

THE MULTILATERAL CONVENTION ON MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS

The Multilateral Convention on Mutual Administrative Assistance in Tax Matters was originally developed by the OECD and the Council of Europe in 1988.

At the April 2009 London Summit, the G20 stressed the importance of a swift implementation of the commitments for exchange of information. It also requested a multilateral approach for exchange of information. By April 2010 less than one year after the 2009 London Summit, an agreement had been concluded. In February 2011 the G20 “encouraged jurisdictions to consider signing the Multilateral Convention on Mutual Administrative Assistance in Tax Matters” and that was the impetus for the G20 signing ceremony in Cannes.

On the occasion of the 3-4 November G20 Summit in Cannes all G20 countries participated in a signing ceremony. Prior to this date the amended Convention had already been signed by 21 countries: Belgium, Denmark, Finland, France, Georgia, Iceland, Ireland, Italy, Korea, Mexico, Moldova, the Netherlands, Norway, Poland, Portugal, Slovenia, Spain, Sweden, Ukraine, the United Kingdom and the United States. More countries will be signing in the near future.

Questions and Answers

Q: What is the amended Convention?

The Convention is a freestanding multilateral agreement designed to promote international co-operation for a better operation of national tax laws, while respecting the fundamental rights of taxpayers. The Convention was developed by the OECD and the Council of Europe but is now open to all countries. It provides a solid legal framework to facilitate international cooperation through inter-country exchanges of tax information and assistance. Its objective is to enable each Party to the Convention to combat international tax evasion and better enforce its national tax laws, while at the same time respecting the rights of taxpayers.

Q: What are the benefits of the amended Convention?

The updated Convention is the most comprehensive multilateral instrument available for tax co-operation. The scope of the Convention is broad: it covers a wide range of taxes and goes beyond exchange of information on request. It also provides for other forms of assistance such as: spontaneous exchanges of information, simultaneous examinations, performance of tax examinations abroad, service of documents, assistance in recovery of tax claims and measures of conservancy and automatic exchange of information. It can also facilitate joint audits. The Convention also imposes extensive safeguards to protect the confidentiality of the information exchanged.

Q: What taxes are covered by the amended Convention?

The Convention may apply to 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.

Q: Why was the original Convention amended?

The Convention was amended for 2 reasons: 1) to align it to the internationally agreed standard on exchange of information for tax purposes. It now provides that bank secrecy and a domestic tax interest requirement should not prevent a country from exchanging information for tax purposes and 2) to enable a wider group of countries to become parties to the Convention. Previously, only OECD and Council of Europe member countries could sign it.

Q: When did the amended Convention enter into force?

The amended Convention entered into force on 1 June 2011. For new parties that sign, the amended Convention will enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of ratification with one of the Depositaries.

Q: Why would a State become a Party to the Convention if it already has a network of bilateral agreements?

A: The Convention covers a much wider range of taxes than bilateral treaties (e.g., it covers VAT/GST and social security contributions). Multilateral instruments are efficient: Compared with a full network of bilateral treaties, they save a lot of time and resources in terms of negotiation and ratification. 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.

Q: Does the Convention allow automatic exchange of information?

A: Yes. It can be established through an administrative agreement between the competent authorities of the Parties willing to provide each other information automatically. The agreement would address issues such as the procedure to be adopted and the information that will be exchanged automatically (Article 6).

Q: Can a Party exchange information with another Party under the Convention if their bilateral tax Convention does not provide for it?

A: Yes. In practice, when two States are Parties to both the Convention and another instrument, the competent authority of the applicant State will request assistance under the instrument likely to be most effective, provided of course that the terms of the request meet all the necessary requirements set for assistance to be granted under that instrument (Article 27).

Q: Can the information obtained under the Convention be given to another Party to the Convention?

A: Information provided by one Party to another Party may be transmitted to a third Party, subject to prior authorisation by the competent authority of the Party that provided the information (Article 22.4).

Q: Can the information obtained under the Convention be given to other authorities, e.g. law enforcement authorities to counteract corruption, money laundering and terrorism financing?

A: Yes, the Convention expressly allows this, subject to certain conditions: information received by a Party may be used for other purposes 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 (Article 22.4).

Q: If a country signs the Convention, does it have to allow the presence of foreign officials in its territory?

A: At the request of the competent authority of the applicant State, the competent authority of the requested State may allow representatives of the competent authority of the applicant State to be present at the appropriate part of a tax examination in the requested State. However, under the Convention, a Party may inform one of the Depositaries of its intention not to accept, as a general rule, these requests. Such a declaration may be made or withdrawn at any time (Article 9.3).

Q: Can the information obtained under the Convention be disclosed if there is a requirement under Freedom of Information legislation?

A: No, the confidentiality rules in the Convention prevent this. Paragraph 220 of the Explanatory Report makes it clear that "... the information received by the competent authority of a Party, whether taxpayer specific or not, should not be disclosed to persons or authorities not mentioned in paragraph 2 of Article 22, regardless of domestic information disclosure laws such as freedom of information or other legislation that allows greater access to governmental documents".

Q: Can a Party make reservations?

A: Yes, the Convention allows for certain reservations (e.g. tax collection), but it is not possible to make reservations concerning only certain Parties to the Convention.

Q: Can a Party withdraw a reservation at a later stage?

A: Yes, a Party can withdraw a reservation made at an earlier date. For instance Poland withdrew its reservation concerning assistance in the recovery of taxes at the time it joined the European Union.

Q: How does the Convention protect taxpayers' rights under the Convention?

A: The Convention provides that information shall be treated as secret and protected in the receiving State in the same manner as information obtained under its domestic laws. If personal data are provided, the Party receiving them shall treat them in compliance not only with its own domestic law, but also with the safeguards that may be required to ensure data protection under the domestic law of the supplying Party (Article 22).