

Veröffentlichungen

The Multilateral Convention on Mutual Administrative Assistance in Tax Matters

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Introduction

Taxes throughout the globe are one of the largest income of every state treasury. Therefore every state has imminent interest in taxes to be determined and collected in good order and in that regard every state tries to create as much powerful and efficient legal instruments as possible in order to achieve its goal.

As we know the area of tax law undisputedly forms considerable aspect of both business and personal life of our clients. It is important to realize that the relationship between tax authorities and tax subjects (i.e. our clients) should not be primary adversarial and that cooperative attitude towards tax administrator might bring desired results and outcome. On the other hand this does not necessarily mean that our clients should be passive players and should obey the tax authorities without hesitation. Readiness and good knowledge of tax and administrative legislation is the best way how to prepare and handle the whole course of tax administration. When the rights of our clients are violated they should be able to effectively defend them.

The submitted document shall provide the Members of Libralex E.E.I.G. (hereinafter also referred to as the "Members") a general overview of The Multilateral Convention on Mutual Administrative Assistance in Tax Matter (hereinafter also referred to as the "Convention") as one of legal instruments that the financial and state authorities may apply in order to success in the process of collection of taxes. The submitted text draws primarily on the information provided by the Organisation for Economic Co-operation and Development (hereinafter also referred to as the "OECD") and also includes commentary of the attorneys from the law office HSP & Partners.

General idea is to discuss possible function of the Convention in practice, to point out possible advantages and/or risks for Members' clients and to set out general ideas on possible legal remedies in case of violation of the Convention by the State authorities.

History

The Convention was developed jointly by the OECD and the Council of Europe in 1988 and amended by Protocol in 2010. The Convention is the most comprehensive multilateral instrument available for all forms of tax cooperation to tackle tax evasion and avoidance, a top priority for all countries.

The Convention was amended to respond to the call of the G20 at its April 2009 London Summit to align it to the international standard on exchange of information on request and to open it to all countries, in particular to ensure that developing countries could benefit from the new more transparent environment. The amended Convention was opened for signature on 1st June 2011.

Recent activity within the Convention

Since 2009 the G20 has consistently encouraged countries to sign the Convention including most recently at the meeting of the G20 Leaders Summit in September 2013 where the communique stated "We call on all countries to join the Multilateral Convention on Mutual Administrative Assistance in tax Matters without further delay." Currently over 60 countries have signed the Convention and it has been extended to over 10 jurisdictions. This represents a wide range of countries including all G20 countries, all BRIICS, almost all OECD countries, major financial centres and a growing number of developing countries.

Purposes of Convention

The amended Convention facilitates international co-operation for a better operation of national tax laws, while respecting the fundamental rights of taxpayers. The amended Convention provides for all possible forms of administrative co-operation between states in the assessment and collection of taxes, in particular with a view to combating tax avoidance and evasion. This co-operation ranges from exchange of information, including automatic exchanges, to the recovery of foreign tax claims.

Complete list of countries to the Convention is enclosed as a appendix of this paper.

Practical aspects of the Convention and its use in practice is described below.

Practical aspects of the Convention

How does it work?



General information on functionality aspects of the Convention

Assistance covered

Exchange of information (including on request, spontaneous and automatic), simultaneous tax examinations, tax examinations abroad, assistance in recovery and measures of conservancy, and the service of documents. It can also facilitate joint audits.

Taxes covered

All forms of compulsory payments to the general government except for customs duties. It applies to taxes on income, profits, capital gains, and net wealth levied at the central government level. It also covers local taxes, compulsory social security contributions, estate, inheritance or gift taxes, etc.

Rights and safeguards

Generally, rights and safeguards under national law remain applicable and the Convention expressly recognises a number of limitations to the obligation to provide assistance.

Confidentiality

Very high standards of confidentiality and protection of personal data.

Co-ordinating Body

Made up of representatives of each of the Parties, it monitors the implementation of the Convention. States which have signed but not yet ratified the Convention also participate in the meetings of the Co-ordinating Body as observers.

Flexibility

The Convention lists reservations which States may make regarding the taxes covered (e.g. local taxes) and the type of assistance to be provided (e.g. assistance in collection). Reservations can be made at the time of signature or when depositing the instrument of ratification and they can also be made or withdrawn at a later stage. Certain forms of co-operation such as automatic exchange of information and tax examinations abroad require the previous consent of the relevant Parties.

Use of information to combat serious crimes

Information obtained under the Convention may be relevant for other purposes such as pursuing

serious financial crimes. The Convention permits such other use when (i) such information may be used for such other purposes under the laws of the supplying Party and (ii) the competent authority of that Party authorises such use.

Advantages

The Convention covers a much wider range of taxes than bilateral treaties. In addition, the Convention provides a single legal basis for multilateral country co-operation in tax matters and sets up a body that can, at the request of a Party, furnish opinions on the interpretation and application of the Convention. Further, it specifies uniform procedures for various forms of mutual assistance such as service of documents, simultaneous tax examinations and tax examinations abroad.

Possible issues to discuss during working group

- Use of the Convention in practice – particular experience of the Members of the Libralex in tax cooperation.
- Possible risks regarding our clients in connection with Convention being effective in our countries.
- Possible protection of taxpayers' rights (under the Convention).
- Possible legal remedies in case of violation of a State authority.
- Other practical issues connected with the use of Convention.
- Recent experience with unlawful practice of Financial authorities in Member's country.

We are sincerely looking forward to mutual discussion on abovementioned topics on Libralex Conference in Prague.

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