

Collaboration and Sharing: The OECD's Forum on Tax Administration

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In this article, Katz-Pearlman considers the impact of the OECD Forum on Tax Administration's work in bringing together the revenue authorities of its members to improve tax administration, compliance, and certainty.

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The OECD has been front and center since 2013, when it unveiled the base erosion and profit-shifting initiative. The BEPS report, issued in February of that year, laid out the concerns of the G-20, the OECD, and the international tax community regarding the serious risks that base erosion presented to tax revenues and tax fairness for many jurisdictions.

The report set off a chain reaction of events, initiatives, and laws that have heavily affected global tax enforcement — a most challenging environment for multinational corporations, which now routinely and simultaneously deal with inquiries from revenue authorities in multiple jurisdictions. While much of the activity in the global tax environment is attributable to the BEPS initiative and its progeny, this article focuses on a critical, though often unnoticed, group within the OECD — the Forum on Tax Administration (FTA).

The FTA was created in 2002, long before the BEPS initiative, to bring together revenue authority commissioners from over 50 OECD and non-OECD countries¹ for the purpose of sharing their experiences, successes, and challenges, all focused on improving tax administration, compliance, and certainty. Its vision is to:

create a forum through which Commissioners can identify, discuss and influence relevant global trends as well as develop new ideas to enhance tax administration around the world. It does so by:

- Providing a unique global forum where Commissioners and their teams can share experiences and expertise on tax administration issues
- Harnessing the collective strength of tax administrations globally including through developing joint programmes of action on key tax administration issues
- Developing and promoting world-class products and standards for effective, efficient and fair tax administration
- Engaging in dialogue with key stakeholders, including business and individual taxpayers, tax intermediaries, tax policymakers and financial regulators, and supporting parallel dialogues at a national level
- Promoting enhanced co-operation between countries and working co-operatively with

¹ A list of participating countries is available on the OECD Forum on Tax Administration's website.

other international and regional tax organisations and international organisations.²

The vision has become a reality — the FTA’s reach has been tremendous — and yet I am often struck by how few people are aware of it, and how even fewer follow and focus on its work. The concept of revenue authorities from around the world coming together in the name of tax administration to share information and join forces is quite extraordinary. Though it has now become almost commonplace for revenue authorities to collaborate, the FTA’s work should be followed, and its efforts focused on, because many of its initiatives have had and continue to have a strong effect on the landscape of multinational enterprises’ tax disputes. Taxpayers should take notice.

The FTA has left its mark on a variety of initiatives that have influenced the tax disputes world for MNEs. For example, the IRS’s compliance assurance process has its roots in the horizontal monitoring program that developed in the FTA and was piloted in the Netherlands. The idea of taxpayers and their representatives working collaboratively and transparently with revenue authorities was presented in March 2009, in an information note that was issued by the FTA’s compliance subgroup.³ In that note, the Netherlands reported:

In a different approach to industry type partnerships, the Netherlands have commenced development of Horizontal Monitoring protocols/agreements with tax intermediaries. The emphasis is on building an “enhanced relationship” with these intermediaries. The Netherlands Tax and Customs Administration (NTCA) and the tax intermediary state in this agreement that they want to structure their relationship based on *trust, understanding and transparency*. [Emphasis added.]

² *Id.*

³ OECD Forum on Tax Administration Compliance Sub-Group, “Managing and Improving Compliance: Recent Developments in Compliance Risk Treatments,” at 32 (Mar. 2009).

This concept of cooperative compliance ultimately spread, with multiple revenue authorities developing their own unique forms of cooperative compliance with their large corporate taxpayer populations.⁴ Although revenue authorities’ fervor regarding these enhanced relationships has somewhat dissipated over the years, the basic concepts of transparency (which some think is more one-sided than it should be) and dealing with a revenue authority in an open and collaborative manner have survived.

In 2018 the FTA piloted the International Compliance Assurance Programme (ICAP).⁵ ICAP is the FTA’s contribution to efficiency for both MNEs and revenue authorities, offering MNEs the opportunity to proactively be simultaneously risk-assessed by a number of jurisdictions. There are 22 participating jurisdictions, and the process envisions an MNE assessment involving six or seven countries at one time. The program, which is focused on transfer pricing and related risks, is intended to “reduce the resource burden on both MNEs and tax administrations and mean[s] fewer disputes requiring resolution through mutual agreement proceedings.”⁶ Although only a small number of taxpayers have participated in ICAP, many believe that its approach is the way of the future. As tax concepts continue to align more globally, and as revenue authority activity continues to rise, both revenue authorities and MNEs will continue to seek more efficient ways to achieve certainty and resolution. ICAP offers a path forward.

The use of technology by the revenue authorities and their increased focus on technology can also be traced to the FTA. For years it has been collecting data and information from revenue authorities around the world regarding their use of technology in the tax administration process, and has conducted a global survey of revenue authorities on

⁴ Australia, France, the Netherlands, Singapore, Slovenia, the United Kingdom, and the United States are just some of the countries that developed some form of enhanced relationship/corporate compliance regime with their large corporate taxpayers. See OECD, “Co-Operative Compliance: A Framework” (2013).

⁵ For a full discussion of ICAP, see Sharon Katz-Pearlman and Lillie Sullivan, “An ICAP Primer,” *Tax Notes Int’l*, Aug. 23, 2021, p. 1027.

⁶ See OECD, “International Compliance Assurance Programme: Handbook for Tax Administrations and MNE Groups” (2021).

digitalization. The FTA's findings are presented on its website and provide an inventory of tax technology initiatives. In keeping with the themes of sharing best practices and ideas, the purpose of the inventory is to "assist tax administrations in their considerations of possible domestic reforms as well as to help identify where future collaboration between tax administrations might be of most value."⁷ In early 2022 the FTA issued a report outlining its intention to create a strategic framework that addresses both digitalization and digital transformation for revenue authorities. Aware that tax administrations — especially those in developing countries — are at different stages of their digitalization journey, the FTA is focused on providing assistance.⁸

The FTA's work aligns with work being done by the United Nations Committee of Experts on International Cooperation in Tax Matters, which is intent on assisting less-developed jurisdictions as they seek to fully engage with the MNE tax community.⁹ Building on the successful work that has already been done by Tax Inspectors Without Borders, the OECD/U.N.'s joint initiative,¹⁰ the FTA suggests a similar approach for digitalization efforts, envisioning the digitalization of tax administration programs to encourage discussion and sharing of ideas across many jurisdictions. A report published in September 2022 captures the experiences and challenges of 71 tax administrations in the digitalization space, based on a survey of those administrations. The report also provides guidance and considerations for jurisdictions moving toward e-invoicing, a trend that is sweeping the global revenue authority community.¹¹

Also in September 2022, the FTA published a report addressing tax capacity building programs, another area on which the FTA is

keenly focused.¹² The need for capacity building and ensuring that revenue authorities in all jurisdictions have well-developed, well-trained professionals is obvious: A well-trained revenue authority leads to more efficient, fairer, and better results for both the taxpayer and the revenue authority. Everyone benefits from well-conducted examinations or inquiries. The need for capacity building is well expressed in the preface to the report, which states:

Tax administrations across the world are at varying stages of development and capability and we all have things to learn from each other. We know that peer to peer learning between tax administrations has a tangible impact, allowing us to benefit from those with direct experience of tax matters. The OECD's FTA Capacity Building Network *has supported tax administrations to develop their capacity building programmes, fostering close cooperation between members* and encouraging active and open exchange to develop and strengthen capacity building activities.¹³ [Emphasis added.]

Again, the FTA's fundamental tenets of cooperation, sharing successes, and learning from each other comes through clearly.

The FTA is also inextricably linked to the success of the Joint International Taskforce on Shared Intelligence and Collaboration (JITSIC). JITSIC, a subgroup within the FTA:

brings together 42 of the world's national tax administrations that have committed to more effective and efficient ways to deal with tax avoidance. It offers a platform to enable its members to actively collaborate within the legal framework of effective bilateral and multilateral conventions and tax information exchange agreements —

⁷ See OECD Forum on Tax Administration, "Inventory of Tax Technology Initiatives" (last accessed Nov. 28, 2022).

⁸ See OECD Forum on Tax Administration, "Tax Administration 3.0: Action Plan Update" (Jan. 2022).

⁹ U.N. Committee of Experts on International Cooperation in Tax Matters, "Digitalization and Other Opportunities to Improve Tax Administration," E/C.18/2022/CRP.33 (Oct. 4, 2022).

¹⁰ See OECD Forum on Tax Administration, "Statement of Outcomes — Forum on Tax Administration Plenary 2022," at 2.

¹¹ See OECD Forum on Tax Administration, "Tax Administration 3.0 and Electronic Invoicing: Initial Findings" (2022).

¹² See OECD Forum on Tax Administration, "Tax Capacity Building: A Practical Guide to Developing and Advancing Tax Capacity Building Programmes" (2022).

¹³ *Id.* at 3.

sharing their experience, resources and expertise to tackle the issues they face in common.¹⁴

JITSIC, which began in 2004 with only four participating jurisdictions (Australia, Canada, the United Kingdom, and the United States¹⁵) was formerly known as the Joint International Tax Shelter Information Centre. It was created to focus solely on cross-border tax avoidance. In 2016 the acronym was repurposed to restate the group's focus (shared intelligence and collaboration) and set forth a broader scope that encourages a wider exchange of information and collaborative cross-border casework. JITSIC now has 42 member jurisdictions — a growth spurt of admirable proportions.

One final area worth noting — and a major accomplishment of the FTA — is the spotlight it shines on the need for tax certainty. The ability to obtain certainty and closure on tax matters and disputes is critical for both MNEs and revenue authorities. With this in mind, in 2019 the FTA organized and hosted the OECD's first Tax Certainty Day, created to “provide an opportunity for tax policy makers, tax administrations, business representatives and other stakeholders to take stock of the tax certainty agenda and move towards further improvements in both dispute prevention and dispute resolution.”¹⁶ At the inaugural event, and at the Tax Certainty Days that have followed, speakers discussed the state of tax certainty, as well as the frustrations and barriers faced by MNEs seeking to reach closure in their tax matters. During these events the OECD issues the MAP Awards,¹⁷ identifying and congratulating revenue authorities that have pushed the tax certainty agenda forward by efficiently resolving mutual agreement procedure cases and reducing their inventory backlog. Winning a MAP Award is meaningful, and the

winners are always proud to have been recognized for their efforts by their colleagues. Peer pressure can sometimes be a great motivator.

Directly related to the tax certainty agenda is the recently released bilateral advance pricing arrangement manual.¹⁸ At the 2019 plenary meeting held in Chile, the FTA's MAP Forum¹⁹ was:

tasked with working to further advance tax certainty through the exploration of various tools. The FTA MAP Forum is a collaborative network which seeks to improve dispute resolution between jurisdictions. It currently includes delegates from the over 140 members of the OECD/G20 Inclusive Framework on BEPS.²⁰

The result of the MAP Forum's work is a manual that outlines ways for tax administrations and taxpayers to streamline the APA²¹ process through “increased transparency and collaboration between competent authorities and taxpayers and mitigating delays created by differences in individual jurisdictions' bilateral APA processes. In addition to detailing several Best Practices for engaging in bilateral APAs, it also includes practical resources for tax administrations and taxpayers, such as templates and examples.”²²

The FTA has had a lasting effect on MNE global tax disputes, and this article merely scratches the surface of the FTA's accomplishments. Increased revenue authority collaboration and information sharing have drastically changed the disputes landscape, and the FTA is keenly focused on continuing and expanding these initiatives and efforts. In September 2022 the FTA marked its 20th anniversary at its annual meeting in Sydney, Australia. Keep your eye on the FTA; there is undoubtedly a lot more to come. ■

¹⁴ See OECD Forum on Tax Administration, “Joint International Taskforce on Shared Intelligence and Collaboration” (last accessed Nov. 28, 2022).

¹⁵ China, France, Germany, Japan, and the Republic of Korea eventually joined.

¹⁶ See OECD, “OECD Tax Certainty Day — 16 September 2019” (Sept. 10, 2019).

¹⁷ MAP refers to the mutual agreement procedure, an intergovernmental process regarding a tax treaty, through which a taxpayer can resolve double taxation issues and other instances of taxation not in accordance with the treaty.

¹⁸ See OECD Forum on Tax Administration, “Bilateral Advance Pricing Arrangement Manual” (2022).

¹⁹ The MAP Forum is a collaborative network within the forum, focused on ensuring the efficient and effective use of MAP in all jurisdictions where the procedures are available under the relevant tax treaty.

²⁰ Forum on Tax Administration, *supra* note 18, at 3.

²¹ See Rev. Proc. 2015-41, 2015-35 IRB 263.

²² Forum on Tax Administration, *supra* note 18, at 3.