their outcome, to check progress with case-work and to obtain statistics.

101. An increasing number of tax administrations are also using IT tools in case selection and for automatic quality checks (such as type of tax and time limits) and in importing information on foreign debts into their national risk assessment databases.

### Box 3.2. Belgium's workflow processing system

In **Belgium**, all incoming and outgoing requests are processed by the Belgian Competent Authority in a dedicated application called STIRint. This is a multi-workflow central system for international co-operation. For each legal base of international co-operation a separate module is available. The module managing international tax debt recovery is directly connected with the European Commission's Common Communication Network mailboxes and allows the creation of a recovery file for each request. This file can be linked to other requests and debtors, contains automated follow-up workflows and generates statistics. The Federal Tax Collection teams can consult the requests to be treated or sent abroad by their team in STIRint.

Source: Belgium – Federal Public Service Finance (2020).

### ***Initiation of a request for assistance in recovery***

102. The first step in international tax debt collection is the initiation of a request for assistance in recovery (with the different forms of such request as set out above).

103. This is a significant step since it may entail extensive use of resources in the requested jurisdiction. In order to justify this, a number of factors need to be considered, starting with whether it can be demonstrated that all appropriate domestic measures for collection and recovery have been taken. This includes consideration of whether there is clear and specific information regarding the availability of liquid assets in the requested jurisdiction (e.g. funds in bank accounts based on Common Reporting Standard data, the identification of other assets held in the requested jurisdiction etc.) in order to avoid situations where an applicant jurisdiction engages in what might be seen by another jurisdiction as a “fishing expedition”.

104. Once information is known about the location of the tax debtor and/or assets, then there first needs to be an examination of any limitations as regards the provision of assistance by a relevant jurisdiction, in particular:

- is there an appropriate legal basis in place such as through a bilateral, regional or multilateral agreement;
- what, if any, restrictions apply where such an agreement is in place. It may not always be clear whether there is flexibility around some of the apparent restrictions, and it can be advisable to contact the relevant jurisdiction to ask for clarification in cases of doubt. Such restrictions may include:
  - time limits on the age of the debt
  - limitations on recovery where debts are contested
  - minimum thresholds beneath which assistance will not be provided
  - restrictions regarding enforcement against particular classes of assets etc.
- previous experience with the jurisdiction in question. This may include an assessment of the degree of balance and reciprocity and an assessment of the simplicity of processes (for example in the European Union, the use of e-forms and uniform instruments of enforcement);
- where the debtor holds assets in different jurisdictions, consideration needs to be given to which jurisdiction or jurisdictions should be approached in the first instance (in particular by considering the impact of any restrictions in place in the various jurisdictions). Other things being equal, consideration should be given to approaching the jurisdiction first where the highest amount of unencumbered assets are located.

### Box 3.3. Standardisation of e-forms and the Common Communication Network

For mutual assistance within the EU, Member States use so-called e-forms and the secured Common Communication Network. E-forms are standardised digital forms, with an automatic translation function, which are available in all official languages of the EU. Another advantage is the use of a Uniform Instrument Permitting Enforcement that shall not be subject to any act of recognition, supplementing or replacement in the requested Member State.

E-forms are sent via a secured network between the Member States, which allows the Central Liaison Offices of the Member States, i.e. the competent authorities, to communicate electronically, which has a significant positive effect on the processing time, e.g. reduction of the processing time of requests for exchange of information of more than 60% (in the Netherlands).

### Quality control

105. Tax administrations emphasised the importance of quality control in all aspects of assistance in recovery requests since poor quality requests can lead to lengthy delays and wasted resources. In particular, it is important that officers check whether:

- the right forms are used and are completed correctly in accordance with the requirements of the requested authority;
- the taxes for which assistance is requested are covered by the legal instrument with the jurisdiction concerned;
- the debts are the subject of an instrument permitting enforcement;

- the debts are not contested or, if they are, the requirements to request assistance in their collection are met;
- the total amount for collection exceeds the minimum amount agreed upon or the requirements to send a request under the threshold are met;
- the debts are not older than the time limit agreed upon;
- the period of limitation of the debts included in the request has not expired yet;
- the calculation of the total amount of pending debt is correct;
- the applicant jurisdiction demonstrates that it has exhausted all practical means provided under its legal framework to collect and enforce its own outstanding tax debts before it turns to requesting for offshore assistance;
- the correct attachments are enclosed and no relevant supporting documentation is missing.

### ***Changes after requesting assistance***

106. After a request has been made, it is possible that new information will become available on previously unknown domestic assets. In this case, the applicant jurisdiction will want to consider whether to place on hold, withdraw or proceed with the request for assistance. In all cases, it would be appropriate to inform the requested jurisdiction of any significant changes in circumstance.

107. Suspension is likely to be appropriate if the debtor, having previously left the jurisdiction of the debt, returns to the applicant jurisdiction. This will give an opportunity for further examination of whether domestic means of recovery have been exhausted. For example, the tax debtor may reveal previously unknown assets or may agree to an instalment plan. If no new assets are revealed or the debtor does not agree an instalment plan, the applicant jurisdiction can ask the requested jurisdiction to resume recovery actions. Where there is high degree of certainty that the debt can be collected in full in the applicant jurisdiction, then it would be expected that the request is withdrawn.

108. Where a domestic asset has been uncovered, but the tax debtor remains outside of the jurisdiction, it may remain necessary to proceed with the request if the tax debtor does not cooperate and there are difficulties in serving legal proceedings and obtaining a judgment within the jurisdiction of the debt. In some jurisdictions, the exception might be where a third party (for example a financial institution) is discovered to hold money on behalf of the debtor and domestic legislation allows for a garnishee notice to the third party to recover the funds, no matter where the tax debtor is located.

### ***Guidelines and training***

109. Given the complexities inherent in seeking and providing mutual assistance in tax debt collection, and the resource implications for both the applicant and requested jurisdiction, the importance of clear guidelines and training on international tax debt collection is clear.

110. In **Belgium**, for example, general guidelines and instructions, including updates, are sent via mail to all agents working in tax debt management. All mails, together with all other relevant information concerning international tax debt recovery, can also be found on a dedicated space on the administration intranet. A first category of documentation are instructions that provide information that is more theoretical concerning mutual assistance, including a detailed analysis of the legal basis. A second category of documentation is more oriented towards the practical application of international tax debt recovery.

111. To assist in the application of the practical procedures, in Belgium a consolidated table is produced providing a general overview of the international recovery possibilities per jurisdiction. For each jurisdiction covered by the consolidated table, a detailed country profile is created, containing both legal and practical information on how to request assistance from that jurisdiction (legal basis, administrative requirements, practical issues etc.). Each time new information becomes available, the country profile is updated. In

addition, practical user guides have been developed for both the internal IT application managing international recovery requests and for the EU's e-forms user(s).

112. In **India**, the Indian Competent Authority has issued a Manual on Exchange of Information, which includes guidelines for Assistance in Collection of Taxes (ACT), to support Local Field Offices in handling incoming requests as well as in identifying cases for international recovery assistance as well as in drafting an outgoing international recovery request. The Manual also provides the list of tax treaties entered into by India where ACT provisions exist. The office of the Indian Competent Authority also clarifies any doubt that may arise regarding mutual assistance in the recovery and gives guidance to the local offices when needed. At the same time, trainings are also organised for field officers to make them aware about the provisions of ACT in various legal instruments and to improve the way they handle both incoming and outgoing cases of international recovery assistance.

# 4 Recommendations for future work

113. Drawing from the issues identified in this report, this chapter sets out a number of areas where the Forum on Tax Administration (FTA) Tax Debt Management Network may wish to consider further work. These focus on;

- Further sharing of knowledge and best practices; on both assistance in recovery and insolvency measures;
- The use of standardised e-forms for requests for assistance in recovery;
- Ways to improve the identification of tax debtors and assets;
- Further research on the use of reservations and options for facilitating assistance in recovery
- Tools to assist in the operation of administrative assistance; and
- Collaborative work on analysing and assessing the scope and use of domestic tax debt management powers.

## Sharing of knowledge and best practices

114. A number of areas were raised where the sharing of knowledge and experiences, both good and bad, would be of mutual benefit:

- **Enhanced training and guidance:** Most of the surveyed jurisdictions reported that many of their officials are not yet fully aware of the possibility of sending a request for assistance in recovery. Even when they are aware of this possibility, there can be gaps in knowledge as to the steps to be followed from the identification of appropriate cases, to the information and supporting documents that need to be sent when requesting assistance. Recipient tax administrations have reported that, in a significant number of cases, jurisdictions have sent requests for recovery that from the beginning have a very low prospect of success.

A number of FTA member administrations have implemented guidance on international tax debt collection and tax administrations are encouraged to continue to develop such guidance and to undertake training programs for those involved in international tax debt collection. The Tax Debt Management Network may wish to discuss options for assisting tax administrations in this area, for example by facilitating the sharing of the main elements of guidance and considering whether this is an area where e-learning might be developed.

- **Sharing of information on successful domestic and international tax debt practice:** **International tax debt:** while a lot of information is currently shared on wider tax debt management practices, there is not much sharing of information on successful practices in international tax debt management. This itself might be a product of the relative lack of experience in such cases and the lack of prioritisation of Administrations in this area. While there are important differences in jurisdictions' legal and administrative frameworks concerning assistance in tax collection, valuable information on best practices can be shared.

The Tax Debt Management Network might wish to consider holding occasional virtual meetings which bring together those responsible for international tax debt management as well as the creation of a compendium of anonymised cases drawing out the main success factors as well as the issues which led to both successful and unsuccessful recovery outcomes.

- **Analysis of international tax debt management cases** It may also be worth considering identifying specific types of cases and examining them on a case by case basis, against a number of factors to assess the costs and potential benefits each case (rather than a mass generalisation). Taking this approach could feed into a more thorough evaluation of the costs and benefits through the use of analytics, for example by segmenting tax debtors based on characteristics such as previous history, the type of tax debtor and the different communication channels and options that might be available, compatibility of domestic enforcement laws with fellow jurisdictions. What should also be considered and included in any cost/benefit analysis is the impact of successful recovery on future behaviour by other tax debtors as well as the wider impact on public trust. Thought should be given to how this can be maximised;
- **The production of jurisdiction-specific information database:** As set out in Chapter 2, Belgium produces jurisdiction-specific information sheets that set out the possibilities, requirements and any restrictions on mutual assistance in tax administration. This allows officers to see at a glance the elements which need to be considered before moving further in consideration of requesting mutual assistance from another jurisdiction. The Tax Debt Management Network may wish to consider options for the production of such a database on a multilateral basis which could be shared widely. Other steps could also include the creation of Practice Notes and template checklists to help ensure that appropriate steps are taken in conjunction with such a database.

## Efficient exchange arrangements

115. As part of discussions with FTA members and delegates on the merits of widening the use of the Common Transmission System (CTS) to include requests for assistance in tax collection, delegates also considered the use of standardised electronic forms, where practical to do so, that could facilitate and support such requests.

116. Standardised e-forms have been in operation for a long time between EU Member States. They have the advantage that the information requested and the information provided in response to a request can be done in a standardised format that is easily readable for Competent Authorities and that can be made fully compatible with respective domestic systems. The e-forms also improve the quality of information requests as they include checklists of the information that must be included in a request. They include a built-in automatic translation software for EU languages. While they are developed within the EU, they are designed to cover most cases of mutual assistance on request, including requests for assistance in tax collection on the basis of bilateral treaties and the Convention.

117. The Secretariat and the EU Commission have explored whether these forms can legally and technically be made available to be used in the context of CTS exchanges. This would have the advantage of low development/adaptation costs in order to make the forms available for CTS exchanges and would allow EU Member States to rely on a format they already use. The Commission indicated that the Java based EU e-forms can be freely shared with third countries (in contrast, the web based EU e-forms can only be shared with third countries if an international agreement is concluded, as for Norway). These EU e-forms can already be used for recovery assistance requests based on bilateral tax treaties or based on the multilateral Convention, as agreed in 2006, when the OECD participated in the development of these e-forms. These forms can be sent via the CTS platform.

## Identification of tax debtors and assets

118. Proactively using different data sources and data analytics to match taxpayers with tax debts helps tax administrations to better manage, address and prioritise international tax debt collection cases. In particular, the timely and accurate collection and recording of information about the residency of tax debtors and the location of their assets can allow tax administrations to understand the tax debtors' circumstances and to determine the most appropriate actions to deal with international tax debt collection cases (as well as in exhausting domestic possibilities).

119. Tax administrations often face difficulties in this process, though. In many cases a jurisdiction may not have a population registration system which obliges persons to register where they live and also when they move out of the jurisdiction. In addition, finding a debtor or assets abroad can be highly labour intensive, requiring investigative skills and the use of a range of different data sources from within and outside of the tax administration.

120. It can be expected that improvements in the tracing of debtors and assets might result from the automatic exchange of information about financial accounts under the CRS, at least as far as tax residents are concerned. There may also be other options for improving visibility of tax debtors and assets outside of the jurisdiction where the debt is owed, including better understanding the information sets available in other jurisdictions, whether publicly searchable or not, on assets and ownership (for example on boats and immovable property).

121. The Network may wish to consider building a repository of useful information sets in its member countries whether publicly available or only available on a restricted basis (for example on application). Such a repository might reduce the number of information requests that are sent. There may also be options for the creation of new data sources. For example, work is currently being undertaken by the Joint International Taskforce on Shared Intelligence and Collaboration (JITSIC) on internationally mobile high net worth individuals. Any data source, whether already existing or new, would have to comply with the data protection rules in place.

## Effective use of Mutual Assistance in Recovery

122. A large number of tax administrations expressed concerns about the lack of a legal base for exchange with some other jurisdictions. This seems, though, to be mainly an issue about the number of reservations that have been made under the Convention with respect to the assistance in tax collection and the need for bilateral negotiations to use the Convention in such circumstances.

123. At the same time, not all jurisdictions may possess the necessary domestic legislation needed to be able to render assistance in foreign tax recovery, even where the international legal base is available. Some of the concerns that countries face include issues of sovereignty (collecting taxes for another jurisdiction); procedural issues where collected taxes are automatically transferred into the own government's coffer where there is no legal framework to transfer sums to other parties; lack of laws to enforce on taxes imposed by another jurisdiction; and concerns that administrations may be overwhelmed with requests from other parties.

124. Reservations can constitute a significant barrier for a legally binding basis for assistance in tax collection between jurisdictions under the Convention. The Tax Debt Management Network might therefore wish to conduct further research within the Network to identify the reasons behind jurisdictions use of reservations and the implications for administrative processes as well as a potential input into the appropriate policy discussions.

125. One further possible option might be the drawing up of model Memorandums of Understanding by the Tax Debt Management Network which jurisdictions might wish to use, in specified circumstances, to

provide for the applicant jurisdictions to bear the full costs of the requested jurisdictions in providing assistance. While this is already possible, having a more standardised arrangement may allow those jurisdictions which seldom make requests for assistance, for example because of the use of powers preventing tax debtors leaving in their own case, to consider requests from jurisdictions which do not have such powers. While there would not be a balance in requests made between such jurisdictions, such a mechanism might address concerns about excessive burdens. The Tax Debt Management Network could seek to develop a framework summarising the regular costs related to recovery (e.g. overheads, opportunity costs, etc.) and calculating the costs which could be considered as special costs to help aid case by case discussions.

## Symmetries and Asymmetries in powers

126. As mentioned, there are concerns with the lack of balance in jurisdiction respective collection frameworks and recovery powers. The Network may wish to conduct further research on the effectiveness of certain domestic powers in international tax debt cases. While introducing or using such powers is a matter for each jurisdiction, such research could assist in internal deliberations.

127. The possibilities of recovering a debt depend greatly on the debt collection powers of the jurisdiction where the debtor's assets are located. Although there is no easy solution to this problem, the Network may wish in the first instance to consider creating a database with information regarding the domestic debt collection powers of each jurisdiction and an assessment by the jurisdiction concerned as to their effectiveness. The FTA could also consider developing a list best practice domestic tax recovery and enforcement powers that a jurisdiction should strive to put in place to ensure effective domestic tax collection. Such a list would serve as a good guide for jurisdictions that seek to, develop and improve on its own recovery and enforcement powers. This could build on the information already collected for the purposes of the OECD's Tax Administration Series<sup>1</sup>. As well as assisting in domestic deliberations as to the availability of powers, this would also allow applicant jurisdictions to check the powers possessed by the requested jurisdiction prior to sending a request. This would allow consideration of whether to proceed with the request or whether to seek different routes for the collection of the debt, for example focusing on the use of powers the jurisdiction may have in respect of different assets or seeking assistance from another jurisdiction.

128. Jurisdictions should assess the effectiveness of the provisions in place to accommodate requests related to international tax debt collection. Whereas this assessment should in the first place be performed by the jurisdictions themselves, setting up Peer-to-Peer support measures could be envisaged, including providing bilateral support and voluntary peer reviews for those jurisdictions interested in doing so.

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<sup>1</sup> For more information on the OECD Tax Administration Series please see: [www.oecd.org/tax/forum-on-tax-administration/database/](http://www.oecd.org/tax/forum-on-tax-administration/database/) (accessed on 10 November 2020).



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## Enhancing International Tax Debt Management

This report, which has been developed by the Forum on Tax Administration's (FTA) Tax Debt Management Network, looks at some of the main challenges currently facing international tax debt collection and makes a number of recommendations to help address them. These challenges include a lack of reliable statistics to inform decision-making, potential difficulties that can be faced in tracing debtors and assets, as well as an apparent lack of experience and knowledge in some cases as to the processes and best practices for requesting assistance in recovery. Building on the OECD report Working Smarter in Tax Debt Management, this report recommends a number of areas for further work by the FTA's Tax Debt Management Network to help improve international tax debt collection.



For more information:

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 [www.oecd.org/tax/forum-on-tax-administration/](http://www.oecd.org/tax/forum-on-tax-administration/)

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