

The Nordic Mutual Assistance Convention on Mutual Administrative Assistance in Tax Matters

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1. Introduction

‘The Nordic Convention on Mutual Administrative Assistance in Tax Matters, concluded by Finland, Sweden, Norway, Denmark and Iceland, can be seen as a pioneering measure regarding multilateral cooperation in mutual tax assistance.’¹

This statement summarizes well the essence of the Nordic cooperation in tax matters and the multilateral convention which is the subject of this contribution. Examination of the provisions of the Nordic Convention on Mutual Administrative Assistance in Tax Matters (the Nordic Convention), particularly with regard to exchange of information, shows that the Nordic countries have in many aspects been a step ahead of, for example, the OECD and the European Union. The Nordic Convention has also served as a model and a reference for other regulations², such as the CoE/OECD Convention on Mutual Administrative Assistance in Tax Matters (the CoE/OECD Convention).³

The Nordic countries have a long history of very extensive and vivid regional cooperation.⁴ Factors contributing to this are, for example, traditionally strong commercial links and high migration figures as well as free employment markets among the countries.⁵ The Nordic countries also share many economic, cultural and political interests. Furthermore, all the Nordic countries are members of the Nordic Council⁶ and the Nordic Council of Ministers.⁷ Objectives of the cooperation in tax matters in the framework of the Councils is to facilitate activities for

¹ *Juusela*, Possibilities for Ensuring the Taxation of International Investment Income in Finland, *Bulletin for International Taxation*, Vol. 57, No. 1 (2003) p. 24 (p. 31).

² E.g. *Wisselink*, International exchange of tax information between European and other countries, *EC Tax Review*, Vol. 6, No. 2 (1997) p. 108 (p. 111); for the development of other mutual assistance conventions, see *Gangemi*, International mutual assistance through exchange of information: General Report, *Cahiers de droit Fiscal International*, Vol. 75b (Rotterdam, 1990) p. 19 (pp. 19–20); see also *Cannas* in this volume.

³ CoE/OECD Convention on Mutual Administrative Assistance in Tax Matters, initially opened for signature in 1988 (ETS No. 127); an amending protocol was opened for signature in May 2010 (CETS No. 208) that entered into force in June 2011, bringing the Convention in line with the internationally agreed standard on exchange of information and transparency and opening it for accession by all countries; see also section 3.1.3 and *Wittmann* in this volume.

⁴ Global Forum on Transparency and Exchange of Information for Tax Purposes, Combined Peer Review Report Norway (2011) paragraph 206.

⁵ *Mattsson*, Multilateral Tax Treaties – A Model for the Future?, *Intertax*, Vol. 28, No. 8–9 (2000) p. 301 (p. 301); *Tunturi*, International mutual assistance through exchange of information: National Report (Finland) *Cahiers de droit Fiscal International*, Vol. 75b (Rotterdam, 1990) p. 329 (p. 330).

⁶ The Nordic Council, formed in 1952, is an official inter-parliamentary body in the Nordic Region. The Council has 87 elected members from the Nordic countries as well as from the Faroe Islands, Greenland and Åland.

⁷ The Nordic Council of Ministers, set up in 1971, is the forum for Nordic governmental co-operation.

Nordic citizens and companies, to improve the Nordic region as a joint market as well as to coordinate the Nordic approach to tax issues internationally.⁸

The aim of this contribution is, firstly, to examine the content of the Nordic Convention, with emphasis on the provisions covering exchange of information. Secondly, the objective is to compare the means and thresholds for exchange of information covered by the Nordic Convention to other legal bases existing for mutual administrative assistance within the OECD and the European Union. Section 2 focuses on the Nordic Convention, including its background, scope and experience with it in practice. In section 3, the exchange of information under the Nordic Convention is examined in relation to the internationally agreed standard on exchange of information and transparency (the OECD standard). In section 4, a corresponding comparison is made in relation to the European Union legislation concerning exchange of information. Finally, section 5 is reserved for conclusions.

2. The Nordic Mutual Assistance Convention

2.1. Background and Historical Development

The Nordic countries have cooperated for decades in tax matters with the aim of furthering efficient tax assessment and collection of taxes as well as preventing international tax evasion. The collaboration started on a bilateral basis, consisting of agreements made to facilitate the enforcement of taxes in cases of migration of taxpayers within the Nordic countries. The first mutual assistance agreement was signed between Finland and Sweden in 1943, followed by others from 1949 on, so that by 1956 Denmark, Finland, Norway and Sweden all had bilateral agreements with each other.⁹

In 1967, the Nordic countries, including Iceland, decided to draft a model treaty on mutual assistance. The first Nordic Multilateral Treaty on Mutual Assistance in Tax Matters was signed in 1972. The treaty included provisions concerning exchange of information, collection of taxes as well as supply of tax return forms and service of documents. Already then, taxes covered by the treaty ranged from direct taxes to value added taxes, turnover taxes, motor vehicle taxes and taxes on inheritance as well as social security contributions.¹⁰

The 1972 treaty was amended in 1976, 1981 and 1987. A new convention was signed in 1989, with also the Faroe Islands and Greenland (parts of Denmark but independent in tax matters) as parties. This version of the Nordic Convention became effective on 9 May 1991 and it is in force to date.¹¹ Due to the existence of

⁸ See www.norden.org.

⁹ Global Forum on Transparency and Exchange of Information for Tax Purposes, Combined Peer Review Report Norway, paragraph 208.

¹⁰ *Hengsle*, The Nordic Multilateral Tax Treaties – for the Avoidance of Double Taxation and on Mutual Assistance, Bulletin for International Taxation, Vol. 56, No. 8-9 (2002) p. 371 (pp. 374–375).

¹¹ *Hengsle*, Bulletin for International Taxation, Vol. 56, No. 8–9 2002, pp. 374–375.

this separate Convention on mutual tax cooperation, the multilateral double tax treaty concluded between the Nordic countries¹² does not contain provisions concerning exchange of information or assistance in the recovery of claims.

To ensure that the Nordic Convention corresponds to the requirements and needs for efficient administrative assistance, the tax administrations and governments of the contracting states meet regularly to discuss, evaluate and adjust any difficulties that potentially arise. The Nordic countries have negotiated a revision of the Nordic Convention with the aim of aligning it better with other provisions on mutual assistance, among others in the VAT area.¹³ According to the information received from the Finnish Ministry of Finance, also the recent European Union Directives on administrative cooperation in the field of taxation¹⁴ and recovery of tax claims,¹⁵ the update to the CoE/OECD Convention as well as other international developments have been taken into account in the update of the Nordic Convention. The protocol is yet to be signed.

2.2. Scope

2.2.1. Personal and Substantive Scope

The Nordic Convention is wide in scope, covering almost all kinds of taxes collected in the Nordic countries.¹⁶ In addition to income and capital taxes, the Nordic Convention covers taxes on inheritances and gifts. Moreover, motor vehicle taxes, value added taxes and any other general turnover taxes, excise duties, social security contributions and other public levies fall under the Nordic Convention.

The forms of mutual assistance based on the Nordic Convention are likewise extensive, consisting of the following:

- Exchange of information;
- Collection and transfer of tax (including prepayments);
- Recovery of tax including precautionary measures for the payment of tax claims;
- Service of documents;

¹² Convention between the Nordic Countries for the Avoidance of Double Taxation with respect to Taxes on Income and on Wealth, signed on 23 September 1996, entered into force on 7 May 1997, and amended in 1997 and 2008 (the Nordic double tax treaty); unlike the Nordic Convention, Greenland is not a party to the Nordic double tax treaty.

¹³ *Gustafsson Myslinski*, National Report Sweden in: *Seer/Gabert*, Mutual Assistance and Information Exchange. 2009 EALTP Congress, Santiago de Compostela, EATLP International Tax Law Series, Vol. 8 (Amsterdam, 2010) p. 529 (p. 533).

¹⁴ Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, OJ L 64 of 11 March 2011, p. 1; see section 4.1.2; see also *Muñoz Forner* in this volume.

¹⁵ Council Directive 2010/24/EU of 31 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures, OJ L 84, p. 1; see section 4.1.3; see also *Lao* in this volume.

¹⁶ *Tunturi*, *Cahiers de droit Fiscal International*, Vol. 75b, p. 331.

- Procurement of tax return forms and other tax forms;
- Measures to avoid the imposition of preliminary tax in more than one contracting state;
- Simultaneous examinations; and
- Presence of representatives of one contracting state in tax examinations in another contracting state.

A contracting state is obliged to provide administrative assistance regarding all tax matters and all tax claims arising in another contracting state in accordance with its laws relating to the taxes and levies covered by the Nordic Convention.¹⁷ There is no explicit statement of the persons covered. Residence and nationality are therefore not relevant as long as the information is necessary to assess the taxes covered by the Nordic Convention.¹⁸ Pursuant to Article 4(2) of the Nordic Convention, the assistance may concern measures not only against the taxpayer but also any other person who, according to the laws of the contracting state to which the request is directed, is obliged to give assistance to the tax authorities. Assistance may be requested if the action cannot be undertaken in the requesting state itself without considerable difficulties and the said state is able, under its own laws, to provide equivalent assistance to the requested state (the threshold).¹⁹

2.2.2. Exchange of Information

Article 1 of the Nordic Convention covers exchange of information upon request and without a request in general. Information must be supplied in accordance with the laws of the contracting state to which the request is made. The requested state may refuse the supply of information if complying with the request would disclose business, manufacturing or professional secrets.²⁰ Article 6(1) of the Nordic Convention complements the above by stating that administrative assistance may be refused if it is considered to be against the *ordre public* of the requested state.

Article 11(1) of the Nordic Convention contains the provision on automatic exchange of information.²¹ From a comparative international perspective, it is notable that the possibility for automatic information exchange has existed since the preceding mutual assistance treaty from 1972. The automatic exchange of information covers payments on a wide scale. The contracting states are required, as soon as possible after the end of each calendar year and to the extent possible on the basis of control information and similar information available, to provide to

¹⁷ Article 4(1) of the Nordic Convention.

¹⁸ *Gangemi*, *Cahiers de droit Fiscal International*, Vol. 75b, p. 43; see also *Végh*, *Towards a Better Exchange of Information*, *European Taxation*, Vol. 42, No. 9 (2002) p. 394 (p. 396).

¹⁹ Article 4(3) of the Nordic Convention.

²⁰ Article 10 of the Nordic Convention.

²¹ For a detailed discussion on the different kinds of exchange of information, see *Gusmão de Oliveira*, *Jeong* and *Parida* in this volume.

all the other contracting states information on individuals and legal entities resident in the other state in respect of:

- a. Profits distributed by companies and similar legal entities;
- b. Interest on bonds and similar securities;
- c. Credit balances with banks, savings banks and similar institutions and interest on such balances;
- d. Ownership of immovable property;
- e. Royalties and other periodic payments for the use of copyrights, patents, designs, trademarks and similar rights or property;
- f. Wages, salaries, fees, pensions and life annuities;
- g. Compensation for damage, insurance payments and similar compensation received in connection with business activities; and
- h. Any other income or property, to the extent that an agreement pursuant to Article 20 of the Nordic Convention has been concluded concerning such income or property.

Article 11(2) of the Nordic Convention stipulates exchange of information on a spontaneous basis: a contracting state is to forward any information resulting from an examination carried on in that state in a tax matter which can be assumed to be of interest for another contracting state. The situations where information must be exchanged spontaneously relate mainly to tax audits. It is, however, debatable whether the provision actually limits the spontaneous exchange of information merely to such cases or whether a wider application would be possible.²²

2.2.3. Other Forms of Administrative Assistance

The Nordic Convention covers service of documents²³, which must be effectuated in accordance with the laws or administrative practice of the requested state. Simultaneous tax examinations by two or more contracting states with a view of exchanging any relevant information obtained are also possible under the Nordic Convention.²⁴ The actual examination is carried out by each participating state in its own territory, and all exchange of information takes generally place either through the competent authorities, or in common meetings of the auditors.²⁵ The participants' cooperation starts already in the planning phase.²⁶ Furthermore, representatives of an authority of a contracting state may in a tax matter which is of

²² *Juusela*, Kansainväliset sijoitukset ja verotuksen tehokkuus (Helsinki, 1998) p. 330.

²³ Article 9 of the Nordic Convention.

²⁴ Article 12 of the Nordic Convention; see also *Roncarati* in this volume.

²⁵ Global Forum on Transparency and Exchange of Information for Tax Purposes, Combined Peer Review Report Denmark (2011) paragraph 216.

²⁶ See e.g. *Helminen*, Finnish international taxation (Helsinki, loose-leaf, supplement 2013) Chapter 18, Taxing procedure and appeals, International assistance.

essential importance for that state be allowed to be present during the examination of that tax matter in another contracting state.²⁷

The Nordic Convention also includes provisions regarding recovery of taxes.²⁸ Enforceable decisions given in tax matters in one contracting state must be recognized as being enforceable in another contracting state. Precautionary measures in order to ensure recovery of a tax claim may be taken in accordance with the legislation or administrative practice in force in the requested state, even if the tax claim is not yet declared enforceable.²⁹

Finally, Article 20 of the Nordic Convention empowers the competent authorities of the contracting states to conclude separate agreements in order to carry out the provisions of the Nordic Convention. In fact, two additional agreements have been concluded. The agreement on collection and transfer of taxes for the avoidance of the imposition of preliminary tax in more than one contracting state (the Article 20 Agreement) stipulates that prepayments of tax are, to a large extent, made to only one state in accordance with the provisions of the Nordic double tax convention. The other agreement contains detailed provisions for the application of the Nordic Convention.³⁰

2.2.4. Administrative Aspects

In general, documents concerning administrative assistance must be drafted in or accompanied with a translation into Danish, Norwegian or Swedish.³¹ The requesting state is liable to reimburse the costs incurred by the requested state from the administrative assistance; however, only to the extent such costs are related to court proceedings (excluding administrative courts) or to bankruptcy proceedings in the requested state.³²

The Nordic Convention does not include any specific time limits. The requested state must notify the requesting state as soon as possible the result of the administrative assistance.³³ Disagreements relating to interpretation or application must be solved through negotiations between the competent authorities and through conclusion of specific agreements, followed by a notification of the results to other contracting states as soon as possible.³⁴

²⁷ Article 13 of the Nordic Convention; see also *Roncarati* in this volume.

²⁸ Article 14 of the Nordic Convention.

²⁹ Article 19 of the Nordic Convention.

³⁰ For details, see *Hengsle*, Bulletin for International Taxation, Vol. 56, No. 8–9 2002, pp. 375–376; see also *Gustafsson Myslinski* in: *Seer/Gabert*, Mutual assistance and information exchange, p. 533; latest versions of both agreements have been in force since 1998; however, at the least the Article 20 Agreement will be revised in relation to the pending update to the Nordic Convention.

³¹ Article 5 of the Nordic Convention.

³² Article 22 of the Nordic Convention.

³³ Article 7(2) of the Nordic Convention.

³⁴ Article 20(2) of the Nordic Convention; it is also possible that all contracting states negotiate on a question of interpretation or application jointly, upon a request of one contracting state based on Article 20(3) of the Nordic Convention.

2.3. Experiences of the Nordic Mutual Assistance Convention in Practice

The Nordic Convention provides for extensive exchange of information, which is considered to function efficiently.³⁵ Similarity of the tax legislation and administrative procedures as well as working cultures likely supports this.³⁶ Denmark and Norway have received excellent feedback in their Global Forum Peer Reviews with regard to their institutional framework, existing practices, competencies and resources that facilitate efficient exchange of information internationally.³⁷

The practices of automatic exchange of information have been developed during the past decades, and such exchange has become an important instrument to combat tax avoidance and evasion. The automatic exchange of information is considered to work ‘smoothly even though improvement is always possible’.³⁸ Concerning exchange of information on request, countries typically request more frequently information from their neighbours than from other countries,³⁹ and this holds true also in the Nordic case. At the beginning of the new millennium, Finland cooperated most actively with the Nordic countries, Estonia, Germany, Spain, the United Kingdom and the United States.⁴⁰ In 2009, Finland was reported to have received requests for exchange of information most often from Estonia and Sweden.⁴¹ Also for Norway’s practices and policies regarding exchange of information, the Nordic cooperation including assistance under the Nordic Convention has a central role.⁴² Likewise, in Sweden most administrative cooperation in tax matters in general takes place between the Nordic countries, primarily based on the Nordic Convention.⁴³ It is, however, noted that in addition to the

³⁵ *Helminen*, Finnish international taxation, Chapter 18; see also *Äimä/Lahdenperä/Soinila*, National Report Finland in: *Seer/Gabert*, Mutual Assistance and Information Exchange. 2009 EALTP Congress, Santiago de Compostela, EATLP International Tax Law Series, Vol. 8 (Amsterdam, 2010) p. 221 (p. 221).

³⁶ See e.g. *Tunturi*, *Cahiers de droit Fiscal International*, Vol. 75b, p. 332.

³⁷ Global Forum on Transparency and Exchange of Information for Tax Purposes, Combined Peer Review Report Norway, paragraph 203; Global Forum on Transparency and Exchange of Information for Tax Purposes, Combined Peer Review Report Denmark, paragraphs 5 and 8; for Iceland, Finland and Sweden a Combined Peer Review covering both Phase 1 (legal and regulatory aspects of exchange) and Phase 2 (exchange of information in practice) was scheduled to be launched in 2012.

³⁸ *Hengsle*, *Bulletin for International Taxation*, Vol. 56, No. 8–9 2002, p. 376.

³⁹ *Seer/Gabert*, General Report in: *Seer/Gabert*, Mutual Assistance and Information Exchange. 2009 EALTP Congress, Santiago de Compostela, EATLP International Tax Law Series, Vol. 8 (Amsterdam, 2010) p. 3 (p. 22).

⁴⁰ *Juusela*, *Bulletin for International Taxation*, Vol. 57, No. 1 2003, p. 32.

⁴¹ *Äimä/Lahdenperä/Soinila* in: *Seer/Gabert*, Mutual Assistance and Information Exchange, p. 229.

⁴² Global Forum on Transparency and Exchange of Information for Tax Purposes, Combined Peer Review Report Norway, paragraph 4.

⁴³ Regerings Proposition 2012/13:4, p. 76 (i.e. Sweden’s governmental proposal on implementation of the Council Directive 2011/16/EU); Regerings Proposition 2011/12:15, p. 59 (i.e. Sweden’s governmental proposal on implementation of the Council Directive 2010/24/EU).

Nordic Convention also other legal bases for exchange of information and administrative assistance are available for most Nordic states.

The long tradition of cooperation is mirrored in the volume of taxes collected under the Nordic Convention, which for example in Finland is higher compared to tax collection under other treaties concerning administrative assistance.⁴⁴ With regard to other means of administrative assistance, the Nordic countries sometimes execute simultaneous tax examinations⁴⁵ and request permission for representatives of one country to be present in tax examinations carried out in another country.⁴⁶ Finally, the Article 20 Agreement has vitally reduced double taxation in situations where a taxpayer lives in one Nordic country and receives his/her salary or pension from another country. Also, prevention of non-prepayment can be achieved through the agreement.⁴⁷

3. Nordic Mutual Assistance Convention in relation to the OECD Standard

3.1. Differences in Scope

3.1.1. Article 26 OECD Model

Article 26(1) OECD Model⁴⁸ covers exchange of foreseeably relevant information for carrying out the provisions of the convention and for the administration or enforcement of the domestic laws. The Nordic Convention is also considered to meet the foreseeably relevant standard,⁴⁹ even if evaluation of the relevance of the requested information is actually not required under the latter,⁵⁰ apart from the exchange of information on spontaneous basis. When Article 26 OECD Model still contained the word ‘necessary’ instead of ‘foreseeably relevant’, the threshold for assistance based on the Nordic Convention was said to be lower, as the latter merely refers to ‘essential difficulties’ of undertaking of the action by the requesting state itself and the existence of reciprocity.⁵¹

⁴⁴ *Äimä/Lahdenperä/Soinila* in: *Seer/Gabert*, Mutual Assistance and Information Exchange, p. 236.

⁴⁵ For Finland, see *Äimä/Lahdenperä/Soinila* in: *Seer/Gabert*, Mutual Assistance and Information Exchange, p. 229.

⁴⁶ For example, Denmark reported of 15 requests for presence from Norway, seven from Sweden, and one from Finland and sending of one request itself by late 2010; see Global Forum on Transparency and Exchange of Information for Tax Purposes, Combined Peer Review Report Denmark, paragraph 214.

⁴⁷ *Hengsle*, Bulletin for International Taxation, Vol. 56, No. 8–9 2002, p. 376; see also *Gustafsson Myslinski* in: *Seer/Gabert*, Mutual Assistance and Information Exchange, p. 533.

⁴⁸ For details of Article 26 OECD Model, see *Chirinos Sota, Novis and Torres Jiménez* in this volume.

⁴⁹ Global Forum on Transparency and Exchange of Information for Tax Purposes, Combined Peer Review Report Norway, paragraph 215.

⁵⁰ HE 129/1994, p. 4 (i.e. the Finnish governmental proposal on implementation of the CoE/OECD Convention).

⁵¹ *Juusela*, Kansainväliset sijoitukset ja verotuksen tehokkuus, p. 281.