Mutual Assistance and Exchange of Information IN THE IOTA REGION

IOTA Report for Tax Administrations

Intra-European Organisation of Tax Administrations www.iota-tax.org
MUTUAL ASSISTANCE AND EXCHANGE OF INFORMATION IN THE IOTA REGION

IOTA Report for Tax Administrations

Intra-European Organisation of Tax Administrations (IOTA)

Budapest 2010
IOTA, as one of the major international organisations working in the field of tax administration, commits itself, besides its other activities, to issuing publications on selected topics to inform interested tax officials from IOTA Member tax administrations and other readers working in or dealing with tax administration issues.

To address this aspect, the IOTA Area Group “Prevention and Detection of VAT Fraud” decided to form a Task Team with the purpose of producing a good practice guide and a web-based overview on mutual assistance practices and exchange of information in the IOTA region in the field of VAT fraud. A web-based questionnaire was sent out to all IOTA tax administrations to obtain information about legal frameworks, tax administration organisation and also ideas on possible ways of improvement in the area of exchange of information and mutual assistance. Based on the replies from the 30 Members¹ who responded, the Task Team compiled information on the different practices and methods.

The basic principle has been to gather information on issues related to exchange of information and mutual assistance and to then present this information in a comprehensive format through the use of a knowledge database on the IOTA website.

This report aims at presenting and giving an overview of the exchange of information and mutual assistance in the IOTA region. It also wants to identify existing weaknesses and proposes possible improvements in the area of exchange of information in the field of VAT fraud. Any proposals from readers for amendments or the inclusion of additional information that will increase the value of the document would be appreciated and should be sent to the IOTA Technical Advisory Committee (e-mail: TechnicalActivities@iota.hu).

We would like to thank the Task Team members who compiled this report: Anna Yaneva (Bulgaria), Reino Nielsen (Denmark), Christine Lafolie (France), Amalia Liontaki (Greece), Stefano Gesuelli (Italy), Lars Aarness (Norway) and Susanne Malmborg (Sweden).

Budapest, 2010
Intra-European Organisation of Tax Administration

¹ Albania, Austria, Azerbaijan, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and Switzerland
TABLE OF CONTENTS

1. Introduction..................................................................................5
   1.1. Aim of the report.....................................................................5
   1.2. Working methods of the Task Team ........................................5
   1.3. Reading guide (caveat) ...........................................................5

2. Summary ....................................................................................7

3. Questionnaire and Knowledge Database .......................................9

4. International Agreements in the IOTA Region ..............................11
   4.1. European Council Regulation 1798/2003 ..................................11
      4.1.1. Typology of the exchange of information ......................11
      4.1.2. Time limit for providing information ............................12
      4.1.3. Presence in administrative office and participation in administrative enquiries ..................12
      4.1.4. Simultaneous controls ..................................................12
      4.1.5. Language requirements ...............................................12
      4.1.6. Threshold value .......................................................12
      4.1.7. Use of standard forms ...............................................12
   4.2. OECD Convention on Mutual Administrative Assistance ..............12
   4.3. Bilateral agreements ..............................................................13
   4.4. Multilateral agreements ........................................................14

5. Organisational and Practical Aspects ..........................................15
   5.1. Introduction ..........................................................................15
   5.2. Competent authority .............................................................15
   5.3. Special agreements on practical aspects of exchange of information ....15
   5.4. Technical requirements for exchange of information by electronic means ....16
   5.5. Use of forms for exchange of information ..................................16
   5.6. Access to information ............................................................16
   5.7. Specific exchange on information with certain countries ..............17
   5.8. Taxpayer’s right to be informed .................................................18
      5.8.1. When sending a request ...............................................18
      5.8.2. When receiving a request ..............................................18
   5.9. Situations when responding to a request of information is restricted ....19
   5.10. Access to taxpayer’s documentation .........................................19
   5.11. Language .............................................................................19
   5.12. Response times to a request ................................................19

6. Good Practices and Weaknesses .................................................21
   6.1. Legal framework - an advantage and an obstacle ....................21
IOTA Report for Tax Administrations - Mutual Assistance and Exchange of Information in the IOTA Region

6.3. Use of standardised forms and format of exchange ........................................... 23
6.4. Language and persons engaged in the exchange or information .................. 25
6.5. Deadlines........................................................................................................ 26
6.6. Organisational measures ............................................................................. 27

7. Possible Ways of Improvement........................................................................ 31
1. INTRODUCTION

The Task Team “Mutual Assistance and Exchange of Information in the IOTA Region” was established in January 2009 in order to obtain a better knowledge of the area of mutual assistance and exchange of information in the IOTA region in the field of VAT fraud.

For this purpose, the Task Team sent a web-based questionnaire to all Members of IOTA and collected their responses.

1.1. Aim of the report

The Task Team aimed to produce a good practice guide and an overview on mutual assistance practices and exchange of information in the IOTA region in the field of VAT fraud.

The purpose of this report is to supplement the Knowledge Database by trying to identify existing weaknesses and possible ways of improvement in relation to the exchange of information and mutual assistance in VAT fraud cases. It also intends to promote and facilitate practical co-operation and exchange of information in the IOTA region.

The report covers the following aspects:
- The Knowledge database;
- International agreements in the IOTA region;
- Organisational and practical aspects;
- Good practices;
- Weaknesses and possible ways of improvements.

1.2. Working methods of the Task Team

The Task Team organised its work on two levels:
- Task Team meetings to discuss the development of the web-based questionnaire and main points of the analysis;
- For detailed analysis and specific subtopics; tasks were shared and each participant of the Task Team was responsible for their allocated topics.

The Task Team members carried out an analysis based on the responses to the web-based questionnaire. This questionnaire was answered by 30 IOTA Members.

1.3. Reading guide (caveat)

The report is based on answers to a questionnaire and discussions held during Task Team meetings.

The focus of IOTA publications is always in the area of administration itself and does not cover policy issues: IOTA good practice guides, reports, booklets or comparative studies are not intended to prescribe a solution to a specific problem,
but rather to provide an overview on the different approaches adopted by the various tax administrations in addressing and tackling those issues. It is up to the individual tax administration to draw their own conclusions from the publication and to make their decisions based on their own domestic situation.
2. **SUMMARY**

This report is intended to give an overview of the exchange of information and mutual assistance in the IOTA region. It also attempts to identify existing weaknesses and proposes possible improvements in the area of exchange of information in the field of VAT fraud.

The basic intention of the Task Team was to gather information on issues related to the exchange of information and mutual assistance and then to present this information in a comprehensive way in the form of a knowledge database on the IOTA website.

The report is based on the responses given to a web-based questionnaire that was sent out to the IOTA members in the autumn of 2009. All administrations that responded have provided information on the various topics found in the questionnaire. This report gives information about:

- The Knowledge Database;
- International agreements in the IOTA region;
- Organisational and practical aspects;
- Good practices;
- Weaknesses and possible improvements.

Responses from the IOTA administrations show that a minority of the Members are involved in bilateral or multilateral agreements (disregarding the EC Regulations and OECD Convention). In most of the cases where agreements exist, they can be explained by geographical or historical reasons. Some of the administrations have stated that they have specific exchange of information with certain countries. This involves specific exchanges of particular information, for example, data on acquisitions or suspended tax numbers.

The signing of bilateral, multilateral or other agreements is a good practice that is recommended by the administrations that use them. The agreements support specific needs in the tax area, especially when they are tailored to the needs of the fight against VAT fraud.

Other examples of good practice in the exchange of information are the use of common forms and secure networks for the exchange. Among the responses are also mentioned the importance of the organisational structure for the exchange of information and the proper training for the persons working in the field of exchange.

The analysis of the answers to the questionnaire highlights the lack of a legal basis for the exchange of Information outside the EU. The Task Team therefore believes that it is important for IOTA Members to participate in this effort to improve international co-operation. A common EU-OECD-IOTA agreement providing tax administrations with the legal framework to exchange tax information would be an effective tool to combat tax fraud. The Task Team recommends that IOTA takes the initiative to enter into contact with the EU and OECD in this perspective.
The following topics should be taken into consideration in the effort to improve the exchange of information and should also be considered by IOTA in the event of discussions with the EU and OECD for an agreement for international co-operation.

- A common, standardised form;
- The creation of a secure joint network;
- Sufficient capacity in the existing CCN/CSI;
- Languages used in the exchange;
- Quality of the exchange;
- Short deadlines;
- Direct access to information;
- Feedback;
- Training programs;
- Common meetings;
- Network of contact persons.
3. QUESTIONNAIRE AND KNOWLEDGE DATABASE

The result of the initial analysis work lead the Task Team to consider adopting a new approach to the issue; by taking advantage of the new IOTA IT platform which was developed to support such needs and producing the first IOTA online Knowledge Database. This solution was considered the most effective for providing the IOTA administrations with a comprehensive, tailored tool, capable of presenting all the information necessary for carrying out future international cooperation activities and for providing further statistical analysis on the current situation, trends and perspectives.

Within this framework it was decided to develop a web-based platform based on the following main principles:

- Long-term validity of content;
- Streamlined processes;
- High level of interactivity;
- Clear structure;
- Easy navigation and management.

The Knowledge Database is equipped with the following functionalities:

- Database:
  - Cross-search engine;
  - Automatic page generation depending on search;
  - Easy update management;
- User management integrated with the IOTA website;
- Integrated news module;
- Print function for all pages;
- Feedback form;
- Connection with the main IOTA Forum module.

Population of the Knowledge Database has been carried out by collecting information using a web-based questionnaire, available to all IOTA Member tax administrations. The questionnaire was devised in order to compile experiences relating to good practice, the exchange of information and mutual assistance among the tax administrations within the IOTA region.

The Knowledge Database will be permanently available on the IOTA website and regularly updated.

The questionnaire that was sent out consists of two parts divided into 13 sections. The first part of the questionnaire consists of 12 questions. Responses to these questions are published with the minor editing on the Knowledge Database which is available on the restricted domain of the IOTA website and accessible by IOTA Members only.

The answers have been analysed by the administrators of the database, and a trend analysis is also available on the Knowledge Database.
The second part of the questionnaire (Section 13, “Additional Questions”) is not included in the Knowledge Database. These answers have only been used by the Task Team members in producing this report.

In order to make the questionnaire as “user-friendly” as possible, almost every section and question had an additional explanation, activated through a “tip-box” and the explanations of terms used was also available under the link to “Definitions and Abbreviations”.

It is the intention that, once a year, a reminder will be sent to IOTA Members to update the questionnaire with their latest information. However, it is possible to update the Database on an ad hoc basis whenever any answer changes or new information needs to be added.
4. INTERNATIONAL AGREEMENTS IN THE IOTA REGION

In today’s global economy, mutual assistance in tax matters and in particular effective exchange of information is essential for countries to be able to maintain sovereignty over the application and enforcement of their tax laws and to ensure the correct application of tax conventions. While taxpayers can operate relatively unconstrained by national borders, tax authorities must respect these borders in carrying out their functions. Mutual assistance provisions offer them a legal framework for co-operating across borders without violating the sovereignty of other countries or the rights of taxpayers. Mutual assistance and exchange of information between tax administrations are governed by international agreements in order to establish the effective exchange of information.

Not all countries of the IOTA Membership are members of the EU or the OECD. The IOTA Membership covers 44 countries of which 27 are Member States of the EU and 14 have signed the OECD Convention on Mutual Administrative Assistance. Of the IOTA Members, 11 are neither members of the EU or the OECD. In this context the survey is focused on the international agreements in force within the IOTA region.

It has been identified that there are four types of agreement which cover the entire existing legal framework. These are: agreements provided by the EC Regulations, the OECD Convention, bilateral agreements and multilateral agreements.

This analysis is based on the 30 responses to the questionnaire that were received. Tax administrations from 24 EU Member States and 18 OECD members replied to the questionnaire (15 are members of both bodies) and two from countries which belong to neither the EU nor the OECD.

4.1. European Council Regulation 1798/2003

The European Council Regulation 1798/2003 affects 27 countries of IOTA region. It provides rules and detailed procedures to enable the Member States to co-operate and exchange information, including several aspects mentioned below.

These provisions have been adopted by the Council of the European Union and lay down the conditions of the co-operation between Member States.

4.1.1. Typology of the exchange of information

- Spontaneous information: meaning the irregular communication without prior request of information to another Member State;
- Request for information: meaning that the requested authority shall communicate predefined information including any information relating to a specific case or cases;
- Automatic exchange: meaning the systematic communication of predefined information to another Member State without prior request at pre-established regular intervals. Information available in VIES is: VAT
identification number, name of the taxable person, address of the company for tax purposes, date of registration for VAT, date of cessation and information on Intra-Community transactions.

4.1.2. Time limit for providing information

As soon as possible and no later than 3 months following the date of receipt of the request. If the requested information is already in possession of that information, the time limit shall be reduced to a maximum period of one month.

4.1.3. Presence in administrative office and participation in administrative enquiries

By agreement between the requesting authority and the requested authority officials authorised by the requesting authority may, with a view to exchanging the information, be present in the offices where the administrative authorities of the Member State in which the requested authority is established carry out their duties.

4.1.4. Simultaneous controls

By agreement between two or more Members States to conduct simultaneous audits in their own territory, of the tax situation of one or more taxable persons who are common or complementary interest.

4.1.5. Language requirements

The request may be made in any language agreed between the requested and the requesting authority.

4.1.6. Threshold value

The European Commission recommends a minimum of EUR 15,000 to address a request for information.

4.1.7. Use of standard forms

SCAC 2004 or SCAC 383 forms are used for missing traders. The forms are to be submitted by electronic means.

4.2. OECD Convention on Mutual Administrative Assistance

In the late 1980s, the OECD and the Council of Europe jointly developed a Convention on Mutual Administrative Assistance in Tax Matters. The Convention, which was opened for signature on 25 January 1988, entered into force in 1995, and interest is growing, with almost half of the countries that have signed the Convention doing so in the last five years. This reflects the growing importance of exchange of information and other forms of co-operation between tax administrations in an increasingly borderless business and financial world. The parties to the Convention are presently Azerbaijan, Belgium, Denmark, Finland, France, Iceland, Italy, the Netherlands, Norway, Poland, Sweden, Ukraine, the
United Kingdom and the United States. Canada, Germany and Spain have signed the Convention and are awaiting ratification.

During the OECD’s annual Ministerial Meeting in Paris on 27-28, May 2010 the Protocol amending the Convention was opened for signature. The purpose is to adjust the Convention to the international standard on information exchange for tax purposes and in particular by requiring the exchange of bank information on request. It also provides for the opening of the Convention to non-OECD and non-Council of Europe Member States. Based on a decision of the parties to the Convention, such states can also sign the convention. Other OECD members and Member States of the Council of Europe, including some that are G20 countries, are looking at becoming parties to the Convention.

The changes will enable developing countries to become party to the amended Convention and benefit from the new, more transparent tax co-operation environment. The Protocol provides, among other things, for exchange of information, multilateral simultaneous tax examinations, service of documents and cross-border assistance in tax collection, while respecting national sovereignty and the rights of taxpayers and ensuring extensive safeguards to protect the confidentiality of the information exchanged2.

From the answers received to the questionnaire it appears that the standard document is often amended by the parties. At the two extremes, some agreements contain all the requirements, others only a few of them; from which it is very difficult to devise a common practice. That is why the situations of the countries which ratified this regulation are quite different. The agreement is presented as both a multilateral instrument and a model for bilateral treaties or agreements.

Most of the agreements include mutual assistance as part of a request for information, spontaneous information and an automatic exchange of information.

They mainly provide the opportunity to perform simultaneous control or MLC.

Few of them contain a requirement relating to response times, choice of language or use of standard forms.

4.3. Bilateral agreements

10 tax administrations answered that they are involved in one or several bilateral agreements (Azerbaijan, Bulgaria, the Czech Republic, France, Hungary, Lithuania, Luxembourg, Spain, Portugal and Slovakia). Most of these agreements can be explained by geographical or historical reasons. The agreements nearly all include a request for information and/or spontaneous exchange for information. The legal framework offered by bilateral agreements does not seem to be as complete as the EC provisions, even when they are signed by two EU Member

---

2 OECD Convention on Mutual Administrative Assistance in Tax Matters - http://www.oecd.org/document/14/0,3343,en_2649_33767_2489998_1_1_1_1,00.html
States. Sometimes bilateral agreements identified by a country can also be defined as a multilateral agreement by another (for instance, Lithuania and Latvia).

4.4. Multilateral agreements

In the questionnaire seven countries have stated that they are involved in multilateral agreements.

Like bilateral agreements, multilateral agreements are in force between countries apparently due to geographical or historical reasons (the Nordic states, the Baltic states, Benelux states, border countries). Some agreements are the result of important trade exchanges. Most of them provide for spontaneous and automatic exchange of information. A few allows MLC, simultaneous audits or presence in tax examination.

Switzerland signed two multilateral agreements:

- First in the framework of Schengen with the European Union, Iceland and Norway;
- Second in 2004 with eight European countries. Of the eight European countries only Austria have mentioned this agreement in response to the questionnaire. The agreement covers requests for information and spontaneous information between the counterparts and also the presence in a tax administration.
5. ORGANISATIONAL AND PRACTICAL ASPECTS

5.1. Introduction

This part of the report is dedicated to the organisational and practical aspects of the exchange of information. It covers, for example, the opportunity of making special agreements with other tax administrations as well as information on forms and language requirements. The following comments stem from the analysis of the responses provided by the surveyed tax administrations.

5.2. Competent authority

Section 2 of the questionnaire contains information about the competent authorities responsible for the exchange of information in VAT cases, both fraud and criminal cases. However, as not all IOTA tax administrations submitted an answer, there is no information available concerning offices in charge of the exchange of information.

5.3. Special agreements on practical aspects of exchange of information

Section 3 of the questionnaire is related to special agreements concerning practical aspects of exchange of information. Practical aspects refer to procedures or agreements meant to speed and smooth the exchange of VAT information.

Many Members claim to have no special practical agreements.

Below are listed the IOTA administrations with special agreements concerning the practical aspects of exchange of information:

- **France**: cross-border agreement with Belgium, Spain and Germany;
- **Hungary**: special agreement with Lithuania and Germany;
- **Latvia**: special agreements with Lithuania and Estonia;
- **Lithuania**: special agreements with Estonia, Hungary and Latvia to intensify the exchange of information in the VAT area;
- **Luxembourg**: special agreement with the Länder Saarland and Rheinland-Pfalz (Germany) to make the exchange of information more direct and intensive;
- **The Netherlands**: bilateral agreement with Belgium and Germany for exchange of VAT information;
- **Portugal**: cross-border agreement with Spain;
- **Slovakia**: agreement with the Czech Republic;
- **For the Nordic countries there is the multilateral Nordic Agreement on Exchange of Information in Tax Matters (Sweden, Finland, Denmark, Island, Norway, Faroe Island and Greenland)** which also covers the exchange of VAT information.

As it is presented above there are many special agreements between different administrations within the IOTA region. It has to be noted that many agreements
provide for a delegation of the competent authority to regional offices located in border regions, thus allowing these offices to exchange information with their foreign counterparts without forwarding the information to a central competent authority. Even though few tax administrations provided information concerning this specific point, this mechanism has been proved to be faster and smoother by all tax administrations who have delegated the competent authority to border regions.

5.4. Technical requirements for exchange of information by electronic means

This section of the questionnaire (Section 4) is intended to identify the means by which the IOTA tax administrations exchange information electronically. In the responses, surveyed countries reported their tax administrations existing capabilities as well as current reforms.

Answers to these questions vary a lot. Even if most of the tax administrations use different means to exchange information (CCN-mail, e-mail, VIES, encrypted CD’s, regular post, etc.) it has to be noted that they have to agree upon the electronic means of exchange before this exchange takes place. This situation stems from the fact that IT developments have been implemented at a different pace in different IOTA administrations.

5.5. Use of forms for exchange of information

In Section 5 of the questionnaire, tax administrations provided information concerning the type of forms they use for exchanging information.

Amongst the administrations participating in the survey, it appears that only Azerbaijan, Iceland, Norway and Switzerland do not use the SCAC form.

Only Croatia, France, Hungary, Iceland, Luxembourg, the Netherlands and Poland use other forms.

5.6. Access to information

Section 6 of the questionnaire deals with the different types of information tax administrations can access in their databases.

Analysis of the responses revealed that all the surveyed IOTA Members have the ability to check the taxpayer’s identifications number in their database, except Switzerland.

Except Slovenia, all IOTA Members can check the taxpayer’s postal address in their database.

All the tax administrations that submitted responses, except Hungary, the Netherlands, Portugal and Switzerland, can check the taxpayer’s telephone and fax number in their database.
All respondents, apart from Croatia, Estonia, France, Portugal and Sweden, can check for the taxpayer’s existence and location of the business premises in their database.

All the answering IOTA Members, except Cyprus, the Czech Republic, Estonia, the Netherlands, Poland, and Sweden, can check the manager at the time of delivery in their database.

Only Azerbaijan, Estonia, Ireland, Italy, Latvia and Luxembourg, have access to the previous criminal records and connected information.

All IOTA members that replied to the questionnaire, except Croatia, Cyprus, Poland, Portugal and Switzerland, have information about the company’s branches or subsidiaries in their database.

Finally, all IOTA Members that responded, except Cyprus, Luxembourg, and Switzerland, can access tax documents for a specific tax period from their database.

5.7. Specific exchange on information with certain countries

Section 7 of the questionnaire focuses on the specific exchange of information with certain IOTA countries. Below is a summary of the information the Members have provided concerning the exchange of information with certain countries.

<table>
<thead>
<tr>
<th>Country</th>
<th>Exchange Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>Cross-border agreements with France and Germany.</td>
</tr>
</tbody>
</table>

Bulgaria
Bilateral agreements have been signed with Romania, Greece and Hungary for exchange of information on Intra-Community Acquisitions (ICA) performed by each country from suppliers from the respective Member State. The information is exchanged electronically in Excel format.

Estonia
Exchange of information concerning the use of importation Customs Procedure Code (CPC) 4200 with Latvia. They also receive information concerning the Intra-Community Acquisitions from Latvia, Romania, and Hungary.

Greece
Exchange of data in recapitulative statements of acquisitions with Bulgaria, Romania and Hungary.

Hungary
Suspended tax numbers sent within the EU: Germany, Greece, Spain, Finland, Lithuania, Latvia, Slovakia, Romania and Italy.
Latvia
Data on acquisitions are exchanged with Estonia and Lithuania on a monthly basis.

The Netherlands
With several EU Member States and some countries outside the EU the Netherlands has agreements (bilateral, multilateral, or memoranda of understanding) to exchange specific kinds of information on an automatic basis.

Spain
Specific exchange of information exists in the area of VAT but does not exist in direct taxes, except with some EU countries, with which CCN is used.

5.8. Taxpayer’s right to be informed

This section (Section 8) of the questionnaire gives information about when the administration is obliged to inform a taxpayer about a request for information. The first question focuses on situations when sending a request and the second question deals with situations when receiving a request.

5.8.1. When sending a request

Of the 30 IOTA administrations that answered the questionnaire 25 of them have stated they are not obliged to inform the taxpayer when sending a request to another country. The other five have underlined the fact that they have to inform the taxpayer. For instance, Hungary stated that they have to inform the taxpayer in each case but only the fact that a request was sent and to provide information about the type of tax and the legal basis used.

The Netherlands stated that they are obliged to inform the taxpayer in cases where the request contains relevant fiscal information that could be considered as a spontaneous exchanged of information. The EC Council Regulation 1798/2003 is excluded from this. The taxpayer receives a summary of the information in the request that is handed over to the competent authorities of the requested country and has the right to object, e.g., when the information is incorrect or when the taxpayer thinks there are doubts on the legal basis.

5.8.2. When receiving a request

With regard to this situation, 25 of the responding IOTA tax administrations stated that they were not obliged to inform the taxpayer about receiving a request. The remaining five stated that they have to inform the taxpayer. In the case of the Netherlands and Sweden, the taxpayer is not informed that a request has been received but they are informed about the answer sent to the requesting authority. There are certain exceptions to this when the obligation to inform the taxpayer is not applicable in all cases. Switzerland states that for legal and administrative assistance the information is only transmitted to the taxpayer if the information is not in the possession of the tax administration.
5.9. Situations when responding to a request of information is restricted

Section 9 of the questionnaire is intended to establish whether IOTA tax administrations are restricted in answering a request for information in certain circumstances and collect examples.

Of the 30 tax administrations that responded to the questionnaire 17 stated that they have no restrictions on responding to a request for information. The other 13 have indicated that they do have restrictions, with some of them not able to respond to a request in the case of an ongoing criminal investigation or in some other similar situation such as bank secrecy. A reason given by many of the IOTA Members is that they are not allowed to supply information that the administration does not have in its possession or information that is outside the scope of tax matters and not available according to the law. Also, if the information could reveal business, industry, trade or commercial secrets the administrations are restricted on how they respond to a request of information.

5.10. Access to taxpayer’s documentation

Section 10 of the questionnaire provides information about the opportunity for tax administrations to access the taxpayer’s documentation and records of taxes.

The first question focuses on the taxpayer’s obligation to keep accounting records for tax purposes. The second focuses on the reference period for audit and tax assessment. The last question gives information about the possibility of IOTA Member administrations extending the tax assessment period in the case of a request for information from another country.

The responses to the first question show that the length of time which the taxpayer is obliged to keep the accounting records for tax purpose in the administrations that replied is between 24 and 120 months.

The reference period for audit and tax assessments is between 6 to 120 months in the various administrations.

In response to the final question on the ability to extend the tax assessment period in cases of a request for information from another administration, 19 administrations have stated that they have no ability to do this while 11 state they can.

5.11. Language

Section 11 in the questionnaire provides information on the language requirements and languages used in the competent authority. It also shows the responses from IOTA Member administrations on problems due to language in the exchange of information.

A few responding tax administrations have indicated that they have no requirements with regards to language, while most of the IOTA Member tax
administrations require English, German or French. The languages referred to are also, apart from the national language, the most commonly used ones in the responding authorities.

With reference to potential problems related to language in the exchange of information process; a few administrations have stated that they have not had nor are aware of any problems. However, the majority of the tax administrations have mentioned different problems due to language, in particular:

- Abbreviations, acronyms, jargon should not be used;
- Free text is sometimes written in a language other than English; free text should be kept short;
- Translation of foreign languages lead to problems, as it increases costs and causes delays; the best way to avoid problems is to agree on a common language that can be understood by all parties involved;
- Problems with translation services on the Internet: it is important to go through the text after using such a service;
- Aspects related to language are the main problems when it comes to administrative cooperation; the use of English as the only working language could reduce the language constraints;
- Information exchanged in languages not used by the competent authority has often to be sent to another governmental department for translation and this may cause delays;
- If the correspondence with other administrations is performed in languages other than English, this is hindering the officials and requires the use of external translation services; the use of such services raises the cost of the exchange of information process and slows it down.

5.12. Response times to a request

Section 12 contains information about the average response times when receiving a request for information from another tax administration.

The first question focuses on information available in databases and the second - on requests for information involving a suspected VAT fraud. The last question deals with the response time in general cases, with general cases meaning a request that does not involve fraud.

Concerning information that is available in databases the responses show that the responding administrations are able to reply within 5 to 30 days.

When it comes to VAT fraud the response times are between 5 to 90 days depending from the administration.

For general cases the administrations state that they can answer within 21 to 92 days where 90 days is the most frequent answer.
6. GOOD PRACTICES AND WEAKNESSES

Through the questionnaire; IOTA Members were invited to share their good practices and ideas, to mark the most important questions and requirements included in a request for information and to also indicate any changes and improvements in the exchange of information process they would like. The Task Team analysed the answers and considered all the needs and tips mentioned. Additionally, the answers to the other questions in the questionnaire were taken into account along with available external information. As a result, it was concluded that good practices and weaknesses in the study area are predetermined by the use of specific legal frameworks, technical certainty and organisational measures. While the first two factors are usually dependent on external influences such as politics, financial resources, etc., the third requires only the involvement of the tax authorities.

Because of its limited size, this report does not elaborate on the above issues but instead gives conclusions, designed to facilitate tax administrations’ defining feasible goals and objectives to improve their co-operation and exchange of information. For this reason good practices are highlighted as opposed to weaknesses.

The report is intended to be used by all IOTA Members; however, this section involves issues which are more familiar to the tax administrations of EU Member States and less known to the others.

6.1. Legal framework - an advantage and an obstacle

The most successful information exchanges are achieved where a shared special legal framework that governs in detail many of the specific issues, including terminology, is applied and when it is applied correctly.

It is necessary that the applicable legislation clearly defines:
- Types of data exchanged;
- Conditions and circumstances under which an exchange takes place;
- Particular time of exchange;
- Technical requirements for the exchange;
- Quality requirements.

Having a legislation that regulates the use of standard forms and clear procedures, exchange of data about the experts involved and their competencies appears to be a significant advantage. A high level of coordination offers many opportunities to resolve problems over a larger number of regions. Therefore, the use of multilateral agreements is perceived by many as a good practice. The Council Regulation (EC) 1798/2003 and the Convention on Mutual Administrative Assistance in Tax Matters (OECD) play a leading role in the area of administrative co-operation and exchange of information. As becomes clear from several responses to Question 1.1 they allow the following aspects to be covered simultaneously:
- Request for information;
• Response to a request;
• Spontaneous information;
• Automatic Exchange of Information;
• MLC (Multi Lateral Controls);
• Simultaneous audits;
• Presence in tax examinations abroad;
• Response times;
• Standard forms;
• Language requirements;
• Threshold value.

It follows, therefore, that the use of each of these elements is a good practice.

Another good practice is the signing of bilateral agreements which support specific regional and bilateral needs within the tax area, especially when they are tailored to the needs of fighting VAT fraud. Their advantage is that they can be updated more easily than multilateral agreements and will require only two countries’ decisions and normally only two administrations. They are particularly applicable in border regions and can provide a more effective exchange and shorten the usual time limits.

In the area of interaction, a good practice is the organisation of regular or spontaneous meetings at administrative level with a predefined agenda of topics of mutual interest, even when an agreement is only based on a declaration of cooperation. This is noticed more often between border states and neighbouring countries and tend to be at regional level. At these meetings it is important that both team leaders and experts participate so that any issues discussed at management level (essential to ensure implementation of the decisions) can be assessed simultaneously at the actual level of implementation.

A general weakness is the lack of a legal framework or agreements; or their improper implementation or when an agreement does not cover in detail some specific issue. Other weaknesses are:

• The lack of legal frameworks for the involvement of other national administrations (non-tax) or governmental bodies (such as judicial) at national or international level in information exchange and interaction;
• No legal framework exists for the application of Council Regulation (EC) 1798/2003 in a co-ordinated manner with the OECD in such a way that would allow the avoidance of double or triple workloads; the agreements are applied separately and independently;
• No uniform legal rules exist on information exchange between IOTA tax administrations that apply Council Regulation (EC) No 1798/2003 (EC) and other IOTA Members that do not apply the Council Regulation but also fight VAT fraud and seek exchange of information with other IOTA Members;
• No information exchange exists about national VAT legislation and any changes in the legislation.

The information exchange under European Council Regulation 1798/2003 only concerns VAT and only administrative co-operation between tax administrations. Other administrations or judicial assistance are not included. The obligation of EU Member States to assist each other does not extend to the provision of information or documents obtained by the authorities, acting with the permission or at the request of a judicial authority, unless it is permitted by the national law. There are types of data that EU Members States should include in their databases (Article 18, former Article 22) and there are uniform forms of exchange (SCAC 2004, SCAC 383, SCAC 397, etc.) and procedures. The Regulation also stipulates the conditions and circumstances in carrying out an exchange, the exchange terms, technical requirements for the exchange and the requirements for data quality.

It is important that this European Council Regulation defines the parties concerned (i.e., the competent authorities of the Member States) but also that the following issues are determined:

- The exchange of information on request and exchange of information without prior request;
- The storage and exchange of information specifically related to Intra-Community transactions;
- Relations with third countries and other conditions governing the exchange of information.

Furthermore, it is important that the relationship of countries with the European Commission is determined. This allows, with the aim of improving future co-operation, the European Commission to pool the Member States experiences, including any information relevant to their application of the Regulation and to their compilation and analysis of statistics.

6.3. Use of standardised forms and format of exchange

All IOTA Members highlight the benefits of the use of standardised forms and format of any exchange by electronic means. Currently the standardised e-forms used are based on the Council Regulation (EC) 1798/2003 as mentioned earlier:

- Form SCAC 2004, designed for exchange of information under articles 5 and 19 of Regulation 1798/2003 EC;
- Form 383, missing trader form;
- Form 397, designed for the exchange of information on trends regarding tax fraud;
- Form for request for notification and outcome of the notification.

A good practice is when EU Member States keep to the rules of completing the SCAC forms, namely:

- Use the right SCAC form and format - only the current version and not an old one;
- The right legal basis within Council Regulation (EC) 1798/2003 is used; request for information (Article 5) in cases where tax is at risk in the
requesting Member State; spontaneous information (Article 19) in case a Member State wants to send information and where tax is at risk in another Member State;

- Specific, short, understandable and relevant questions are asked; in the request, clear information must be sent; this means that the sent information is precise enough for an assessment or at least for starting an audit (it must contain the correct VIES information, VAT and reference numbers, names and addresses of businesses, periods or amounts related to transactions and that all relevant documents, invoices, etc. are legible);
- Answers to a request for information are comprehensive and covers all the requested information;
- There is an observation of the threshold value;
- EU Members States shall respect the deadlines;
- A substantial amount of tax is involved in the information, otherwise reasons are given for the enquiry, e.g., fraud is suspected or it is part of a series of transactions.

In order not to overload other tax administrations, requests for information or spontaneously exchanged information should not cover older periods of an assessment which might be under the statute of limitations in the addressed EU Member State. The request for information may contain other associated cases when it aims to ensure a co-ordinated approach (especially in fraud cases).

A good practice is when the forms for requests and the replies are forwarded electronically to speed up the procedure.

Due to good experiences with the use of SCAC forms and formats some IOTA tax administrations propose to adapt them for use by non-EU countries and to introduce similar procedures for direct tax.

A weakness is when, despite the use of SCAC forms, the information exchange is of poor quality and slow speed. In particular, bad practices are when:

- The requests are of poor quality; they contain inaccurate information such as incorrect names and addresses, VIES information, periods or amounts relating to transactions; global figures are given which may cause problems relating to the identification of individual transactions and vague or ambiguous wording that requires further clarification or additional requests for actual documentation; poor quality requests do not focus on information that is essential or that the requested information is clear;
- No explanation is given as to the reasons for suspecting fraud; a brief explanation may point audit staff in the right direction and outline exactly what the requesting tax administration is hoping to achieve;
- No evidence of transactions are available on VIES despite the request saying otherwise and no hard copy documents have been provided;
- Mismatches between periods are not investigated;
• No working language is used or incorrect or poor translations sent, e.g., failure to translate attachments (invoices or bank statements);
• There are no replies or poor quality replies and only partial answers are given; the response simply outlines the authority's inability to obtain information with little or no background as to the legitimacy of the trader's activities; the use of bland statements such as "our trader is compliant" or "our trader has made taxable supplies as detailed on VIES" may result in additional requests; the omission of reference numbers from an actual SCAC 2004, SCAC 383 or subsequent correspondence can cause confusion;
• Unnecessary information is spontaneously sent, e.g., deregistered businesses.

6.4. Language and persons engaged in the exchange or information

Linguistic diversity in the IOTA region is great and wonderful, but generally renders the exchange of information more difficult. A good practice in the exchange of information and interaction with other countries is when the exchange is carried out in the respective language designated by the other tax administration for these purposes.

Firstly, it is important to have adequate information on the language used in the communication between IOTA Members. Some Members have at their disposal the CIRCA (Communication and Information Resource Centre Administrator) website. This website contains data about names and working languages of the experts working for the CLO teams.

In many tax administrations the international exchange of information and fight against VAT fraud are tasks assigned to several departments in the administration. There are units for administrative co-operation, VAT fraud or criminal investigation. An advantage in any exchange is to have all the necessary information about the background of those involved in the exchange, irrespective of which organisation they belong to.

In the knowledge database at the IOTA website, the IOTA Members have at their disposal updated answers about the working languages of each IOTA administration and also information about names of the contact persons. There is also information about the names and responsibilities of experts who do not work in CLO teams but participate in information exchange and are able to answer important questions regarding the exchange of information.

A good practice mentioned by some IOTA tax administrations is the introduction of specific requirements for applicants who wish to work in the field of exchange of information. The applicants must have knowledge of at least two foreign languages and the required language skills should be combined with a competence in the fight against VAT fraud and skills in the specific tax terminology.

The responses to the questionnaire show that the efficiency of interaction often depends on the use of English, perhaps more than was expected. This was
mentioned by many of the IOTA tax administrations and is a reason to why using of English also should be considered as a good practice that supports the interaction.

Bad practice is when the requests and answers are not written in the language requested by the counter tax administration. It reduces the speed of the information exchange and interaction, as in some IOTA tax administrations it is necessary to have a translation carried out by an external party. This also leads to extra expenses for the administrations. The use of other languages affects the quality of the exchange and it even becomes more difficult to understand the meaning of the information, especially if the translation was made by a person who has no knowledge of the special tax fraud terminology used.

Another bad practice is when requests or answers are not accurate, mainly because they contain jargon, are ambiguous or are not translated correctly. Abbreviations, etc. must in general be avoided otherwise an explanation of the meaning should be provided.

6.5. Deadlines

Speed has to be ensured, because without speed the administrative co-operation looses effectiveness. For the IOTA tax administrations that do not have deadlines, deadlines can be considered a good practice in order to speed up the exchange of information. For the rest of the IOTA Members, respecting deadlines is important. A good practice is when the responding administration keeps to the deadlines or, even better, reduces the common deadline (often on the basis of special multilateral or bilateral agreements), especially in VAT fraud cases or when the information is available from an accessible database and is in electronic format. In case the deadline can not be met it is important to send an immediate or partial reply giving notification of the delay or inability to respond to the request.

IOTA Members see a need to agree upon how to speed up the exchange of information when it comes to “urgent” cases where fraud is suspected. If we are to consider a common practice to achieve a real shortening of the time for an exchange, without damaging the quality, the following relevant factors need to be taken into account:

- If register-based information is needed it should be requested separately from other broader questions; development of common electronic forms for the exchange of information could make the exchange easier and help prevent language problems and misunderstandings; in cases where the requested IOTA tax administration does not possess all information which is needed for providing the requesting IOTA Member with the response, it would be better to provide at least a partial response;
- Standardised forms (such as SCAC forms) with standardised questions will shorten the time; at the same time it is essential to disseminate the “culture” of exchange of information within every tax administration at both central and local level; it is important to have an understanding of all the rules surrounding the exchange of information;
- Monitoring of deadlines;
Direct access to other IOTA administrations’ databases, where it is possible.

One of the IOTA Members shared the following experience: in order to speed up the response times and to be able to meet, for example, the 3-month deadline, departmental heads may demand from the CLO contact persons and other experts involved an answer to a request within one and a half months. This has given very good results when it comes to meeting the deadlines. Other techniques to achieve better terms of exchange are an easy-to-use manual or training module for completing SCAC, an awareness program for end-users and clarification of the rules and use of deadlines. A similar training module could also be presented on the IOTA website.

In addition to the above mentioned experiences, direct communication between the experts involved in the information exchange is an advantage. Speed is increased if the administrations own VAT fraud desk, with fraud specialists (apart from the CLO) who is the competent authority to exchange information directly with the partner-countries fraud specialists.

Bad practices are the lack of deadlines, lack of responses to requests and late responses. Low speed information exchange can loose efficiency in the administrative cooperation.

6.6. Organisational measures

Effective investigation of VAT fraud calls for specialised organisational measures, including, when the state participates in multilateral or bilateral agreements, regular or spontaneous meetings, etc. Many of the following points were mentioned when considering the above topic:

- Provision on adequate human resources;
- Monitoring system, in particular use of checklists;
- Automation of procedures to limit human intervention;
- Provision on interaction with other national governments;
- Participation in international initiatives, including management and internal organisation within tax administrations.

A type of organisational measure is the organisation of the CLO teams and building of appropriate structures, applied by the Member States of the EU under Council Regulation (EC) 1798/2003.

First of all is the provision of adequate human resources (auditors, local officials, CLO staff and other competent authorities). The determination of the appropriate number and quality of staff used in administrations are different and depend upon the priority given by tax administrations to cross-border co-operation. Experts exchanging information work in varying structures and in each administration the relationship between them are configured in a different way. A good practice is when experts are continuously trained, when the training meets the specific needs and is linked to the achievement of positive action by all participants. Another good practice is the establishment of a department for combating fraud and the
direct exchange of information between these divisions and units to fight fraud in other countries.

Auditors often have to be made aware of the importance of the information which they collect and exchange spontaneously for other tax administrations to use in the assessment of taxes. The need for raising awareness about the importance of the exchange of information involves different levels within tax administrations, e.g., management and auditors. To achieve quality at national level, good practices are:

- Organisation of workshops with CLO contact persons and auditors;
- Language learning, e-learning and computer training to develop a systematic training program for employees;
- Disseminating the knowledge about how to gather quality information and how to use information from different databases;
- Modular courses on how to use websites containing specific information, including administrative procedures;
- Organisation of workshops to discuss interesting case studies and the sharing of good practices;
- Use of written guidelines for those who are involved in international administrative co-operation.

For the identification of training needs, IOTA tax administrations consider as good practice the use of checklists and information received from experts participating in national and international meetings. In these meetings the experts can listen to the views of their counterparts in other countries on issues involving the quality of requests and responses. They can share good practices and national initiatives while identifying errors in applying the rules and which rules still lack clarity. Additionally it can be established whether it is necessary to update the organisation or the legal framework.

Management is very important, particularly in the case where several units are involved or where the unit of information exchange is not within the tax administration, e.g., the part of the customs organisation. As a good practice, to ensure the competence of all participants in the exchange of information, managers should:

- Assist these authorities and make sure they have access to available databases and technical resources so as to be able to use them most effectively;
- Establish permanent links for information exchange and interaction with other important national anti-fraud authorities such as customs, court, prosecution and others;
- Arrange intergovernmental agreements so as to exchange experiences and to jointly solve problems, both at central and at local level;
- Use feedback from the administrative procedures for the purpose of measuring the operations and results of any information exchange;
- Enhance the motivation of employees and improve the overall performance of the administrative co-operation in providing information.
In this aspect, a good practice at national management level would be to introduce a monitoring system for quality checks and checks on time limits. This could be achieved by the use of checklists. Monitoring provides constant awareness of the interaction and the needs for improving staffing skills. Such a monitoring system could ensure that the basic administrative information in requests, replies or spontaneously exchanged information is correct, in fraud cases reasons for suspicion are given and deadlines met, etc.

A decentralised organisation may need a more effective monitoring system, considering the fact that language problems may hinder the process.

From the organisational perspective it is a good practice when efforts are made to automate certain procedures and limit human intervention. The need for human intervention often means a possible bottleneck that can cause delays in the workflow. This risk can be reduced by automating as many procedures as possible. The more information that is available from databases the less time consuming audits have to be done. Access to updated databases and efficient IT solutions minimises the risk of not meeting the timeframes.

According to Council Regulation (EC) 1798/2003, which lists the competent authorities of the EU Member States, the competent authority of each EU Member State may designate liaison departments or competent officials. If so, the central liaison office (CLO) is responsible for keeping the list of those departments or officials up to date and making it available to the CLO of the other EU Member States. Liaison departments and competent officials are required to inform the CLO of their EU Member State every time they send or receive a request for assistance or a reply to a request for assistance. They must notify the CLO and competent authority of their EU Member State about any request for assistance received which requires action outside their territorial or operational area. As was mentioned before, the obligation for EU Member States to assist each other does not cover the provision of information or documents obtained by the authorities when acting with the authorisation or at the request of the judicial authority, unless national law allows it.

The regulation introduces a number of requirements. For example, about information exchange on request, information exchange without prior request, the storage and exchange of information specifically related to Intra-Community transactions, relations with the European Commission and third countries, conditions for exchange of information, etc. EU Member States still have discretion in some respects. For example, they can determine whether they will participate in the exchange of a certain category of information, if they which to participate in automatic or structured automatic exchange, if they want to reduce the time for exchange and will allow for direct access to some of their databases by another EU Member State.

It is important that the organisation for the exchange of information is subject to control, located outside the interacting administrations. Every three years starting from 1 July 2003 the European Commission and EU Member States must ensure that existing or new communication systems that are necessary for information
exchange can operate. The European Commission is responsible for any improvement of the common communication network, common system interface (CCN/CSI), to permit the exchange of information between EU Member States.

One of the best results from the introduction of CLO teams is that they put systematic, joint and well organised resources into improving their own practice in information exchange and co-operation. Therefore, almost all good practices mentioned above come from CLO teams.
7. POSSIBLE WAYS OF IMPROVEMENT

The analysis of the answers to the questionnaire highlights the lack of any legal base for the exchange of information outside the EU. The tax treaties based on the OECD Model Tax Convention usually cover only income and capital taxes. Few countries have signed bilateral or multilateral agreements covering VAT and allowing for the exchange of information.

The Council of Europe and OECD have recently agreed to improve international co-operation by revising the Convention on Mutual Administrative Assistance in Tax Matters and by opening it to countries which are not members of the Council of Europe or the OECD. On the other hand OECD has developed SECTIS, a secure system for the exchange of non taxpayer specific information and avoidance schemes.

The Task Team believes that it is important for IOTA Members to participate in this attempt to improve international co-operation. A common EU-OECD-IOTA agreement, providing tax administrations with a legal framework to exchange tax information would be an effective tool to combat tax fraud. The Task Team recommends that IOTA takes the initiative to enter into contact with the EU and OECD in this perspective.

The points that most frequently occur in the answers to the questionnaire and which should be taken into consideration in the effort to improve the exchange of information are:

- **Forms**
  A common standardised form, such as the SCAC form used in the EU, should be developed. The SCAC form is easy and quick to complete, thus facilitating the work of the officials. A similar form could be developed and adapted to meet the needs of IOTA Members.

- **Communication**
  The creation of a secure network for the exchange of information within IOTA appears to be necessary. The responses point out that exchange of information should take place in an electronic format.

- **Exchange capacity**
  The capacity of the existing CCN/CSI mailbox is judged insufficient. Its enlargement will allow the exchange of larger files. In case of the creation of a new, secure network, provision should be made for a higher capacity.

- **Language**
  The problems of language are frequently mentioned in the answers. The agreements for exchange of information should stipulate which language(s) can be used. It is also important that the administrations respect these agreements and do not use languages other than the agreed ones.

- **Quality of the exchange**
  It was frequently mentioned in the answers that questions should be clear and concise and also that a short explanation of the reason for the request should be given. This helps the requested auditors to make the right checks and give the right answers.
The quality of answers is not always satisfactory. Sometimes they are too short, and in other cases only documents are supplied without an explanation. Care should be taken to provide adequate answers.

- **Deadlines**  
  Short deadlines for answering a request, especially in VAT fraud cases, should be adopted. Also meeting the deadlines and informing the requesting country in cases where the request cannot be answered within the deadline are both considered important.

- **Access to information**  
  A provision for direct access to another country’s databases in order to shorten deadlines is judged as important by many countries. The extent of this option should be regulated in any agreements for exchange of information.

- **Feedback**  
  Feedback on the information exchanged would give the officials the ability to assess the usefulness of the information provided and to improve its quality.

- **Raising awareness and training of auditors**  
  It has been noted that auditors often do not consider an audit made as a result of a request from another country to be of high importance and do not give priority to such audits. Training programs must demonstrate the importance of the exchange of information in combating tax fraud in order to raise awareness and give motivation to the officials involved.

- **Meetings of the officials**  
  Personal contact has proved to be very important, especially in exchanging opinions and discussing new trends in VAT fraud and practices for detecting and fighting them.

- **Network of contact persons**  
  Finally, the creation of a network of contact persons in the countries involved is something that must be taken into consideration. This will allow the officials to turn to the right person when they need information or assistance.

These points should be considered by IOTA in the event of discussions with the EU and OECD for an agreement for international co-operation.