



Efficiency of mutual assistance in tax matters; what is in a name?

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1. Introduction

The current report on the efficiency of mutual assistance in tax matters has been based on national reports prepared by colleagues from Austria, Belgium, Finland, Germany, Hungary, Italy², Luxembourg, the Netherlands, Poland, Portugal, Spain, Sweden and the United Kingdom. In these 13 national reports which had to be submitted by the end of 2008, answers were provided to the questions raised in an outline prepared by Prof. Dr. Roman Seer who acted as the general reporter on mutual assistance in tax matters.

In this report, I focussed on the answers provided with respect to the 50 questions from the outline regarding matters of use and of efficiency of the mutual assistance in tax matters. In view of the enormous amount of information included in the national reports, I have had to make a selection of the aspects that could be dealt with in this report and have refrained from mentioning specific national reports. Despite this rich source of information, it is difficult to judge whether the mutual assistance can be considered efficient due to the lack of general criteria for this notion and the lack of relevant data. I would like to thank my colleagues for their efforts in preparing these national reports and refer to the outline for the questions put and to the national reports for further details regarding the situation in the specific countries concerned. Although I based my report to a large extent on these national reports, I would like to emphasize that I am solely responsible for its content, and in particular for the recommendations made.

In view of the perceived lack of a common definition of what is meant by efficiency, the report will first contain some general considerations regarding the meaning of efficiency. In that context, a distinction is made between the notions of effectiveness and efficiency. Subsequently, a number of aspects included in the outline and dealt with in the national reports which are considered relevant in the context of efficiency of the mutual assistance are discussed. Although a number of these aspects are intertwined and therefore cannot be fully separated from each other, I considered it useful for the sake of overview and in view of the primary nature of these aspects, to distinguish the following categories: organizational, legal and practical aspects. For the sake of promoting a discussion on ways to enhance the effectiveness and efficiency of the mutual assistance in tax matters, I have added a recommendation at the end of each aspect dealt with.

I would certainly like to mention all the useful work done in the past regarding mutual administrative assistance in the context of the EC and especially also of the OECD in standard setting, best practice and publishing manuals for all types of administrative assistance³. As

² A word of thanks to Prof. Pietro Selicato and other Italian colleagues, who were so kind to invite us to attend a seminar on 26 January 2009 in Rome at which we could benefit of the knowledge exchanged on the topic of mutual assistance by these colleagues in preparation of their Italian national report

³ See for instance the Manual on Information Exchange, containing one general module and 8 specific modules, approved by the Committee on Fiscal Affairs on 23 January 2006, and published on the OECD website

you know, this is a very dynamic area in which many important developments have recently taken place. In this respect, I would like to mention the successful actions undertaken by the OECD, G20 and UN to improve transparency and exchange of information in tax matters in the context of good governance in tax matters generally, and also more specifically by abolishing bank secrecy⁴. In this context, reference is also specifically made to the activities of the OECD Forum on Tax Administration and to the work being done in the UN on a possible Code of Conduct on Cooperation in Combating International Tax Evasion and Avoidance. The proposals made by the European Commission in February 2009 for two new Directives regarding the exchange of information and the mutual assistance in the collection of taxes should also be mentioned⁵, as well as its Communication entitled "Promoting Good Governance in Tax Matters"⁶. In that Communication, the Commission calls upon Member States to adopt these proposals and improve the functioning of the Savings Directive. The Commission also proposes specific measures to promote good governance in the relation with third countries by proposing to include principles of good governance in the agreements with these countries, and to discuss counter measures towards uncooperative jurisdictions.

In view of the nature of the proposals for the new Directives mentioned above, these may, if accepted, take the EC from the back seat to the first row in the area of mutual administrative assistance. Finally, it will be interesting to observe the outcome of the ongoing work in this area by the UN as well.

However, in the area of efficiency of the assistance a lot remains to be done, as you will see below. Let us hope that the EATLP conference can contribute to enhancing interest in the topic, and provide useful input for desirable improvements in mutual assistance in tax matters.

2. General aspects of the notion of efficiency.

Having studied the various national reports, I chose to add the wording "what is in a name" to the title of this report, to express that no general concept of efficiency is apparent in this context, and also in tax literature, a broader framework of this notion appears to be lacking. In particular, an analysis of the economic and financial aspects of the mutual assistance seems to be in its infancy.

In saying this, I certainly do not want to suggest that the latter aspects are the most important ones in judging the efficiency or otherwise of the mutual administrative assistance. Obviously, many other aspects, like taxpayer protection, or a lack of it, may also

www.oecd.org; a similar Manual on Assistance in the Collection of Taxes was also published by the OECD on the same website.

⁴ See for instance the report on the progress of the implementation of internationally agreed standards on exchange of information for tax purposes by Financial centres around the World published on the OECD website www.oecd.org on 2 April 2009 as a follow up on the G-20 summit and communique.

⁵ Proposal for a Council Directive on administrative cooperation in the field of taxation, and proposal for a Directive on mutual assistance in the recovery of taxes published by the European Commission on 2 February 2009 (see website www.europa.eu.int)

⁶ Communication of 28 April 2009, IP/09/650 (see website www.europa.eu.int)

influence the efficiency of the mutual assistance. In this respect, one may think of delays in providing the information requested due to certain types of notification procedures, or on the other hand of liabilities for damages for states where these rights are considered as not having been properly observed. These aspects of taxpayer rights are, however, dealt with specifically in another report. Also, considerations of taxpayer justice and equality may limit the economic and financial efficiency of mutual assistance. In this respect, one may think of refraining from including thresholds of amounts of tax involved which must be met before assistance is granted, or of the wish to have certain checks on taxpayer information made, despite the fact that such checks may not always be cost effective for the state concerned. These are ultimately political decisions, and therefore difficult to include in this report.

Having considered these above-mentioned aspects and limitations, it seemed important to attempt to create a bit clearer framework for our discussion on efficiency by looking further at the meaning of that notion. In view of the lack of a generally used concept of efficiency, I looked at the meaning as defined in the Oxford Dictionary. On the basis of these findings, I considered it useful to make a distinction between the notions of effectiveness and efficiency which are both used in this context.

- A. **Effectiveness.** According to the Oxford Dictionary definition, the focus of this notion is on whether something has its definite or desired effect. More specifically in our case: does the administrative assistance achieve its aims?

In order to be able to answer that question, the following aspects seem crucial: what are these aims and how can we measure whether these are indeed achieved?

In the context of administrative assistance, it must be observed, that generally speaking, these aims are defined only in very general terms. I refer e.g. to the preamble of the current EC Directives on mutual assistance. In the sixth recital of the preamble of Council Directive 77/799/EEC regarding the mutual assistance in the field of direct taxes and insurance premiums, it is stated that the purpose of the Directive is the correct assessment of taxes on income and on capital, in particular where there appears to be an artificial transfer of profits between enterprises in different Member States, or where such transactions are carried out between enterprises in different Member States through third states to obtain tax advantages, or where tax may be evaded or avoided for any reason whatever. The OECD and the UN Model Double Taxation Convention both mention the prevention of fiscal evasion in a footnote to the preamble. They also mention as an aim in the text of Article 26 on exchange of information of these Models, the carrying out of the provisions of the Convention as well as the domestic tax laws. The text of Article 26 of the UN Model also expressly mentions the prevention of tax fraud and evasion. The text of Article 27 of the OECD Model and its Commentaries do not elaborate on the aim of the assistance in the collection of taxes.

Although such general description of the aims of international mutual assistance may be desirable and even necessary in the context of creating a broad legal base for such assistance, more specific aims seem to be necessary to achieve the required focus and to make it actually work. Depending on the type of assistance, selecting specific aims may, for

instance, be based on modern risk assessment techniques. In the context of international cooperation, a coordinated approach would seem to be most effective

As far as I am aware, no general instruments have been developed or described on the issue of measuring the size of the problem addressed under the mutual assistance, and of the results achieved with the assistance. Sometimes, it appears that there are estimates of the size of the problem. I refer to the speech of the Secretary-General of the OECD of 21 October 2008⁷ in which he stated that the amounts of funds held offshore are somewhere between 5 and 7 trillion US dollars, whereas in a study of Oxfam published on 13 March 2009⁸, mention is made of up to 124 billion US dollars of annual tax loss for developing countries due to at least 6.2 trillion US dollars being held offshore in tax havens by individuals. Furthermore, it is mentioned by the EC Commission in the explanatory note to the above-mentioned proposal for a Directive on assistance in the recovery of taxes that approximately only 5% of the amounts for which recovery assistance is requested is effectively recovered. Finally, the amount of VAT fraud in the European Community is estimated to amount to 100 billion euros/per year, which is partly attributable to so-called carousel fraud. As regards the results of international administrative cooperation to combat these problems, no, or hardly any, relevant information seems to have been published by the various countries. Incidentally, figures are published, like in the Swiss Government's press release of 8 May 2008, in which it is reported that in 2007, an amount of 653 million Swiss francs was withheld on interest payments to residents of EC countries.

Also on the basis of remarks in the various national reports, I have the feeling that it is desirable in order to be able to focus the efforts on mutual administrative assistance via target setting and resource allocation, to define the aims of the assistance more specifically, and to develop systems to report on the results achieved. In this context I would like to refer for instance to the case of the taxation of income of savings and the combating of carousel fraud, which focus led to more reporting on these topics and also amendments of the instruments to improve the effectiveness of the combat against such fraud and evasion. Finally, I would like to mention that I was informed that a project regarding performance management of administrative assistance will soon commence at the OECD, whereas also the previously mentioned recently proposed EC Directives on mutual administrative assistance⁹ contain tools to evaluate the results of the assistance.

Recommendation 1. Set more specific targets using where appropriate risk assessment techniques, and introduce systems to measure the results of administrative cooperation, to better focus the efforts and to achieve the desired results.

⁷ Improving transparency and stepping up exchange of information in tax matters; see OECD website www.oecd.org

⁸ Tax havens: releasing the hidden billions for poverty eradication; see Oxfam website www.oxfam.org.uk

⁹ See footnote 5

- B. **Efficiency.** According to the Oxford Dictionary definition, this notion focusses on whether the approach is productive with minimum waste or effort. More specifically in our case: do we have and use the right tools or types of assistance to achieve the aims in a cost effective way?

Currently, besides general statements in, for instance, preambles on gains regarding tax justice and equality and the removal of economic distortions, no, or only very partial, cost/benefit analyses seem to be made and published (see also under 3D below). From the national reports, it appears that no systematic publication takes place of data on additional revenues and costs of the various types of administrative assistance, whereas this is important, in my view, to be able to judge whether certain approaches should, from an efficiency perspective, be used. For the sake of clarity, I would like to mention that costs should not only include the costs of the tax administrations involved, but also an estimate of the compliance costs for taxpayers.

Cost/benefit approaches also seem important for the motivation of tax staff involved and for triggering the thinking about efficiency gains which could be made regarding the instruments and procedures used. Even the development of relatively less sophisticated systems may already form a barrier against introducing or maintaining unnecessary bureaucratic processes which are not desirable from a perspective of costs and risks which they entail for the taxpayers.

In my view, the national and EU auditing offices may play a useful role in boosting the development of instruments aimed at promoting both effectiveness and efficiency of the assistance.

Recommendation 2. A more structured cost benefit approach is desirable which comprises reporting on additional revenues and gains, as well as on related costs for both states and taxpayers. More focus of national and EU auditing offices on both effectiveness and efficiency may boost developments in this area.¹⁰

Although we apparently do not yet have a clear generally accepted concept of efficiency, nor systems to measure the cost effectiveness, many reporters stress the great importance of the mutual assistance in an era of ever-increasing globalization. They also occasionally state that the mutual administrative assistance has not been able to keep pace with the globalization of economic activities. Even where concrete figures are lacking, in several national reports, the great value is mentioned of the possibility to exchange information and to provide other types of assistance from a perspective of prevention of tax evasion. However, many concrete aspects considered relevant in the context of efficiency are also mentioned in the outline and discussed in the national reports. Besides the more general aspects and issues regarding effectiveness and efficiency as mentioned above, I would like to highlight a number of these aspects which are discussed in the national reports and considered relevant in the context of improving efficiency. For the sake of overview and in view of their primary nature, I have categorized these as organizational, legal and practical

¹⁰ Reference is for instance made to the report of the European Court of Auditors on VAT Administrative Cooperation of December 2007 and the joint report of the Belgian, Dutch and German national auditing offices of March 2009 on Intracommunity VAT- fraud.

aspects. It goes without saying that it is sometimes difficult to make that distinction and certainly a number of aspects have characteristics of more than one category, or are intertwined. As mentioned previously, for the sake of discussion I have finalized the discussion of most of these aspects by making a concrete recommendation.

3. Organizational aspects regarding the Tax Administration

The following organizational efficiency aspects can be mentioned:

- A. **Resource, or budget aspect.** In several reports, reference is made to various aspects of resources and lack of budget available. Thus it is mentioned that resources are limited, and additional time spent on international administrative assistance may go at the expense of resources dedicated to domestic investigation. Reference is also made to the need to help less developed administrations in setting up the organization to effectively participate in international assistance, the lack of reciprocity in financial interests, the costs of translation and more generally of the attention given to the topic in the tax administration. In one report the suggestion is made to enable countries to participate in international assistance by high taxing countries financing the set-up of a good organization and also more generally to share the additional revenues generated by the international assistance. Although I realize that this is a complicated topic and that the financial issues may be more relevant for cooperation with developing countries than within the EU, I feel this idea should be picked up for discussion. In other words, I would like to raise the issue whether forms of revenue sharing between the states should be contemplated. In this context I refer to the fact that in the 2002 OECD Model Tax Information Exchange Agreement (TIEA) apparently the problem is also recognized as it addresses the issue of bearing the costs related to the assistance.

Increasing the financial interest of requested states in providing assistance, but also making visible the financial results of it in the requesting states, may underline the importance of the cooperation and also provide a tangible reward for such cooperation. It may further justify making the necessary investments in building up the organizations, acquiring the necessary expertise, carrying out the assistance, having translations made etc. . Thus, it seems that revenue sharing may be an important aspect of realizing an effective exchange of information and can perhaps even be considered as a necessary condition for assuring assistance in particular by less wealthy countries. Again, I would like to stress that this is a complicated area and maybe only feasible for certain kinds of assistance, but I think it is worthwhile to be further explored. By the way, examples of specific revenue sharing between states already exist. I refer for instance to the sharing of the revenues from the withholding tax levied on interest paid in the context of the so-called Savings Directive and related third country agreements, and also to revenue sharing arrangements between states regarding the taxation of frontier workers.

Recommendation 3: it is considered useful to explore possibilities for revenue sharing of additional tax levied and collected due to (certain types of) mutual administrative assistance

- B. **Motivation and training of staff involved.** In some reports (and sometimes also in informal contacts) the issue of lack of attention of management and other staff for international cooperation is mentioned. How to motivate tax staff to put efforts in such cooperation if their performance is judged on other domestic tasks and targets to be achieved and insufficient opportunities for training and developments are offered? I feel that setting tasks and targets in this area, including time limits, and providing relevant training will motivate and enable staff to effectively participate in the mutual assistance. Such priority setting, and recognition of results may also promote a more pro-active attitude of staff in for instance the area of spontaneous exchange of information.

Recommendation 4: include international assistance in the tasks and targets and performance management systems of the tax administrations.

- C. **Organization structure of the assistance.** From the reports, it is clear that forms of central coordination of international assistance are present in most countries and also that the organization of the assistance is generally considered to be satisfactory. In some countries, more than one authority seems to be competent. However, the description in the reports of subsequent lines of communication, number of layers of authority involved as regards various types of taxes, and as regards regions etc., raise the question whether the organization of the international cooperation is indeed efficient or could be improved. In several reports reference is made to decentralisation in the area of international cooperation regarding VAT which is then considered as very efficient. A limited number of countries also reports to have concluded specific agreements to promote decentralized international administrative cooperation in tax matters by enabling direct contacts and exchange between certain local or regional authorities of the countries concerned. It struck me that the authors of several national reports seem in favour of such types of decentralisation, whereas others seem reluctant or even opposed. The latter provide as arguments for their view the need to build up and maintain the necessary expertise and also that centralization can best safeguard the required tax payer protection. It seems to me that it is difficult to draw one conclusion on this matter. It seems that depending on the circumstances (for instance the size and nature of cross border economic relations and of cross border fraud, strength of local tax administration, possibilities to build up and maintain local expertise, expected benefits and costs required) it should be decided whether further decentralisation is efficient or not. This is indeed only a matter of feeling as, like in many other cases, sufficient information to judge whether efficiency gains could be realized seems to be lacking.

Recommendation 5: whether further decentralisation of the international administrative cooperation is efficient and desirable should be judged on the basis of the types of assistance and the specific facts and circumstances in the regions involved.

D. Transparency of aspects regarding actual mutual assistance. In the context of use and efficiency of mutual assistance, many questions were put in the outline regarding the number of exchanges or other types of assistance, on throughput and time limits, on cases of refusal to assist, on number of follow-up questions and on feedback on results achieved with the exchange and other forms of assistance. The answers to such questions might at least give some impression of the effectiveness and efficiency, and the information gathered might also induce efficiency gains as such figures may raise questions and lead to evaluation of outcomes and improvements. Apparently our reporters have made the utmost effort to find information regarding the aspects mentioned above as they do not only refer to official sources where available, but apparently in case of lack of these also occasionally mention information from unofficial sources, informal contacts etc. Sometimes the answers may initially come as a surprise. Thus, it is mentioned in virtually all reports that requests to provide information are (said to be) hardly ever refused, or turned down. This seems surprising in view of the exceptions included in the various legal instruments. It is, however, also mentioned in some reports that if it is, for instance, known that countries have bank secrecy rules, other countries may not be inclined to request such information anymore as they know it will not be provided. The same effect may arise when past experience has shown that it takes too long to obtain the information requested.

However, when looking at the overall result, I must conclude that generally speaking, only very limited information is available on these topics. There are also great differences between countries, and sometimes only ad hoc information is available and not on a structural basis. This seems partly the case because some countries simply do not collect such information and partly also since some countries are apparently reluctant to publish any such data which they probably consider as a kind of business secret.

Where made available, information is sometimes difficult to interpret and to compare. For some countries it is reported that annually only a few hundred cases of exchange of information on request or spontaneously occur, whether for others the numbers mentioned are several thousands.

If automatic exchange is applied, the annual numbers quickly rise to several hundred thousand, but the differences in figures between the years are sometimes very large. Perhaps in some years it was not possible for technical reasons to transfer the data, which data were then transferred in the subsequent year, thus leading to a far higher number of data exchanged than in the previous year.

As regards simultaneous audits and cases of participation of foreign tax authorities in audits in the other country, the numbers provided (at maximum a few dozen per year) are rather limited and some reporters mention that such possibilities are more used in case of VAT than in case of direct taxes.

Many times, the figures are also difficult to interpret as different types of taxes are included, or different types of information (like quick factual information and more complex information requiring more investigation), or differences are made in reporting on information requests received or dealt with etc. Finally, when attempting to derive an

impression about the relative level of effectiveness and efficiency between the various countries on the basis of the limited data available, one should also bear in mind that the numbers as such may not provide much insight in this respect since the relative size of the various economies and of their international relations should in my view then also be taken into account.

Overall, we can only conclude that there is generally a great lack of sufficient transparency and of standardised data which hampers the discussion on the efficiency and possible improvement of it. This should definitely be improved, and within the EU, the Commission may play an important role in this respect.

Recommendation 6: make the mutual assistance more transparent by publishing relevant information regarding the assistance in a more structured uniform way. The EU may provide a suitable environment to develop such uniform standards.

4. Legal aspects

The following legal efficiency aspects can be mentioned:

- A. **Complexity by great diversity of instruments and amongst treaties.** In the answers provided to questions regarding the efficiency of the various legal instruments, the differences between the legal instruments are mentioned in several reports. Although the OECD Model Tax Convention has been frequently updated during recent years¹¹, and in 2002, a Model for a Tax Information Exchange Agreement was published, there is great diversity amongst actual bilateral treaties since these are still mostly based on previous versions of the OECD Model. Besides the bilateral tax treaties, also the OECD/Council of Europe Convention is applicable for a number of countries. Finally, also relevant EC instruments are applicable like the Directives on mutual assistance for the collection of taxes and on mutual assistance in the field of direct taxes, and on savings, besides specific instruments regarding VAT.

Asked for a preference for one or more of these instruments, in several reports, a clear preference is expressed for the EC instruments, whereas, in others, the tax treaties are preferred, and in many others, they are considered as equally effective. Without going into details, it is clear that, currently, the great diversity amongst tax treaties as well as the differences between them and the EC instruments which also need updating in view of the important developments since they were introduced, as well as the OECD/Council of Europe treaty, complicates matters by requiring detailed expertise of various instruments. This not efficient.

Harmonization within the EU is needed and can be achieved if the Council of Ministers agrees to such proposals.

However, a general problem remains regarding existing tax treaty relations with third states as well as regarding tax treaties amongst third states, whereas also a lot of new

¹¹ Reference is in particular made to the various updates of article 26 on exchange of information, and on the inclusion of a new article 27 on assistance in the collection of taxes

treaties need to be concluded. In theory, a multilateral agreement on mutual assistance might lead to the necessary uniformity and simplification, but this will, of course, be very difficult to achieve. Nonetheless, such option could perhaps be explored between experts of the UN and the OECD who are also confronted with this problem in other areas. In view of the great political interest in combating tax evasion, this may be the right time to pick up this challenge in these organizations.

Recommendation 7: The possibility of creating greater uniformity in the international legal framework by developing one or more multilateral conventions containing the last state of the art should be looked into in view of the efficiency which could be gained from such simplification.

B. **Coverage of taxes.** In practise, in many treaties, the assistance is still limited to the taxes on income and on capital though the Models were amended a long time ago.

Recommendation: comparable to issue 7.

C. **General exceptions for laws and administrative practices as well as reciprocity and business secrets.** The exceptions for legal and administrative practices should not apply in case of lack of domestic interest, ownership information, or bank secrecy. Gradually, due to G20, OECD and UN pressure, general acceptance of these points seem to have been achieved. However, the degree of relaxation of bank secrecy and actual implementation need to be monitored and the outcome to be awaited.

Another issue is the reciprocity in the sense of both legal and practical application which is occasionally mentioned in the national reports. Currently these notions of reciprocity may hamper forms of assistance, like automatic exchange, if for instance applied strictly per category of information. A relaxation of this requirement has meanwhile also been proposed in the above mentioned proposals for new EC Directives¹². The practical and policy objections against relaxation or abolition of the requirement of reciprocity can perhaps be accommodated if forms of revenue sharing as advocated can be found, which enable countries to finance the increased efforts required due to an increase in assistance.

According to the national reports, the exception for business secrets which may be of great importance from a perspective of taxpayer protection, seems rarely to be invoked. At least in several reports where information on this topic could be acquired, mention is made that hardly any request is refused. It is of course to be awaited whether the abolition of the abovementioned exceptions and the generally expected increase in mutual assistance will not lead to an increase of such refusals.

¹² See footnote 5 for the proposed EC Directives in which not only the exceptions for lack of domestic tax interest, for information on ownership and for bank secrecy will no longer be possible, but in which also the exception in case of lack of reciprocity will be limited

Recommendation 8: a limitation of the the scope of the exception for reciprocity is desirable to avoid hampering further developments in the effective implementation of mutual assistance.

- D. **Use of information internally and in relation to third countries.** There are differences under the various instruments as to whether the information acquired can be used for other purposes, like social security, subsidies, or other non-tax related purposes, or even for criminal prosecution. There are also differences as to whether information received from another state can be passed on to other states with which the state receiving the information has a legal instrument to exchange information. Although such differences are mentioned in some national reports, there is no strong recommendation to increase efficiency in this respect. It is clear, however, from the various national reports that in most countries different rules apply as regards the protection of taxpayers under criminal prosecution and under administrative procedures and thus I wonder whether removal of such distinction, which seems to be included in the recently proposed new EC Directives¹³ would be feasible, also from the perspective of human rights treaties. It seems clear that from a perspective of taxpayer protection in any case confidentiality should be observed by the authorities acquiring access to such information.

Recommendation 9: a broader exchange of information with designated non-tax authorities, like social security authorities, equally bound by confidentiality principles, should be made possible, possibly with exception for criminal prosecution where specific taxpayer protection exists.

- E. **Presence of foreign tax authorities.** As appears from the national reports there are differences in the legal systems as regards the kind of participation allowed. A distinction is made between so-called passive participation by the foreign authorities present in the other country, and active participation which currently generally does not seem possible in most states. Also, generally not much use seems to be made yet of the possibility for foreign authorities to be present in the other state, with the exception of VAT cases. There is no strong recommendation in the national reports on this issue, although in some the importance in particular in the area of VAT is underlined. It would seem, however, that the possibility for a more active role can increase efficiency, assuming that the option is only used in cases where this presence is really providing an added value. Allowing for such more active role should in my view only be possible in consultation with the state where the audit or investigation takes place and within the limits of investigation powers existing in the country visited and under the latter's final responsibility. A provision of this kind is also included in the previously mentioned proposed new EC Directives¹⁴ and it will be interesting to see whether this is acceptable for the Member States.

Recommendation 10: a more active role should be allowed to visiting tax authorities under the responsibility and limits of investigation powers of the receiving state.

¹³ See footnote 5

¹⁴ See footnote 5

5. Practical aspects.

The following practical efficiency aspects can be mentioned:

- A. **Feedback.** Although maybe already implicitly addressed in chapter 2 and chapter 3, letter D, it is important to also expressly mention here the issue of feedback here. Arranging proper feedback and subsequent evaluation of the results is very relevant for the proper functioning and improvement of the current instruments for assistance. It is also important to avoid unnecessary administrative burdens if certain approaches appear not to be effective. It can also provide useful input for related aspects like motivation and task setting of tax staff involved in the mutual assistance. Finally, it can of course also generate important information which can be used as input for amending the legal framework.

Tailored standardised and cost efficient systems should be developed to avoid unnecessary administrative burdens.

The aspect of feedback is also included in the previously mentioned proposed new EC Directives¹⁵, and it will be interesting to see whether the Member States are prepared and logistically able to accept such mandatory systems under the guidance of the Commission.

As feedback is relevant for all types of legal instruments, including bilateral and multilateral tax treaties, it is clearly preferable to develop proper feedback instruments in a broader multilateral setting. Thus, the OECD, UN and EC could play an important role. In order to avoid inefficiencies regarding the administrative burdens caused by inconsistencies, or duplication of information requirements and also of different sets of rules, it is important that the above mentioned multilateral organizations attempt to achieve some kind of coordination of their efforts to develop standardised instruments in this field. It goes without saying that if such procedures are introduced, they could also have been covered under the organizational and legal issues.

Recommendation 11: Develop standardised feedback mechanisms, preferably in a coordinated multilateral effort by, for instance, OECD, UN and EC, in order to avoid inefficiencies .

- B. **Choice of types of assistance.** It is generally mentioned in the national reports that the various types of assistance, such as information provided on request, spontaneously, or automatically, as well as simultaneous audits and participation of foreign tax authorities in audits in a state, cannot be compared as such. Thus, it is not possible to express a general preference for any of these instruments from an efficiency perspective. They each have their own aims, applicability and efficiency aspects. The OECD Manuals on assistance in the exchange of information and on the collection of taxes provide good overviews of the various aspects involved, as well as practical guidance¹⁶. The following general impressions can be derived from the information provided in several national reports .

¹⁵ See footnote 5

¹⁶ See footnote 3

Exchange of information on request is generally considered a useful tool in case of audits or investigations where the relevant tax authorities lack certain information or want to make a specific check.

Spontaneous exchange is considered as particularly useful, if, during for instance, an audit, information is identified which might be of interest for the tax obligations of a taxpayer in the other state.

Automatic exchange of information is generally considered as a verification tool aimed at checking whether income was reported, and also as an important tool to promote voluntary compliance.

Simultaneous audits appear to be particularly important where quick coordinated action is required in the relevant states, such as in the case of combating international carousel fraud in the area of VAT. The presence of foreign tax authorities at audits in a state could be particularly relevant where in-depth knowledge of the business processes of a group of companies or pricing methodologies used are important, such as in the case of transfer pricing issues.

From the national reports, it also appears that the number of exchanges based on requests, or provided and received spontaneously seem gradually to grow. The number of automatic exchanges increases, as is to be expected, enormously, once applied between states. It appears from the answers that the number of simultaneous audits and cases of presence of foreign tax officials is limited. If used, they are apparently more used in VAT than in direct taxes.

Generally, there are high expectations of the further development of automatic exchange of information, which is probably due to the impressive numbers of data exchanged and quite noticeable effects of the exchange in the case of VAT and the taxation of interest on savings. In accordance with the recommendation previously made on effectiveness in chapter 2, it seems of particular importance in the case of automatic exchange, to select and set clear targets, for instance based on modern risk assessment techniques, to avoid unmanageable flows of bulk information.

From the description of the procedures in implementing the various types of exchange of information as described in some national reports, it has become clear, that an effective use of bulk information exchanged is dependent on a number of very critical conditions being met. These comprise amongst others: clear description of the type of income or transaction, relatively easy and timely availability of the information, clear and correct identification of the taxpayer (e.g. via unambiguous taxpayer identification numbers), proper level of IT facilities in both states concerned, and a more or less automatized system of checking or inclusion in databases used to make verifications of tax returns/assessments. If these conditions are not met, the effectiveness is probably more caused by the psychological effect of prevention of evasive behaviour than by the actual use of data which at those numbers can probably not be managed. Reference should be made here to the extensive work done on these matters in both the OECD and EU. In view of the investment in resources required, cost/benefit analyses seem of interest here too.

Recommendation 12: the type of mutual assistance should be selected on the basis of the aims to be achieved and the cost effectiveness of the particular type of assistance in the specific situation.

- C. **Use of electronic means of communication.** As a matter of efficiency (time saving and to reduce the risk of mistakes) it is mentioned several times in the national reports that properly secured electronic means should be used for including information in databases and also for communicating generally both within countries and cross border. The experiences in this respect with VAT (VIES system and CCN) are apparently generally considered as very positive, despite the recognition of improvements still required to further enhance the effectiveness of the electronic process chosen.

Recommendation 13: the use of properly secured electronic means of communication both domestically and internationally should be strongly promoted.

- D. **Usability, up to dateness and correctness of information.** This relates for instance to the use of taxpayer identification numbers, correct address and other information, as well as timeliness of information. These aspects were specifically mentioned as points where for instance the VIES system should be improved. In particular the aspect of correctness of information exchanged is strongly related to the topic of protection of taxpayer rights, and of liabilities states can be faced with in case these have not been observed and false information has been exchanged. As previously mentioned in chapter 2, letter B, a proper observation of taxpayer rights can in my view be considered as an aspect of efficiency considerations, although for the purposes of this conference it was decided to deal separately with this topic. There can also be a strong link to other tax legal efficiency aspects as dealt with in chapter 4 of this report. You can, for instance, think of the case of combating VAT Carousel fraud, where it has appeared to be very important to shorten the filing period for VAT.

Recommendation 14: it should be ensured that correct and up to date information is used and exchanged.

- E. **Standardisation of forms and procedures.**
This point was frequently mentioned in the national reports. See also the work done by the OECD in the Manuals referred to in footnote 2, and in particular the work done in the area of automatic exchange, where also the European Commission has been very active in certain areas.

Recommendation 15: promote to the greatest extent possible the use of standardised forms and procedures.

- F. **Language problems.** According to the answers included in the national reports, language problems are generally not considered to be a major obstacle. Occasionally, however, delays and cost aspects caused by translation are mentioned, which may increase as the volume of the mutual assistance increases and new agreements with other third countries are concluded. Furthermore, from a perspective of taxpayer protection, it is very important that no misunderstanding can arise or incorrect information be passed on due to inaccuracies in the translation, and thus these issues should, where relevant, be

handled with great care. Standardisation and translation of the forms and most important procedures and training of language skills of the most relevant staff may also contribute to coping with the problem, as well as solving the related funding aspect as suggested previously by, for instance, introducing forms of revenue sharing. The obvious but sensitive issue of using one working language where feasible, should also be mentioned as was done by some reporters.

Recommendation 16: where the use of a single working language is not feasible, the translation of standardised forms and procedures, as well as improving language skills of the relevant staff and solving any problems of translation costs should be considered.

6. Summary

This report was largely based on the answers to 50 questions as provided in 13 national reports. Despite this rich source of information it is difficult to judge whether the mutual assistance can be considered efficient in view of the lack of general criteria for this and the lack of relevant data. The author bears the full responsibility for this report and for the choices of topics made from this rich source of information and from other information available to him.

After a short introduction including some background information and relevant recent developments, a framework for a general discussion of the topic of efficiency is provided. In view of the perceived lack of a common definition of efficiency, some general considerations are provided regarding its meaning, where a distinction is made between effectiveness and efficiency. After having discussed the more general aspects of efficiency, specific aspects are discussed. These aspects have been categorized in organizational, legal and practical aspects. At the end of each aspect, a recommendation has been formulated to promote discussion on the efficiency of the mutual assistance in tax matters and its possible enhancement.

Of the 16 recommendations made, I would like to highlight the following.

As regards the general aspects included in chapter 2, it is recommended to set more specific targets and to develop systems to measure the results achieved in order to be able to judge the effectiveness of the assistance. Furthermore, the development of cost/benefit approaches is necessary to be able to achieve efficiency and to avoid unnecessary burdensome and costly bureaucratic processes. National and EU auditing offices may play a useful role.

As regards the organizational aspects included in chapter 3, it is recommended to look into options for revenue sharing and to increase staff motivation and training as well as management attention by including specific tasks and targets in the performance management systems and by offering training and development opportunities. Furthermore, the transparency of information regarding the mutual assistance should be greatly improved, and decentralised forms of cooperation considered where appropriate for the type of assistance, taking into account the regional situation.

As regards the legal aspects included in chapter 4, it is recommended to investigate the possibility to create greater uniformity in the legal framework, to reduce the scope of the reciprocity requirement, to enlarge the possibilities to pass on information acquired to other domestic and foreign (non-tax) authorities bound by similar confidentiality principles, but with an exception for criminal prosecution, and to revisit the possibilities for foreign tax authorities to participate in investigations.

As regards the practical aspects included in chapter 5, it is recommended to develop standardised efficient forms and procedures as well as feedback mechanisms preferably in a

coordinated EC, OECD and UN approach, to choose the type of assistance on the basis of its aims and cost effectiveness including the opportunities of increasing automatic exchange, and to use properly secured electronic means of communication both domestically and internationally. Finally, timely exchange of correct information should be ensured and translation issues carefully managed in cases where a single language cannot be used.