Joint Tax Audits: Which Countries May Benefit Most?

In their joint fight against tax avoidance and tax evasion, international governance organizations have developed different tools. One of these tools is the joint tax audit, in which two or more countries join together to form a single audit team to examine an issue(s)/transaction(s) of one or more related taxable persons with cross-border business activities. International governance organizations, such as the Organisation for Economic Co-operation and Development (OECD), the European Union and the African Tax Administration Forum (ATAF), promote the use of joint tax audits, amongst others, as a tool in fighting tax fraud, tax evasion and aggressive tax planning. The literature on this phenomenon mainly focuses on the advantages and obstacles of using the instrument, and the need to amend legislation. Moreover, in the literature, guidance for companies invited to participate in a joint tax audit can be found, as well as references to the few joint tax audits conducted and the results of a pilot project conducted by the Netherlands and Germany. The authors’ aim is to answer the question, “Which countries may benefit most from joint tax audits if the arguments raised in the tax literature are valid?”.

The authors have identified eight arguments for joint tax audits (arguments (a) – (h), see sections 4.1. and 5.) in the tax literature and have used sixteen different yardsticks (factors 1 – 16, see section 6.) to analyse which countries might benefit most. To make the research project manageable, the research focuses primarily on the situation faced by the European Union’s 28 Member States (hereinafter the “EU-28”) and the 13 associated states. By combining arguments raised in the legal literature about joint audits with what public finance data tell us about, for example, tax compliance costs, the number of active taxpayers per administration employee, the number of mutual agreement procedures, tax compliance and tax moral levels, the authors analyse which of the EU-28 and its associated states might benefit most from joint audits and for what reasons. The analysis strongly supports the international governance initiatives for a multilateral legislative framework on joint audits. As multinational legislation in this field should be drafted with great care, the authors call for more pilot projects with, as their aim, the sharing of know-how and building capacity. The authors also provide some recommendations for the development of the multinational legislative framework and urge tax authorities/the OECD/the European Union to publish statistics on the joint audits performed.

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1. As Croatia joined the European Union as the 28th Member State in 2013, the public finance data provided in this article refer to the EU-27. Eleven of the 16 factors refer to EU-28 public finance data. The exception is the number of taxpayers’ factor because of available data for Croatia before 2013. The remaining 5 provide data before 2013, thus concern to EU-27 (see Table 8).
1. Introduction and Background

“Dynamic environments demand proactive thinking. Like a pilot navigating an aircraft through turbulent weather, revenue authorities must manage the immediate problems ahead, as well as adopt proactive steps for challenges on the horizon”. (David Swenson 2012)

The global tax landscape presents daunting challenges to both tax legislators and tax administrators. Key challenges include the growing number of taxpayers and the growing volume of data. According to the Intra-European Organization of Tax Administrations data, all 41 European countries analysed experienced an increase of 3.2% on average of the total taxpayers during the 2010-2012 period. However, a greater increase in the number of taxpayers in associated countries (6.3%) than in the EU-28 (1.8%) has been noted. The highest increase in the number of taxpayers recorded is 28.51% and 21.21%, achieved by Serbia and Cyprus respectively, compared with the highest decrease of 15.07% and 9.04% in Croatia and Belgium. This can be explained by, amongst others, the migration of taxpayers throughout Europe, changes made to meet the requirements for EU accession or the implementation of the programmes against shadow economy and corruption in, amongst others, Bulgaria, Cyprus, Georgia, Macedonia, Serbia, etc. The differences in numbers of registered taxpayers in the European Union and its associated countries can be explained by relatively high and low rates of personal taxpayer registration (for example, over 80% of their respective citizen populations in Denmark, Finland, Iceland, Norway, Sweden and Switzerland, but less than 20% in Albania, Georgia, Macedonia (FYR), Montenegro, Romania, Serbia, Turkey and the Ukraine). For more statistical data, see http://www.iota-tax.org and OECD, OECD Tax Administration 2013 Comparative Information on OECD and Other Advanced and Emerging Economies (OECD 2013), available at http://www.keepeek.com/Digital-Asset-Management/oecd/taxation/tax-administration-2013_9789264200814-en#page1.
of cross-border goods and services, the evolution of the digital economy and of sophisticated financial arrangements, and the large amount of potential revenue lost due to aggressive forms of tax avoidance and evasion.

The use of a more effective audit mechanism is one of the recommendations of international governance organizations in their fight against offshore tax evasion. Researches such as, amongst others, Falsetta, Schafer and Tsakumis have indicated that taxpayers decrease

3. According to a 2016 Report of the McKinsey Global Institute, the combined value of trade in goods and services plus financial flows reached USD 30 trillion, or 39% of global GDP, by 2014 compared with just USD 5 trillion or 24% of world GDP, in 1990. Moreover, the McKinsey Global Institute predicts that global flows of goods, services and finance could increase to between USD 54 trillion and USD 85 trillion by 2025, or up to 50% of global GDP, depending on the scenario (more than double or triple their current scale). For more statistical information, see McKinsey Global Institute Report, Digital globalization: The new era of global flows (McKinsey Global Institute 2016), available at http://www.mckinsey.com/business-functions/mckinsey-digital/our-insights/digital-globalization-the-new-era-of-global-flows.

4. According to a 2012 Report by the Boston Consulting Group, the Internet economy in the G20 will grow from USD 2.3 trillion in 2010 to USD 4.2 trillion in 2016. BCG, The Connected World: The USD 4.2 Trillion Opportunity The Internet Economy in the G20 (BCG 2012). According to BCG, the internet is the fastest growing component of the economy, contributing 5.3% of GDP in the G-20. For statistical information, see also OECD, Measuring the Internet Economy: A Contribution to the Research Agenda, OECD Digital Economy Papers, No. 226 (OECD 2013), available at http://dx.doi.org/10.1787/5k43gj6r8jf-en, and OECD, Measuring the Digital Economy: A New Perspective (OECD 2014), available at http://dx.doi.org/10.1787/9789264221796-en. In the latter report, the OECD concludes that existing statistics are not able to keep up with new and rapidly evolving technology and usage by individuals and firms, and therefore new statistical tools are needed.

5. Through the development of innovative ways of dealing with risk, financial engineering has opened up new opportunities for cross-border trade and investment. Multinationals are involved in the most sophisticated financial arrangements (synthetic and hybrid instruments, such as convertible notes, endowment war- ants, perpetual debt, equity swaps, capital protected equity loans, profit participating loans and so on). In addition to investment, financing and risk management objectives, these instruments can also produce tax benefits, significantly reducing overall tax for taxpayers. According to a 2012 Report by the OECD, in 2009 New Zealand settled cases involving four banks for a combined sum exceeding EUR 1.3 billion; Italy reported that it has settled a number of cases involving hybrids for an amount of approximately EUR 1.5 billion; and in the United States, the amount of tax at stake in 11 foreign tax credit generator transactions has been estimated at USD 3.5 billion. For more information, see OECD, Hybrid Mismatch Arrangements: Tax Policy and Compliance Issues (OECD 2012), available at http://www.oecd.org/ctp/exchange-of-tax-information/hybridmismatcharrangementstaxpolicyandcomplianceissues.htm.


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evasion behaviour as the probability of an audit increases and consequently the revenue collected from an increase in the number of audits may be higher. Therefore, it is not surprising that international organizations acknowledge the benefits of tax audits. Alm, Jackson and McKee indicate that tax audits not only have a direct deterrent effect on the individuals actually audited, but also affect the compliance of other taxpayers.9

In most states, tax audits of multinationals and globally active high net worth individuals have traditionally been carried out separately or through simultaneous tax audits. A simultaneous tax audit is an arrangement by two or more countries to examine simultaneously and independently, each on its territory, the tax affairs of taxpayers (or a taxpayer) in which they have a common or related interest with a view to exchanging any relevant information which they so obtain.10 Instead, in the case of a joint tax audit, the two or more countries join together to form a single audit team to examine an issue(s)/transaction(s) of one or more related taxable persons (both legal entities and individuals) with cross-border business activities. This may include cross-border transactions involving related affiliated companies organized in the participating countries and in which the countries have a common or complementary interest. The taxpayer jointly makes presentations and shares information with the countries, and the team includes competent authority representatives from each country.11

Research shows that, in general, audits are an effective tool for deterring tax fraud.12 For several reasons, joint tax audits may be the most effective form of audit. Evidence of this may be found in general audit practice research. Joint tax audits are a common phenomenon in general audit practice. The audit regulation of several countries contains an obligation to appoint at least two auditors; in other countries, joint tax audits take place on a voluntary basis.13 Research on these general joint audit practices shows group judgment is superior to that of individuals and group decision-making quality is better than individual decision-making quality. Research also shows that heightened integrity delivers increased profits and – not surprisingly – corruption has a negative effect on tax revenues.14


10. See OECD, Joint Audit Report, supra n. 7, at 15-16.
11. See OECD, Joint Audit Report, supra n. 7, at 7-8.
13. N. Ratzinger-Sakel et al., What do we know about joint audit?, SATER (ICAS 2012), written for the Institute of Chartered Accountants of Scotland, give the following definition of a joint audit in general audit practice: an audit in which financial statements are audited by two independent auditors with shared audit effort, one single auditor’s report signed by both auditors and joint liability for both auditors. They provide an overview of the various international settings where joint audit has been implemented, either on a mandatory (in France as from 1966!) or a voluntary basis, as well as of the practical challenges that may be faced by the various stakeholders in joint audits (are the auditors really independent, preferred pattern of auditor renewal, potentially unexpected restrictions on auditor choice, higher auditing costs (though the conclusions of research in this area contradict each other and may be influenced by other factors than the joint audit), lack of clear lines of responsibility between the joint auditors. They also give an overview of the limited empirical research on the phenomenon, showing that joint audits lead to increased auditing quality, and they also mention that Big 4 audit firms are largely against joint audit, mainly for cost reasons, while second-tier audit firms are in favour of joint audits, mainly for quality reasons. Each group of stakeholders appears to seek to protect their private interests.
14. Numerous studies have identified the negative impacts on tax revenue that are due to corruption. This supports the importance of improving fiscal efforts by simply reducing the incidence of corrupt practices in order to yield more tax revenue. However, the exact revenue benefits on this are still to be estimated. For more information, see, for example, P.S. Dos Santos, Corruption in Tax Administration, speech present-
In 2010, the OECD published its Joint Audit Report containing the results of a survey on the experiences of 29 free trade agreement (FTA) countries working cooperatively with other jurisdictions on audits. The Report maps:

- the countries’ views on opportunities for joint tax audits;
- the type of issues that would be best suited to being examined by joint tax audits; and
- the challenges for conducting joint tax audits.

The primary goal was to address the challenges identified by countries in their responses to the survey, as well as to provide practical examples of how to identify cases appropriate for a joint tax audit and other organizational and managerial issues of a joint tax audit. To facilitate joint audits, the OECD, moreover, drafted a Joint Audit Participant’s Guide.15

Surprisingly, besides the OECD Joint Audit Report, very little research exists on joint tax audits. The few articles the authors could trace concentrated on:

- the need to enhance the effectiveness of national tax auditing systems by eliminating inefficiencies, as well as that of the inter-Community regulations in respect of the execution of intra-Community tax audits;
- the harmonization of procedural law in respect of tax audits;16
- the mapping of the simultaneous and joint tax audit approach and the provision of guidance to the taxpayers on how to react once invited to participate in a joint tax audit;17 and
- the results of a pilot project conducted by Germany and the Netherlands.18

2. Aim and Methodology

To the authors’ knowledge, no empirical studies of joint tax audits exist that provide insight into the question of which of the European Union’s 28 Member States (hereinafter the “EU-28”) and their 13 associated states may benefit most from joint tax audits. With this article,
the authors aim to fill this gap. Moreover, through this research, the authors aim to support the OECD BEPS Project. According to Avi-Yonah and Halabi:

> joint tax audits will assist substantiating the BEPS goals by enabling the countries to have the same information, to examine such information together and to be able to determine the right tax consequences, together. Joint audits procedure will also benefit the taxpayer, when, for example, transfer pricing issues will be dealt with by both countries at the same time, which may reduce income allocation inconsistencies.19

To a certain extent, this article also supports BEPS Action 11, highlighting the necessity of the new data available.20 With this Project, the aim of the OECD is to provide a better understanding of how the BEPS recommendations are implemented in practice, as this could reduce misunderstandings and disputes between governments. The data contained in this article provide better understanding – and thus a reduction of misunderstandings and disputes – on why states may be interested in joint tax audits.

Firstly, the authors characterize the historical background of and growing interest in cross-border tax audits (section 2.). Next, the authors identify the conditions under which entering into a joint tax audit is beneficial to both the tax authority and the taxpayer (section 3.) and the advantages of and obstacles to joint audits identified in tax literature21 (section 4.). Public finance data that underpin the reasons given in tax literature as to why it may be assumed that joint tax audits will probably be an efficient instrument – especially, but not only, for developing states – will be provided in section 5. Section 5. (as well as Tables 1-7 in the Annex (see section 8.)) will also provide data on the cost of tax collection (inclusive of the cost associated with tax audits); tax compliance and tax morale indexes; tax capacity; an international comparison of the size of the shadow economy and the corruption perception index; and public finance data about the relationship between the tax collection effort and the effective amount of tax collected, as well as between the corruption perception index and the GDP per capita.

Such data provide support to the arguments used in tax literature as to why countries would benefit from joining their tax efforts in order to increase the efficiency of revenue collection within the European context. The data also show that the benefits vary per country (as discussed in section 6.). The results of the authors’ research are summarized in the Annex to this article (see section 8.). Table 8 and Table 9 underline the importance of the development of a multinational legal framework for joint audits. In section 7., the authors give some suggestions for the development of such a framework and for further research.

To narrow the field of investigation, the article focuses primarily on the situation faced by the EU-28 and its 13 associated states. A large amount of statistical data provided by the OECD, the World Bank, the Intra-European Organisation of Tax Administrations (IOTA) and other sources of technical expertise has been collected, synthesized and analysed in this article.

20. The authors consider joint tax audits have a role to play as a future required tool able to monitor and evaluate BEPS and countermeasures on an ongoing basis. Moreover, it could solve public concerns about compliance costs and confidentiality, being an important element of ch. 4 of Final Action 11 of the BEPS Project. See OECD, Measuring and Monitoring BEPS, Action 11 2015 Final Report (OECD 2015), International Organizations’ Documentation IBFD.
21. Due to language barriers, the authors may not have traced all legal literature on the issue.
The authors do not intend to prove that the arguments raised in the tax literature are valid; analysis of empirical data on joint audits performed – if they would be publicly available – would not provide statistically valid results for the simple reason that joint tax audits are still in their infancy. Nor do the authors provide an efficiency assessment from either the administrative perspective or that of the taxpayer(s) concerned or discuss legal issues, such as mutual or reciprocal interest in joint audit, enforceability of joint audit mechanisms in both states or the freedom to deny access to domestic means.


3.1. Close resemblance to US interstate audits

To a great extent, joint tax audits resemble the interstate audits conducted by the US Multistate Tax Commission (MTC) to audit the sales and corporate income taxes of multi-state business in the United States for several states at once. Article VIII of the Multistate Compact adopted in 1966 as model law, as revised in 2015, provides for rules on interstate audits, amongst others in respect of:

- the attendance of persons for the purpose of giving testimony with respect to any account, book, paper, document, other record, property or stock of merchandise being examined in connection with the audit;
- the confidentiality of information;
- the persons to whom the information will be available;
- the purpose for which the information is available (only tax purposes);
- the applicable legislation (the laws of the states or subdivisions on whose account the commissioner performs the audit); and
- the meaning of the term "tax".

22. The Multistate Tax Commission (MTC) was created in 1967 through the Multistate Tax Compact, an agreement created and ratified by each member state. The objectives of the Commission are to help make state tax systems fair, effective and efficient; encourage the adoption of uniform tax law and regulations; reduce state compliance burdens on business; and protect state fiscal authority. Multistate joint audits are initiated by the taxpayer who must write a request for a joint audit by the Commission on behalf of the participating states. The decision to perform an audit is made by the MTC audit committee that provides an audit authorization form to each state, if they agree to perform the audit. The states have the option to participate in the audit or to refuse. Preference for participation is given to taxpayers having nexus with ten or more states participating in the MTC joint audit programme and who meet one or both of the following criteria:

- the taxpayer’s audit must involve issues that would benefit from consistent interpretations among several states;
- the taxpayer has recently registered for tax purposes with at least ten participating states, has never been audited by those states and seeks the guidance on compliance that an auditing would provide; and
- in deciding whether or not to place the requesting taxpayer in the programme’s audit inventory, the MTC Audit Committee will consider the following factors:
  - does the taxpayer meet or exceed the preference criteria?
  - are audit staff resources available within the MTC joint audit programme?
  - does the taxpayer have a sufficient size and geographic scale of operations to justify the use of MTC joint audit resources for an audit?; and
  - are at least seven states willing to participate in the audit?

At the time of writing, 16 states have enacted the Multistate Tax Compact in their state law (compact members). Seven states support the purposes of the Multistate Tax Compact through regular participation in, and financial support for, the general activities of the Commission (Sovereignty Members). These states join in shaping and supporting the Commission’s efforts to preserve state taxing authority and improve state tax policy and administration. Twenty-six states are associate members: states that participate in Commission meetings and otherwise consult and cooperate with the Commission and its other member states or, as project members, participate in Commission programmes or projects. See http://www.mtc.gov/The-Commission/Member-States (visited 8 May 2016).
3.2. Initiatives for bilateral joint tax audits

Joint tax audits are still in their infancy. At the time of the OECD Joint Audit Report, none of these states had any experience with joint tax audits.\(^{23}\) Apparently the OECD governance helped in rousing the interest in joint tax audits. In his 2013 IFA General Report on Exchange of Information and Cross-Border Cooperation between Tax Authorities, Xavier Oberson\(^{24}\) mentioned that the interest in joint tax audits and similar forms of international cooperation, such as tax examinations abroad, seemed to be growing.

Not surprisingly, the United States was one of the first countries engaged in bilateral joint tax audits, with the United States and Australia starting joint tax audits in 2011.\(^{25}\) The commonly shared language of these Joint International Taskforce on Shared Intelligence and Collaboration (JITSIC) members\(^{26}\) no doubt played a role. Engagement between countries that speak the same language is easier. Furthermore, it facilitates active participation and joint meetings for information gathering and taxpayer questioning purposes. The positive experience of the United States with multistate controls may also have played a role.

The Australia, the United Kingdom and the United States are also engaged in joint tax audits with other states. For example, in 2013, the International Fiscal Association (IFA) national reporters on the exchange of information and cross-border cooperation between tax authorities in South Africa, Jennifer Roeleveld and Craig West, reported that – at the time of writing their report – the United States and the United Kingdom had commenced joint tax audits with the South African Revenue Service (SARS). In 2011, EY reported a joint tax audit between Her Majesty’s Revenue and Customs (HMRC) in the United Kingdom and SARS of a high net worth individual.\(^{27}\) SARS also performed joint tax audits with non-JITSIC country Botswana.\(^{28}\) Many South African multinationals have foreign affiliates in Botswana.\(^{29}\)

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23. Most countries had experience with simultaneous tax audits. Eleven of the twenty-nine countries had experience with simultaneous examinations carried out under a bilateral tax treaty based on art. 26 OECD Model, three countries had experience with simultaneous examinations under the Nordic Convention on Mutual Administrative Assistance in Tax Matters, thirteen EU Member States had experience with Multilateral Controls under the EU Mutual Assistance Directive and two states had experience with simultaneous examinations under specific treaties other than bilateral tax treaties.


26. The Tax Commissioners of Australia, Canada, the United Kingdom and the United States founded JITSIC in 2004. Japan joined in 2007, Korea and China joined in 2010 and France and Germany are observers. The purpose of JITSIC is to support its members through the identification and understanding of abusive tax schemes and those who promote them and help them to address these schemes. Hay & Kimkana, United Kingdom, supra n. 24, at 766.


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The 2013 IFA country reports show that, at the time of writing the reports, non-JITSIC states scarcely used joint tax audits. The notable exception is Finland, which, according to the Finnish national IFA reporter A. Johansson, is conducting five to ten joint tax audits a year.

Recently, the Netherlands and Germany conducted a pilot project. In the period January 2013 – November 2014, five joint tax audits took place according to the OECD principles in order to test the experiences of the companies and tax officers involved in this type of audit. Van der Hel – van Dijk and Meickmann reported on this project. Four internationally operating companies physically situated in both the Netherlands and Germany, and one internationally operating company situated only in the Netherlands operating in Germany from the Netherlands, took part in the project, including three multinationals, a large foreign investor and a family-owned company. The emphasis was on transfer pricing. Van der Hel reported that the tax officers were satisfied with the collaboration between the two countries, but not satisfied with the requirement to ask for the consent of the taxpayer for the active presence of foreign officers or for the exchange of information. The companies in general did not experience a joint tax audit approach, although “more” cooperation was felt than in previous joint tax audits experienced by the multinationals participating in the pilot project; there was more joint fact-finding and a joint position was taken as a result of the fact-finding process to prevent a MAP. The audit officers operated in their own way and did not seem to have a common or complementary interest. The big advantage for the multinationals, though, was that it saved time and money in sharing their information with both tax authorities at the same time. They were also satisfied with the result, as the joint tax audit resulted in a joint position of both tax authorities.

According to the IFA 2013 Netherlands national reporters De Bont and Van der Hel – van Dijk, the Netherlands also invited France to participate in the joint tax audit. The authors could not trace any publication mentioning whether or not France accepted this proposal.

The Czech Republic European Association of Tax Law Professors (EATLP) 2014 national reporters L. Moravec and D. Nerudová mentioned that the Czech Republic had, at the time of writing their report, pending requests from Germany for joint audits. The Italian report-

30. Johansson, Finland, supra n. 24, at 289-301. See also M. Urpilainen, National Report Finland, in New Exchange of Information Versus Tax Solutions of Equivalent Effect p. 261 (G. Marino ed., IBFD 2015). Urpilainen mentions there are no specific domestic legal obstacles for the Finnish tax authorities to further expand their participation in joint audits, but the focus of these authorities has concentrated on the cross-border transactions of Finnish companies that are part of multinational enterprises.
31. Van der Hel – van Dijk, supra n. 18.
32. Van der Hel – van Dijk, supra n. 16, at 496-498.
33. Meickmann, supra n. 18. This book chapter only mentions the project, it does not discuss it. The book chapter describes from a legal perspective the administrative mandate and competence in cross-border situations, differing assessment of cross-border situations as a stumbling block of substantive tax law, the unilateral measures for fact finding in a cross-border context and the functioning of expectations, requirements and challenges, as well as the legal framework for joint tax audits. It briefly reflects on the fact that, in future, joint tax audits will depend heavily on the competence and willingness of tax administrations to waive the different legal assessments of the cross-border situation, the possibilities to offer the taxpayer real added value and certainty about tax data protection and the fact that joint tax audits may improve the countries’ positions as business locations.
34. In their 2015 Report on international transfer pricing prepared for the German foundation for family enterprises, Stiftung Familienunternehmen, Oestreich and Reimer refer to joint tax audits as “Vetogames: all four parties in the joint tax audit have to give their consent”. See Oestreich & Reimer, supra n. 16, 83.
35. De Bont & Van der Hel – van Dijk, Netherlands, supra n. 24, at 12.
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ers A.E. La Scala and P. Mastellone revealed that, although Italy was not part of the group of 13 countries that promoted the use of joint audits in the Joint Audit Report 2010, the Italian tax authorities have declared that Italy will be a leading actor in this innovative form of control, but that no statistical data were available at the time of writing their report.\textsuperscript{37} The Luxembourg national reporter A. Steichen\textsuperscript{38} mentioned that the Luxembourg tax authorities seem not to be opposed to joint audits and have gained relevant experience in this in the field of VAT. The Swiss national reporter X. Oberson\textsuperscript{39} mentioned that there do not seem to be many joint or multilateral audits under Swiss practice so far.

3.3. \textit{International governance initiatives promoting joint tax audits}

3.3.1. Governance strategy

The 2010 OECD’s Joint Audit Report and the Joint Audit Participants Guide – providing instruction for the preparation, planning, conduct and completion of a joint tax audit prepared for the Sixth Meeting of the OECD Forum on Tax Administration – have paved the way for joint tax audits without a legislative framework that is tailored for the purpose.\textsuperscript{40}

The OECD’s Joint Audit Report provides an overview of the current frameworks for exchanging information and conducting joint tax audits, as well as recommendations about the organization and management of joint tax audits under which joint tax audits may be pursued under the current legal framework that exists in many FTA member countries. The Annexes to the Joint Audit Report provide an overview of terminology in international legal frameworks (Annex 1); the survey questionnaire and answers (Annex 2); challenges for conducting joint tax audits in domestic legislation and practical issues in conducting joint tax audits (Annex 3); and a description of a multilateral project involving several revenue bodies working collaboratively to combat a common cross-border tax avoidance and evasion scheme (Annex 4).

Apparently the OECD’s policy is to first explore the phenomenon of joint tax audits and their practical implications and legislative challenges before drafting (model) legislation. The experiences of countries can be used to draft an appropriate legislative framework. In its 2013 Tax Inspectors Without Borders Report, the OECD referred to the double tax convention or the multilateral Convention on Mutual Administrative Assistance for Tax Matters as useful tools for sharing knowledge and building capacity to improve tax audit practice.\textsuperscript{41}


\textsuperscript{40} See OECD, \textit{Joint Audit Report}, supra n. 7.

\textsuperscript{41} Tax Inspectors Without Borders (TIWB) is a project of the OECD Tax and Development Programme. The TIWB’s objective is to enable the transfer of tax audit knowledge and skills to tax administrations in developing countries through a real-time, “learning by doing” approach. Experts – either currently serving or recently retired tax officials – will be deployed to work directly with local tax officials on current audits and audit-related issues concerning international tax matters, and to share general audit practices. However, the practical audit assistance will not always be an appropriate response to a tax administration’s needs or there may be cases where TIWB cannot assist (for example, because establishing an appropriate legal framework may not be possible). In such cases, it has been recognized that joint audits are useful tools for sharing knowledge and building capacity to improve tax audit practices. For more information, see OECD, \textit{Final Report on the Feasibility Study into the Tax Inspectors Without Borders Initiative} (OECD 2013), available at http://www.oecd.org/ctp/tax-global/TIWB_feasibility_study.pdf or at http://www.oecd.org/tax/taxinspec
In partnership with the United Nations Development Programme (UNDP), the OECD launched the Tax Inspectors Without Borders initiative on 13 July 2015 in Addis Ababa, having as objective to enable the transfer of tax audit knowledge and skills to tax administrations in developing countries. In the Final Report on the Feasibility Study into the Tax Inspectors Without Borders Initiative of 5 June 2013, the OECD also referred to joint tax audits. Both joint tax audits and industry-wide exchange “under an appropriate legal mechanism (such as a double tax convention or the multilateral Convention on Mutual Administrative Assistance for Tax Matters) are … useful tools to share knowledge and build capacity to improve tax audit practices”.

The European Commission supports the OECD’s policy, but also stresses the importance of gaining more experience with simultaneous tax audits first. In section 33 of their Communication on the Action Plan to Strengthen the Fight against Tax Fraud and Tax Evasion of 6 December 2012, the European Commission mentioned that the issue of a methodology for joint tax audits “should be reviewed once more experience has been gained with the use of existing legal instruments such as simultaneous audits. On that basis, a methodology and guidelines for joint tax audits could be developed. If appropriate and based on an impact assessment, the Commission could also propose a single legal basis for joint tax audits, involving various types of taxes”. As for the European Commission in the short term, in order to facilitate tax audits and pave the way for possible future joint tax audits, it is essential that Member States make the widest possible use of the existing legal provisions to organize simultaneous controls and facilitate the presence of foreign officials in the offices of tax administrations and during administrative enquiries. Member States should ensure that their domestic legislations do not impede the full application of these tools, especially when it concerns the presence of foreign officials in the tax offices or at the premises of the taxpayer.

Developing a methodology for joint tax audits by dedicated teams of trained auditors is referred to in the EU Directorate General Taxation and Customs Union’s Management Plan 2014 as “action to be undertaken in the longer term”. In its Questions & Answers Fact Sheet
to its 2015 Action Plan for Fair and Effective Corporate Taxation in the European Union, the European Commission proposed joint audits as a tool for tax authorities to gain information and a common overview of a company’s tax practices in the European Union.

An EU Project Group on Joint Audits was established in May 2015. The group presented its Final Report, which is confidential, in the 5th Standing Committee on Administrative Cooperation – Expert Group (SCAC-EG) meeting on 23 February 2016. What was revealed, however, is that the Report contains proposals for the implementing of procedures or details of practical arrangements to organize administrative cooperation and the fight against tax fraud, tax evasion and aggressive tax planning and that the European Commission and the Member States will reflect on how this topic will be taken further.

The African Tax Administration Forum’s (ATAF) policy is quite different from that of the OECD and the European Union. Twenty-two ATAF member states have signed the ATAF Agreement on Mutual Assistance in Tax Matters (AMATM) so far. This multilateral instrument allows for the exchange of information, sharing of expertise, mutual administrative assistance and also for joint tax audits and investigations among African countries. The authors could not trace any information on joint audits conducted on the basis of this agreement.

3.3.2. Issues considered amenable for a joint tax audit

The OECD 2010 survey, upon which the OECD based its 2010 Joint Audit Report recommendations, shows that the FTA countries find the following issues particularly amenable for a joint tax audit:

- transfer pricing issues;
- taxpayer residency or permanent establishment determinations;
- the analysis of complex tax structures and entities operating in tax havens and aggressive tax planning schemes;
- complex business restructuring processes;
- split benefit agreements (including royalty payments);
- cost allocation agreements;
- hybrid financial instruments;
- back-to-back loans;
- structured transactions;
- double-dip leases;
- service agreements and cost sharing agreements;
- private equity funds;
- dealings with source issues;


particular tax fraud in relation to value added tax (VAT); and
- using joint tax audits for criminal investigations.

### 3.4. Legislative tools that enable joint tax audits and legislative challenges

#### 3.4.1. Legislative tools

Apart from the ATAF Agreement on Mutual Assistance in Tax Matters joint tax audits are not yet directly part of legal frameworks. Countries that intend to carry out a joint tax audit therefore need to agree on the legal framework based on legislative tools drafted for exchange of information and other types of mutual assistance, such as simultaneous examinations and tax examinations abroad.\(^{(49)}\)

In its 2010 Joint Audit Report, the OECD mentioned that the following legislation may form the legal basis for this type of procedure:

- bilateral treaties based on article 26 of the OECD Model Tax Convention;
- tax information exchange agreement articles based on articles 5 and 6 of the OECD Tax Information Exchange Agreements (TIEA) Model;
- articles 5, 8 and 9 of the Mutual Assistance Convention;
- several EU regulations, including articles 5, 9, 11 and 12 of the EU Directive 2011/16/EU (which was the legal framework used in the Netherlands-Germany pilot project); and
- article 12 of the Nordic Mutual Assistance Convention.\(^{(51)}\)

As for the OECD – after the 2010 amendments\(^{(52)}\) – the Convention on Mutual Administrative Assistance will be the prime instrument for multilateral joint tax audits.

The national reports resulting from the 2014 EATLP Congress show that the opinions of tax authorities differ in relation to which provision might form the legal basis for the joint audits. For example, H. Jochem and T. Meickmann\(^{(53)}\) in the Germany national report found

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49. Defined in *OECD Model Tax Convention on Income and on Capital: Commentary on Article 26* para. 9.1 (26 July 2014), Models IBFD, as an arrangement between two or more parties to examine simultaneously each in its own territory, the tax affairs of (a) taxpayer(s) in which they have a common or related interest with a view of exchanging any relevant information which they so obtain.

50. An examination was defined in para. 9.1 *OECD Model: Commentary on Article 26* as the possibility to obtain information through the presence of representatives of the competent authority of the requesting contracting state.

51. The Nordic Convention on Mutual Administrative Assistance in Tax Matters of 7 December 1989 between Denmark, the Faroe Islands, Finland, Greenland, Iceland, Norway and Sweden, does not provide directly for a joint audit clause. However, its scope is wide and covers almost all kinds of taxes collected in the Nordic countries. Moreover, it goes beyond exchange of information on request; it also provides a wide range of other forms of assistance, including service of documents (art. 9), automatic exchange of information (art. 11(1)), spontaneous exchange of information (art. 11(2)), simultaneous tax examinations (art. 12), performance of tax examination abroad (art. 13), assistance in recovery of taxes (art. 14), precautionary measures (art. 19) and it also empowers the competent authorities of the contracting states to conclude separate agreements (art. 20). It was recognized that some member states use simultaneous controls as the legal base to carry out the joint audits (see supra n. 49). However, all other forms of mutual assistance mentioned above can also be used to facilitate joint audits. Thus, the Nordic Convention can be considered one of the pioneering tools embodying all of the necessary benefits for conducting a joint audit:
- wide scope: extensive forms of cooperation;
- multilateral: single legal basis for multi-country cooperation;
- flexible: reservation possible on certain issues; and
- uniform: a coordinating body ensures a consistent application.


the legal basis for performing joint audits in article 10 of the EU Administrative Cooperation Code. F. Basaran Yavaslar mentioned that in Turkey joint audits are not possible under the framework of bilateral treaties. However, TIEAs concluded by Turkey do provide for the possibility of a joint audit.54

The European Commission mentioned in paragraph 4.1.5 of its 2012 Action Plan to Strengthen the Fight Against Tax Fraud and Tax Evasion that in the short term, to facilitate tax audits and pave the way for possible future joint tax audits, it is essential that Member States make the widest possible use of the existing legal provisions to organize simultaneous controls and facilitate the presence of foreign officials in the offices of tax administrations and during administrative enquiries.55,56

3.4.2. Legislative challenges

The OECD in its Joint Audit Report 2010 acknowledged that (legal) obstacles to the administrative cooperation and the lack of harmony in the domestic auditing systems of the participating revenue bodies could impact upon the execution of a joint tax audit. However, according to the OECD, the use of a structured framework that is characteristic for a joint tax audit may assist in overcoming possible limitations or impediments. This structured framework consists of:

– the steps: planning, execution and forming a judgment;
– the planning activities: invitation, initial meeting; and
– the execution activities: presence of officials, exchange of information, and examination and the forming of a judgment activities concluding meeting and joint report.57

In the authors' view, this structured framework is not sufficient to overcome the limitations and impediments. It will only facilitate the identification of different views on tax audit practice in the countries involved in a joint tax audit. The IFA 2015 general reporters’ – P. Baker and P. Pistone – comparative research of the IFA 2015 national reports on The Practical Protection of Taxpayers' Fundamental Rights” shows that there are numerous differences between the audit practices of the countries, amongst others in respect of the structure and content of an audit; the right of taxpayers to invoke the joint tax audit;58 limitations to the materials requested by the tax authorities; the principle that the taxpayer can only receive one audit in respect of the same taxable period; the right of defence; the right to be heard before any decision is taken; the right to remain silent (non-self-incrimination); the structure and content of tax audits and the time limits for normal audits. Baker and Pistone support the idea of a manual of good practice in tax audit and they formulated principles for the protection of taxpayers’ fundamental rights and a “best practice”, which may indeed also be very useful in formulating a legislative framework for joint tax audits.

55. See European Commission, supra n. 44.
56. Another of the 34 measures contained in the Action Plan – which would be the first step towards improving the tax compliance situation in countries with a lower tax morale index – is the creation of a European taxpayer identification number (EU TIN).
57. See OECD, Joint Audit Report, supra n. 7, at 18.
58. Amongst others not allowed in Germany. Oestreicher & Reimer, supra n. 16. These authors recommend legislation giving taxpayers the right to invoke a joint tax audit.
For the time being, countries may (as a solution for the distortions in laws and regulations, and for the bottlenecks in the exchange of information and in administrative practice) follow the OECD’s advice that revenue bodies wishing to undertake a joint tax audit should ask the taxpayer to consent to an international tax audit.\textsuperscript{59,60}

The Netherlands and Germany tax authorities took up this advice in their pilot project. All companies gave their consent for the implementation of the joint tax audit, although only one of the companies gave permission for the Dutch tax officers to share all information with their German colleagues. This constraint affected the implementation of the joint tax audit. The pilot project showed that Directive 2016/11/EU – written for simultaneous controls in which countries select their own standards and their own insights – as well as the other legal frameworks referred to above, which are also not written for joint tax audits, need to be amended in order to facilitate joint tax audits.\textsuperscript{61}

### 4. Advantages of, and Obstacles to, Joint Tax Audits

#### 4.1. Advantages

Arguments mentioned in the OECD Joint Audit Report 2010 and in literature for governments to engage in joint audits are the following:

(a) **Joint tax audits may reduce compliance costs of both tax administrations and taxpayers**

This may occur as taxpayers can share the same information with multiple revenue bodies at the same time through the presence of the appropriate competent authorities.\textsuperscript{62} The costs of documentation may be reduced, processes may be improved, communication may be more efficient and management of tax issues would be “real time” and thus more effective.\textsuperscript{63} Mutual agreement procedures may be accelerated by the early involvement of the competent authority.\textsuperscript{64} Joint tax audits can also help in identifying further areas of collaboration,\textsuperscript{65} which may improve tax administrations’ supervision exerted on a risk-based audit selection.\textsuperscript{66} Enhanced relationships between revenue bodies and taxpayers may be developed\textsuperscript{67} and joint tax audits are useful tools in sharing knowledge and building capacity to improve tax audit practice.\textsuperscript{68}

(b) **Joint tax audits may encourage companies to work more effectively with revenue administrations, facilitate cooperation between revenue bodies and lower tax risks**

Joint tax audits give much room for compromise and may provide faster legal certainty, lower tax risks and a joint position of both tax authorities.\textsuperscript{69} They have generally given the

\textsuperscript{59}See OECD, Joint Audit Report, supra n. 7, at 18.

\textsuperscript{60}Id., at p. 20.

\textsuperscript{61}See Van der Hel – van Dijk, supra n. 18.

\textsuperscript{62}See OECD, Joint Audit Report, supra n. 7, at p. 24; Meickmann, supra n. 18, at 398.

\textsuperscript{63}See OECD, Joint Audit Report, supra n. 7, at p. 9; Meickmann, supra n. 18, at 398.

\textsuperscript{64}See OECD, Joint Audit Report, supra n. 7, at 8.

\textsuperscript{65}Id., at p. 8.

\textsuperscript{66}Id., at p. 9; see also R.J. Donmoyer, IRS Studying “Protocols” for joint audit with other countries (Bloomberg 2009).

\textsuperscript{67}See OECD, Joint Audit Report, supra n. 7, at 9.

\textsuperscript{68}See OECD, supra n. 41.

\textsuperscript{69}See Van der Hel – van Dijk, supra n. 18, at 499; Meickmann, supra n. 18, at 398; PwC, Emergence of New Examination Approach – Joint Audit (PwC 2011), available at http://www.pwc.com/gx/en/services/tax/newsletters/tax-controversy-dispute-resolution/joint-audits.html; PwC, Joint Audit – a new approach
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tax authorities considerable latitude regarding big-picture issues. Joint tax audits can help taxpayers and tax authorities to focus on the issue, understand the facts and come to a resolution of tax issues in a timelier manner. Moreover, tax administrations are encouraged to approach problems cooperatively and reach an agreement on the auditing process at the very beginning of the process. Joint tax audits therefore allow for the expeditious resolution of any disagreements. More than at any other time in history, bilateral tax treaties, EU regulations, numerous tax information exchange agreements, the availability of mining e-file data submissions, cross-referencing data with XBRL-based financial disclosures, and the possibility to use powerful analytics to accurately determine the audit risk of companies equip global tax administrations to pursue tax underpayments.

(c) The quality of work may rise

An essential characteristic of the joint tax audit is the auditor’s provision of intensive mutual supervision. Tax authorities would be able to share their “know-how” and gain understanding of differences in legislation, audit methodologies and procedures. This would contribute to a better and more complete analysis of the issue, prevention of double taxation and identification of cases of double non-taxation. Moreover, the quality of the audit may be raised in joint audit procedures due to the four-eyes principle, the fact that more experienced staff are involved and that joint audit team members may make use of the particular strengths and expertise of each of the team members. The more experienced auditors may train less experienced auditors and the auditors involved may recognize and learn from the different audit methodologies in participating countries.

(d) Joint tax audits are an effective tool for deterring double non-taxation, aggressive tax planning and tax fraud

An efficient and effective administrative cooperation may improve evidence that the correct and complete amounts of income, expense and tax are reported. Various studies have indicated that audits are an effective tool for deterring tax fraud. Structured cooperation in joint tax audits may enhance the impact of national tax compliance administrations’ programmes.

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70. Cockfield noted “it is becoming progressively more difficult to determine which country should assess the appropriate tax liability (along with enjoying the resulting tax revenues) on globally integrated products and services derived through cross-border investments”. For more information, see A.J. Cockfield, Globalization and its tax discontents: tax policies and international investments: essay in honour of Alex Easson pp. 5-6 (University of Toronto Press Incorporated 2010).
71. See OECD, Joint Audit Report, supra n. 7, at 9 and 23.
72. No Place to Hide: Managing Hyper-Regulation in the Corporate Tax Department, Vertex’s Exchange Europe Conference, Vertex Inc. (4-5 Apr. 2011); B. Norton, Hyper-Regulation Leaves No Place To Hide, Financial Executive Magazine (Jan./Feb. 2011).
73. See OECD, Joint Audit Report, supra n. 7, at 8.
74. Id.
75. See Oestreicher & Reimer, supra n. 16, at 82.
76. Id.
77. According to some of the countries asked to identify opportunities for joint tax audits in the 2009/2010 OECD Survey; see OECD, Joint Audit Report, supra n. 7, at 23.
78. Id., at 8.
79. Id.
and revenue collection, detecting and redressing individual cases of non-compliance. As US Commissioner of Internal Revenue Douglas Shulman noted, “joint audits would be a part of a global effort to crack down on cross-border tax evasion, spurred in the last year by tax-evasion cases involving banks in Liechtenstein and Switzerland”. Consequently, joint tax audits can act as an effective tool for deterring challenging taxpayers who push legal boundaries and rely on a lack of transparency in cross-border situations and tax fraud. This is particularly beneficial to developing countries, as expertise on preventing aggressive tax planning, risk profiling, compliance practices and collecting additional revenue may be exchanged.

**(e) Joint tax audits may prevent tax authorities’ free-rider problems**

This occurs when those who benefit from resources, goods or services do not pay for them. Tax evaders and aggressive tax planners are free riders. They benefit from government expenditures without contributing their share to the government’s income. Joint audits may lead to more effective challenges to those taxpayers who push legal boundaries and who rely on lack of transparency in cross-border transactions.

**(f) The tax compliance and tax morale level may be increased**

The tax compliance and tax morale level may increase due to the fact that, amongst others, on the one hand revenue administrations will focus on high-risk taxpayers and, on the other hand, companies will try to be better in control of their tax position and try to lower their risk rating. Furthermore, Alm, Jackson and McKee show some empirical evidence that changes in audit rates affect compliance beyond the audited individuals themselves. Audits are believed to have an “indirect deterrent effect” on taxpayers not audited that increases compliance.

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81. See Donmoyer, supra n. 66.
82. See OECD, Joint Audit Report, supra n. 7, at 9.
83. Mentioned as an opportunity by six of the countries that replied to the OECD Joint Audit Survey (see OECD, Joint Audit Report, supra n. 7, at 23).
85. See OECD, Joint Audit Report, supra n. 7, at 9.
88. According to Dubin, Graetz and Wilde (1990), in an econometric study using US state-level reporting data for the years 1977 to 1986, for every dollar of revenue produced because of taxpayer audits, an additional USD dollars of revenue was generated from the indirect or “ripple” effects. For more information, see J.A. Dubin, M.J. Graetz & L.L. Wilde, The Effect of Audit Rates on the Federal Individual Income Tax, 1977-1986, 43 National Tax Journal 4, pp. 395-409 (1990); Dubin estimates an even larger ripple effect, at USD 8 to 12. For more information, see J.A. Dubin, Criminal Investigation Enforcement Activities and Taxpayer Noncompliance, California Institute of Technology Working Paper No.1200 (2004); Tauchen, Witte & Beron use taxpayer audit data from the 1969 Taxpayer Compliance Measurement Program (TCMP) and find that raising the audit rate had overall a smaller impact, and one mainly felt on high-income wage and salary workers; for this group of taxpayers, they estimate an indirect effect of audits that is almost three times the direct revenue effect. For more information, see H.V. Tauchen, A. Dryden Witte & K.J. Beron, Tax Compliance: An Investigation Using Individual TCMP Data, National Bureau of Economic Research Working Paper No. 3078 (1989).
(g) Less corruption may occur due to the four-eyes principle

This is important for advanced economies with a high tax morale and high tax compliance– as four eyes see more than two – and, all the more, for developing countries where, compared to most developed countries, the tax morale and tax compliance is generally low and corruption is high. Allowing independent review of reports by international auditing members may help diminish inspectors’ potential to protect corrupt taxpayers from audit.

(h) Joint tax audits guard against conflicts of interest among participating parties

Both countries obtain the same information and are in a position to agree on the facts and the interpretation of facts. The joint audit team that conducted the multilateral project described in Annex 4 of the OECD Joint Audit Report 2010 drafted a Protocol Document in which they established and agreed to a comprehensive operating framework for their collaboration.92 Such “Protocol Document” may provide assurance that members of the joint audit team do not exceed their authority. It also enables crosschecking in order to ensure consistency and “fit”, both at individual tax administration and overall collaboration. The experiences of the tax authorities involved in the multilateral project described in the OECD Joint Audit Report

89. Evidence that the four-eyes principle is effective in commercial practice is provided by, for example, K. Iltonen & P.C. Tronnes, Benefits and Costs of Appointing Joint Audit Engagement Partners, 34 Auditing: A Journal of Practice & Theory In-Press 3 (2014), available at http://dx.doi.org/10.2308/ajpt-50934 (visited 8 May 2016). The four-eyes principle is also recognized by the OECD, Report on Strengthening Tax Audit Capabilities: General Principles and Approaches (OECD 2006).

90. It has to be noted that not all advanced economies have high tax morale. According to Table 5, Austria, Belgium, Ireland and the Netherlands have a tax morality index below the EU-28 average and, vice versa, not all countries in transition have a low index (i.e. Cyprus, Croatia).

91. It should be noted that according to the OECD Foreign Bribery Report, bribes are being paid to officials in economies at all stages of development, not just developing economies as many might have believed. For more information, see OECD, Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials (OECD 2014), available at http://www.oecd.org/corruption/oecd-foreign-bribery-report-9789264226616-en.htm. The OECD has highlighted the role of tax auditors in combating the corrupt practices of private and public officials. In its Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors, the OECD emphasizes that the role of tax auditors appears to be essential in order to ensure the effective and vigorous application of laws. The recommendations provide guidance to tax examiners and auditors to detect, deter and prosecute all forms of corruption. See OECD, Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors (OECD 2013).


In order to demonstrate the role of tax officials in detecting and reporting foreign bribery cases, the OECD published a new report on 2 December 2014 based on an analysis of the crime of bribery of foreign public officials. According to the OECD Foreign Bribery Report, in 60% of cases, the company associated with the corrupt transactions was a large company with more than 250 employees; in the majority of cases, bribes were paid to obtain public procurement contracts (57%), followed by clearance of customs procedures (12%) and favourable tax treatment (6%). For more information, see OECD, Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials (OECD 2014).

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2010 show that such a Protocol Document fosters a sense of community, shared ownership and trust for all parties involved.93

4.2. Obstacles

According to Michael Danilack, Deputy Commissioner (international), IRS Large Business and International Division, the Internal Revenue Service of the US, even though a variety of advantages have been identified, tax authorities are still “feeling their way along with joint audits”.94 Indeed, joint tax audits do also have downsides.

Alink and Van Kommer refer to:

- the differences in legal systems, administrative procedures and audit standards and practices; and
- the practical issues forming barriers for effective implementation of joint audits mentioned in the OECD Joint Audit Report 2010, including time limits in domestic legislation, differences in legal obligations for taxpayers and third parties to provide information, different record-keeping requirements and differences of opinions/interpretations of legal provisions, logistical issues, resource constraints and language barriers.95

Oberson points out countries that intend to carry out a joint audit need to determine the legal framework according to which they can cooperate before they start. He identified the following obstacles to an efficient joint audit procedure:

- a foreign state’s tax officers are not allowed to perform their own tax examinations or exercise any kind of authority functions in the territory of the state concerned, and vice versa, according to its domestic law;
- authority is still (apart from joint tax audits conducted under the EU Mutual Assistance Directive) absent;96
- the different languages used by the authorities of the different countries may form an impediment;
- conflict situations may arise due to different procedures and rules followed by the various tax inspectors involved in the examination;
- different domestic rules concerning the collection of information and the taxpayer’s involvement can make the proof and information recovered not usable for one of the participating countries; and
- excessive time consumption may be the result of the discrepancies identified.97

In their report on transfer pricing written for the German Foundation of Family Companies, Oestreicher and Reimer emphasize the importance of soft skills.98 This was also reflected upon in the report on the experiences of the tax authorities involved in the multilateral project described in Annex 4 of the Joint Audit Report. A good legislative framework for joint tax audits alone is not enough. The parties involved must be able to communicate with each

93. Id., at Annex 4, 54.
95. M. Alink & V. van Kommer, Handbook on Tax Administration (Second Revised Edition), sec. 6.9.10. (IBFD 2016), Online Books IBFD.
96. See Oestreicher & Reimer, supra n. 16, at 84.
97. See Oberson, General Report, supra n. 24, at 44.
98. See OECD, Joint Audit Report, supra n. 7, at Annex 4, 55.
other and must understand foreign law and tax treaty law. Moreover, joint tax audits require tax administrations to have staff able to answer questions with a foreign dimension.\footnote{See Oestreicher & Reimer, \textit{supra} n. 18, at 84.}

5. **Measuring the Possible Impact of Joint Tax Audits: Countries Overview**

As mentioned in section 2., the authors’ aim is to add to the discussion on joint audits from a legal and practical perspective, and to answer the question, “Which countries may benefit most from joint audits?” There are no direct ways of measuring the impact of joint tax audits in terms of length of time, outcome achieved, resource employed, etc. This is not surprising as joint tax audits are still in their infancy and no significant sample sizes are available. Any data collected on these issues will only provide information on the specific joint tax audit.

The authors have therefore used indirect ways of obtaining information about the beneficial effects of joint audits.\footnote{Audit activity is defined as any activity conducted by a competent tax authority to verify compliance.} Assuming the arguments mentioned in the OECD Joint Audit Report 2010 and tax literature listed in section 4.1. (arguments (a) – (h)) are true, the authors have analysed publicly available data in order to show which countries may benefit most.


It is important to keep in mind that indicators and data used are well known, reflect authors’ perceptions and are not objective and quantitative measures of actual joint tax audit advantages. One good feature is that the various data available are highly correlated among

themselves (e.g. paying taxes indicators with value of revenue derived from tax collection, tax capacity and shadow economy, tax efforts and corruption perception index, number of taxpayers per auditor and tax collection cost, tax morale and size of shadow economy, tax compliance and value of assessments derived from tax audits, etc.). When it is not clear which argument is best and data (factors) are highly correlated with themselves, an instrument that addresses all arguments is the best.

In Table 8, a per-country overview is given of the factors that may determine a state’s interest in joint tax audits. An overview of the number of positive factors per country is provided for in Table 9.

5.1. Argument (a): Joint tax audits may reduce compliance costs of both tax administrations and taxpayers

As mentioned in section 4., one of the advantages of joint tax audits mentioned both by the OECD and in tax literature is that they may make it easier for both revenue bodies and taxpayers to deal with tax compliance costs, although, on the other hand, IFA general reporter Oberson mentioned such audits may be more financially burdensome. Statistical evidence on this issue is lacking, which is not surprising since the administrative costs related to joint tax audits in the experimental phase will not be representative for the costs that will be related to joint tax audits when the instrument is more mature.

Publicly available data that provide insight into which countries may benefit most from this argument are available, though, in the field of public finance. For companies, paying taxes indicators are widely used for measuring the tax compliance costs of companies. These indicators are the total tax rate, the time to comply and the number of tax payments indicator. Obviously differences in tax rates, number of tax payments and time to comply are three of the main reasons for individual and company profit shifting. For measuring the costs of countries, the cost of collection ratios are used, indicating the percentage of net tax revenue collection that is spent on administrative costs.

Companies

Table 1 provides an overview of the paying taxes indicators: total tax rates (%), time to comply (hours), number of tax payments, as well as of the GDP per capita in USD. The total tax rate measures the tax cost (as a percentage of profit) borne by the standard firm in the second year of operation, expressed as a share of commercial profit. The time to comply indicator captures the number of hours it takes to prepare, file and pay (or withhold) three major types of taxes: profit taxes, consumption taxes and labour taxes, including payroll taxes and social security contributions (SSC) for a case study company. The number of tax payments measures the frequency with which the company has to file and pay different types of taxes and

103. Good features of factors contain features highly correlated with groups of arguments. Thus, the classification of arguments is strongly related to the correlation among the factors used. The essence of these factors is that they interpret observable phenomena as signs of different cultural and economic backgrounds among analysed countries. With “good features” for all the data available, the authors are closer to characterizing the underlying problem and to highlighting the role of joint tax audits in solving that problem.

104. Compliance costs measure the time and resources expended by taxpayers to comply with the tax system. According to R.S. Avi-Yonah et al., these costs include “the value of individuals’ time spent learning the tax law, maintaining records for tax purposes, completing and filing tax reforms, and responding to any correspondence from the tax administration (including tax audits)”. For more information, see R.S. Avi-Yonah, N. Sartori & M. Omri, Global Perspectives on Income Taxation Law, p. 15 (Oxford University Press 2011).
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contributions, adjusted for the manner in which those filings and payments are made. The authors have also added the GDP per capita, as this shows that there is a relation between the time to comply and the GDP per capita.

Table 1 shows differences in the paying taxes indicators. Thus:
- the lowest total tax rates correspond to 7.4% and 16.4% in Macedonia (FYR) and Georgia, respectively, compared with 65.4% and 66.5% in Italy and France, respectively;
- taxpayers in Luxembourg and Switzerland need the least time to comply – 55 and 63 hours, respectively – compared with Bulgaria and the Czech Republic – 454 and 413 hours accordingly; and
- the lowest number of payments recorded is 4, 5 and 5 achieved by Norway, Ukraine and Georgia, compared with the highest number recorded of 67 and 45 in Bosnia and Herzegovina and Serbia.

Digging deeper into the data has allowed the authors to make the following assumptions about interdependencies between the number of tax payments, the time to comply and the GDP:
- the development level of countries: developed countries have a small number of taxes which greatly simplifies both tax collection procedures and the time spent by taxpayers to pay their taxes, thereby making the perception of paying taxes more “attractive and friendly”;
- the geographical location (north/south position of countries): essentially, the authors have observed an increase in the time it takes in southern countries to pay taxes compared with northern countries (e.g. all the Nordic countries, such as Denmark, Iceland, Finland, Norway and Sweden, as well as countries such as Estonia, Ireland, the Netherlands and the United Kingdom, are in the range 0-150 hours, while the Balkan states and countries such as Italy and Portugal, etc., are placed between 251-300 and over hours); and
- the income per capita: the richer the country, the less cumbersome the tax system of the country. All countries in the range of less than 150 hours on the paying taxes indicator have a GDP per capita in the range USD 23,666 – USD 114,551, except for Estonia and Macedonia (FYR) where the indicator shows USD 5,215 and USD 19,631. Vice versa, all countries in the range of more than 250 hours have a GDP per capita in the range USD 4,435 – USD 21,514, except for Italy and Slovenia where the indicator shows USD 35,815 and USD 23,164 accordingly.

Tax administrations

To highlight the important driving reason for a “reduction of the tax compliance costs for the tax administrations”, the authors decided to analyse (1) the Cost of Collection Ratios (defined as administrative costs divided by net revenue) and (2) administrative expenditure on tax verification and audit activities. The authors assume that countries with higher expenses devoted to tax audit, investigation and other verification-related activities could be more interested in joining their efforts.

Table 2 contains information on:
- staff usage on tax verification (in FTEs)/audit activities as a share of total usage in FTEs. This ratio provides insight into how resources are allocated across compliance functions,

105. The Paying Taxes Indicators are calculated annually by PwC, the World Bank and IFC; see PwC, supra n. 101.
106. See OECD, Tax Administration 2015, supra n. 101, at Tables 5.6 and 5.7.
specifically associated with audit, investigation and other verification activities. In other
words, it shows how many staff are devoted to verification activities as a percentage of
total staff usage;

- **cost of collection ratio.** This ratio shows a comparison of inputs (e.g. administrative
costs) to outputs (e.g. tax revenue collections after refunds) over the course of the fis-
cal year. Most often, this ratio is influenced by initiatives that reduce relative costs (e.g.
 improve efficiency) or improve compliance and revenue (e.g. improve effectiveness). Thus, researchers have a natural tendency to make cross-country comparisons of Cost of Collection Ratios and draw conclusions on tax administration efficiency and effective-
ness; and

- **salary costs as a share of administrative costs.** The general core of cost ingredients
of administration include staff costs (e.g. wages, training), buildings and equipment,
information technology (IT) soft and hardware, maintenance, utility changes and other
operational costs (e.g. paper, printing material). A high ratio of salary costs as a share of
administrative costs implies relatively high staffing costs.

The information provided concerns the year 2013, being the most recent year on which infor-
mation was available at the time of writing (May 2016).

In most countries, the amount of administrative cost is considerable. As we can see from the
Cost of Collection Ratios, one third of the analysed countries are spending 1% or more of net
tax revenue per year in collecting their taxes, which can run into millions of euro (for example,
Germany is spending more than EUR 7 billion per year). This may be due to variations in
aggregate **salary costs**. Table 2 shows these costs as a share of administrative costs for anal-
ysed revenue bodies. The ratios averaged around 72% in 2013, but vary significantly (52.4%
in Hungary and 84.8% in Romania). Since the onset of the global financial crisis in 2008/2009,
revenue bodies have been forced to reduce their administrative costs, for some requiring sig-
nificant staffing reductions, due to significant cuts in their budgets. In this regard, it is likely
that especially countries with high expenses devoted to salary cost (e.g. Austria, Bulgaria,
Cyprus, Luxembourg, Portugal, Romania and Switzerland) will seek to do more (e.g. improve
the cost-effectiveness of their compliance efforts) with less (e.g. reduce the number of tax
management staff):110:

- through strengthening their capacity to collect and monitor in complex tax situations;
  and

- by using one audit, one mechanism for early identification of large business tax risks, one
tax dispute process, one tax audit report, etc.

Thus we can assume that joint tax audits are a good alternative for countries to improve their
compliance efforts, while reducing staffing costs.111

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107. Id., at Table 5.4.
108. Id., at Tables 5.2 and A.6.
110. For example, the United Kingdom: staffing was gradually reduced from 79,049 in 2008 to 61,370 in 2014;
Finland has experienced reductions of 4.4% in 2014 and 2015, and around 2% after 2015; in Slovenia,
the government requires a 1% reduction of employees per year in the public sector, etc. See OECD, Tax
Administration 2015, supra n. 101, at 171-173.
111. According to Neddermeyer, the more comprehensive the tax audit system of the country in which a busi-
ness is located, the higher its cost of tax compliance. W. Neddermeyer, On-the-spot tax audits – Comparativ-
Besides, the differences in the amount of net tax revenue spent on collecting taxes in *tax audit and verification activities* may shed a light on which countries may benefit most from joint tax audits if the reduction of tax compliance costs argument is true. OECD data show tax audit and verification activities represent a major investment of tax administration resources. As we can see in Table 2, more than half of the countries analysed are in the range 30.7%-69.8% (e.g. Ireland 30.7%, Sweden 32.5% – Iceland 65.4%, Estonia 67%, Austria 69.8%) indicating an average of 45% of staff resources that are devoted to tax audit, investigation and other verification-related activities (an average of 35% for all analysed countries). For this reason alone, “the resources used for verification activities and the contribution they make to revenue collections and rates of compliance are of considerable interest to all revenue bodies”.\(^{112}\)

The issues of countries identified in the OECD Joint Audit survey as especially amenable for joint tax audits – with the exception of “criminal investigations” – all concern issues that play a major role in respect of large business. Therefore, the authors have also collected information in which countries’ value of verification actions have been focused on large business organizations. According to the OECD Tax Administration Database, over 50% of value of completed verification actions comes from large taxpayers in Denmark, France and Germany. This percentage is more than 25% in Austria, Bulgaria, Croatia, the Czech Republic, Poland, Romania and the United Kingdom.\(^{113}\)

### 5.2. Arguments (b) and (c): “Collaboration”, a key word for more effective work and higher quality of work

In order to gain insight into which countries may benefit most from the argument raised in tax literature that joint tax audits encourage companies to work more effectively with revenue administrations, facilitate cooperation between revenue bodies and lower tax risks, the authors traced statistical information on:

(i) **The number of active taxpayers per tax administration staff member, the number of taxpayers per auditor and the tax administration structure indicator (TAXSTAFF: defined as total tax administration staff per 100 citizens)**\(^{114}\)

The authors collected information on the number of active taxpayers\(^{115}\) per tax administration staff member, the number of taxpayers per auditor and the percentage of total tax administration staff per 1000 citizens for two reasons.

Firstly, joint tax audits could be a good idea especially for countries with a high number of active taxpayers per tax administration staff member and auditor, and for countries with high numbers of tax payments to proceed, which greatly increases the pressure and labour intensity per tax inspector. However, this conclusion may be too rigid as the differences in the number of active taxpayers per tax auditor/staff member can explain high rates of tax evasion

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114. This is a measurement of the size of the tax administration, with respect to the size of a country’s population. TAXSTAFF is the total number of staff of the tax administration per 1000 members of the national population.
115. Active taxpayers are registered taxpayers who are paying taxes.
(shadow economies\textsuperscript{116} in more than 30\% of nations)\textsuperscript{117} and high levels of corruption (score below 5 on scale from 1-10) in almost all former communist and Balkan countries (Table 6). If that is indeed the case, joint tax audits can be slightly beneficial to countries with a low number of active taxpayers also.

Secondly, countries with more taxpayers per auditor (e.g. Malta, Norway, Spain, Sweden, Switzerland, Norway, etc.) might find that joint tax audits are a useful tool for sharing their knowledge and improving tax audit practices by improving audit quality. De Angelo\textsuperscript{118} formulated the most popular definition of audit quality:

Audit quality is defined as the probability that a given auditor (1) will discover a breach and (2) report the breach.

Thus the main important components of audit quality are: auditor’s competence (capabilities) and auditor’s independence. Joint tax audits have a positive effect on either component of audit quality due to the impartiality and professionality of second partner reviews. In this regard, the authors assume that all countries will benefit from the work quality of the joint audit team.

(ii) The number of Mutual Agreement Procedures (hereafter MAPs)

One of the arguments raised by the countries participating in the OECD Joint Audit survey is accelerating mutual agreement procedures. A significant increase has been identified by OECD and EU public finance data.\textsuperscript{119}

(iii) Increases and decreases in the amount of tax revenue

The authors assume countries showing a decrease during the period 2010-2013 in the amount of tax revenue will benefit more from effective cooperation between taxpayers and tax administrations than other countries. Besides other reasons, such as the credit crunch,\textsuperscript{120} one of the reasons for the decrease might be an increase in (aggressive) tax planning and tax evasion behaviour.

\textsuperscript{116} Measuring the shadow economy is one method of determining the extent of tax evasion, because it provides information on the extent of non-compliance. In this regard, joint tax audits are seen as an efficient tax administrative tool that will discourage egregious tax planning, as it allows for identification of a fuller set of facts earlier, for all jurisdictions involved.

\textsuperscript{117} A good portion of the migrant-net-profit is a result of the high cash flow volatility and the taxpayer’s conscience in relation to paying taxes. Low tax morale and the weak ability of governments to collect their taxes may result in a higher tax evasion rate, thereby increasing the share of the shadow economy in both destination countries and countries of origin.


\textsuperscript{120} Especially for countries allowing the carry-forward of losses.
The information collected shows the following:

Ad. (i): The number of active taxpayers per tax administration staff member and the number of taxpayers per auditor

As Table 3 shows, the tax administration staff in the EU-28 and its associated states is particularly narrow. In 2011 (the most recent year for which the authors could find information), there were 1.3 tax administration staff members per 1,000 inhabitants on average in the EU-27. The actual figures varied enormously from 0.5 in Spain and Italy to over 1.8 in Luxembourg, Malta and the United Kingdom. A bigger difference has been observed among EU associated nations: from 0.1 in Switzerland to over 1.2 in the Ukraine. Statistical data show less than 0.9 tax administration staff members per 1,000 inhabitants in those countries. Moreover, the number of active taxpayers per tax auditor is relatively high. The lowest taxpayer to tax official ratio 354 in Lithuania, 367 in Bulgaria and 544 in France, compared to the highest average of 8,407 in Portugal, 6,733 in Greece, 6,472 in Malta, 4,130 in Norway, 3,158 in Spain and 3,083 in Sweden respectively. Among EU associated states, the Balkan nations and the Ukraine have taxpayer to tax official ratios of below 200 compared to the highest ratio, which is Switzerland, with over 15,000 taxpayers to each tax official.

The countries with the highest number of tax payments to process are Albania, Israel, Macedonia (FYR), Moldova, Montenegro, Romania, Serbia and the Ukraine.

Cyprus, Estonia, Finland, Greece, Italy, Norway, Portugal, Spain, Sweden and Switzerland have high numbers of active taxpayers per tax administration staff member and per auditor.

Ad. (ii): The number of mutual agreement procedures

The number of MAPs among OECD member countries has remarkably increased by 130.57% between 2006 and 2014 (from 2,352 to 5,423) and continues to grow each year. The time to complete a MAP case has also increased from 22.1 months in 2006 to approximately 23.79 months in 2014. However, this represents 3.51 months’ reduction in the average completion time (from 27.3 months in 2010) that demonstrates the changes in tax administration collaboration.

Governments envisage the sharing of taxpayer data more than ever before. Increased global enforcement and global information exchange across jurisdictions encourages companies to work more effectively with revenue administrations. Challenges on exchange of information clauses have accelerated the tax audit’s role, especially in managing the tax compliance of taxpayers on a voluntarily basis, which is seen as a preferable way to implement joint tax audits at this stage. Better collaboration between taxpayers and revenue administrations will help tax authorities to understand the latitude regarding big-picture issues in the earlier stages of control actions on one hand (reducing the time and saving budget resources) and can give companies advance certainty on the structure in place after the close of audit on the other hand (increasing the trust and transparency). Thus, we expect to see more taxpayers volunteering for joint tax audits from countries with high numbers of new MAP cases (e.g.

121. Certainly, the dual impact of migration can be found to affect the number of active taxpayers. For example, about 30% of Moldovan citizens are emigrants. At the same time, those citizens represent about 50% of registered taxpayers, which can substantially change all indicators of the official reports. The same characteristic condition is observed in Romania, where 20% of the population are emigrants, constituting about 35% of all national registered taxpayers. A similar situation exists in almost all former communist and Balkan countries.
in 2014, the number of new MAP cases initiated in Germany was 374, 205 in Belgium, 201 in France, 117 in the United Kingdom, 116 in Luxembourg, 109 in Switzerland, 91 in Sweden, 89 in Italy and 75 in the Netherlands). 122

Ad. (iii): Increases and decreases in the amount of tax revenue

Public finance data show that the 41 analysed countries experienced an increase of 3.2% of the total number of taxpayers during the 2010-2012 period 123 which had a positive impact on the amount of tax revenue received by the governments. However, almost half of those countries experienced a decrease in their tax revenue growth as shown in Table 4. The countries with the highest rate of decrease in tax revenue per year are Lithuania (−0.75%), Israel (−0.66%) and Cyprus (0.62%), whereas the countries with the lowest rates of decrease are Ireland (−0.01%) and Norway (−0.03%). Germany has the lowest rate of increase in tax revenue per year (0.05%) and Turkey has the highest rate of increase (1.13%).

5.3. Argument (d): The fight against aggressive tax planning and tax fraud

To give insight into which countries may benefit most from the argument that joint tax audits are an effective instrument for fighting aggressive tax planning and tax fraud, the authors investigated:

(i) The tax revenue growth rate as a percentage of GDP as result of tax audits over the period 8-3 (no newer information was available at the time of writing)

The authors’ assumption is that countries that are successful in tax auditing in general benefit more from joint tax audits than other countries.

(ii) The value of assessments/total net revenue collection over 8-3

This trend shows the increase or decrease of the aggregate value of revenue bodies’ verification results (e.g. assessed tax and penalties) as a share of net revenue collection per year for the period 2008-2013. Over a 6-year period, more than half of the analysed countries for which relevant data were available experienced a consistent increase in the aggregate value of their verification outputs. The data show a significant and continuing increase of value derived from verification actions in Belgium, Cyprus, the Czech Republic, Denmark, France, Israel, Italy, Romania, Slovenia, Spain and the United Kingdom. This may imply that these countries might benefit most from joint tax audits, if the argument of beneficial effects of joint tax audits in fighting aggressive tax avoidance and tax fraud is true.

122. The OECD reported that at the end of 2014 there were 5,423 MAP cases in ending inventory, a 18.77% increase over 2013 and a 130.57% increase compared to the 2006 reporting period. Germany (1,029), the United States (956) and France (549) had the largest ending inventory of MAP cases in 2014. For more statistical information, see OECD, supra n. 119.

123. Even though the increase in the number of taxpayers in the associated countries at 6.3% and in the EU-28 at 1.8% may not seem much, in absolute numbers this represents around 6 million taxpayers (cca. 5 million in the EU-28 and cca. 1 million in the associated countries), which is considerable. The highest increase in number of taxpayers recorded is 28.51% in Serbia and 21.21% in Cyprus. The increase in number of taxpayers recorded in Serbia and Cyprus may be a result of the changes to their policies and programmes to bring them in line with EU standards.
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(iii) The completed verification actions trends over 8-3

This trend provides an indication of the scale of tax audit and related verification activities in terms of number of actions taken/taxpayers reviewed. Two thirds of analysed countries for which relevant data is available experienced an increase in number of completed verification actions. The increase per year varies from nearest 310,000 in France, 115,000 in Poland, 102,000 in the United Kingdom to 1,400 in Estonia, 400 in Sweden, 100 in Slovakia.

Table 4 combined with Table 1 shows an indirect correlation between tax rates and the percentage of increase/decrease in revenues derived from tax audits. For example, countries with total tax rates up to 30%, such as Luxembourg, Ireland, Switzerland and Bulgaria, noticed a decrease of 0.01%, 0.04%, 0.04%, and 0.04% respectively in the value of assessments. Italy, Belgium, Spain, France, Norway, Greece, Slovakia, with total tax rates over 40%, recorded an increase of 0.99%, 0.75%, 0.57% and 0.56% respectively, and a considerable decrease of 1.20%, 0.48% and 0.46% respectively. In other words, the higher the total tax rates, the higher the increase/decrease of the tax revenue received as a result of tax audits, and the greater the beneficial effect of joint tax audits may be. It is submitted, though, that this correlation is influenced by other factors as well, such as the demographic situation, as the correlation may be the result of wealthy individuals and of corporations reducing their taxable income124 through aggressive tax planning and tax evasion behaviour and therefore should be interpreted with caution.125

Table 4 also shows the trend of the number of completed verification actions for all taxpayers, which decreased in one third of countries. This decrease can explain the negative trends of the aggregate value of revenue bodies’ verification results (e.g. Norway, Finland, Portugal, etc.) and in the effectiveness of control activities (e.g. Spain, Italy, Belgium, etc.). Some countries showed an increase in the number of completed verifications but a decrease in tax revenue growth. This may be a sign of a weak performance by the tax administration (e.g. Slovakia, Greece, etc.).

According to the OECD Tax Administration 2015 Report, there can be observed an increase in number of tax audit and related verification activities for large taxpayers organizations.

During the 2008-2013 period, more than half of the countries for which relevant data were available increased their number of control actions for large taxpayers (e.g. Cyprus, Denmark, France, Germany, Hungary, Latvia, Lithuania, Poland, Portugal, Romania, Slovakia and Turkey).

124. According to Winnett, in 2010, more than 16,000 tax returns in the United Kingdom declared incomes in excess of GBP 1 million. A year later, the number of returns declaring that level of income dropped to 6,000, costing the government £7 billion in lost tax revenue. He year after that, however, when the then UK Chancellor of the Exchequer George Osborne cut the tax rate back to 45%, the number of returns declaring incomes in excess of GBP 1 million rose to 10,000. For more information, see R. Winnett, Two-thirds of millionaires disappeared from official statistics to avoid 50p tax rate in The Telegraph (12 December 2012), available at http://www.telegraph.co.uk/news/politics/9740253/Two-thirds-of-millionaires-disappeared-from-official-statistics-to-avoid-50p-tax-rate.html.

The temporary top marginal tax rate on labour income in France in 2013-14 has cost the country 1 million jobs with 60,000 of the country’s rich now living abroad to avoid paying taxes. For more information, see I. Sparks, France has lost ONE MILLION jobs because of repressive tax regime as 60,000 of the country’s rich now live abroad, report claims, in MailOnline (26 Mar. 2013), available at http://www.dailymail.co.uk/news/article-2298936/France-lost-million-jobs-repressive-tax-regime-report-claims.html#ixzz488T10Mrt.

125. In addition, audits are thought to have a “direct deterrent effect on the individuals actually audited” and believed to have an “indirect deterrent effect on individuals not audited”. Alm et al. highlighted some empirical evidence that suggests that “changes in audit rates affect compliance beyond the audited individuals themselves”. For more information, see Alm, Jackson & McKee, supra n. 87.
Being interested in auditing large business organizations, it is the authors’ assumption that these countries will be the most interested in benefiting from joint tax audits.

5.4. Arguments (e) and (f): Tax compliance and tax morale levels

According to the OECD in its Joint Audit Report\textsuperscript{126} and tax literature,\textsuperscript{127} the use of joint tax audits may increase the tax compliance level and the tax morale level. Due to the low number of examples, it is not possible to provide statistical evidence as to whether this statement is true. What can be derived from public finance data is that, if the statement is true, those EU Member States and associated countries that are “in transition” will probably benefit most from joint tax audits. It is likely that countries with low tax compliance indices (e.g. Italy, Poland, Portugal, Sweden and Turkey) and low tax morale indices (e.g. Estonia, Lithuania, Moldova and the Ukraine) may benefit most from joint tax audits as an instrument to increase the tax morale/tax compliance level.\textsuperscript{128}

The tax compliance index, composed by Riahi-Belkaoui, and the tax morale index, composed by Torgler, provide us with information on tax compliance and tax morale in the EU-28 and the 13 associated states. Riahi-Belkaoui researched international differences in tax compliance amongst 30, mainly highly developed, countries and related these differences to selected determinants of tax morale. His findings indicate tax compliance is highest in countries characterized by high economic freedom, important equity market, effective competition laws and low serious crime rate. It shows that a powerful deterrent to tax evasion is the creation of a “tax morale”\textsuperscript{129} or climate where citizens are guaranteed economic rights and safe

\textsuperscript{126}. See OECD, Joint Audit Report, supra n. 7, at 2.
\textsuperscript{127}. According to Torgler, taxpayer audits are a central feature of the voluntary compliance system in all countries. For more information, see Torgler, supra n. 101.
\textsuperscript{128}. The significant correlation between attitudes and tax compliance behaviour has been recognized, as compliance decisions are affected by moral rules. In other words, people with higher moral values regarding tax are more likely to comply with their tax obligations and people with lower moral values are more likely to evade taxes. According to Slemrod, administration cost can be reduced by increasing voluntary compliance, but the degree of this depends on the level of tax morale. He argues that the social capital derived from the willingness to pay taxes voluntarily lowers the cost of government operation and equitably assigns this cost to citizens. For more information, see J. Slemrod, On Voluntary Compliance, Voluntary Taxes, and Social Capital, 51 National Tax Journal, pp. 485-492 (1998); Slemrod and Yitzhaki find “there may be a tendency to view a tax policy which reduces administrative cost at the expense of an equal (or greater) increase in compliance costs, because it results in a decrease in government expenditures”. For more information, see J. Slemrod & S. Yitzhaki, Tax avoidance, evasion and administration, in Handbook of Public Economics, Volume 3 pp. 1423-1470 (A.J. Auerbach & M. Feldstein, Elsevier 2002).
\textsuperscript{129}. Defined by Feld & Frey as “the existence of an intrinsic motivation to pay taxes” (see Feld & Frey, infra n. 132, at 3).
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Torgler shows that this tax morale is low in the EU Member States and associated countries that are “in transition”.

Torgler and Alm argue that tax compliance can be improved by enforcement, service and trust (referred to by these authors as the enforcement paradigm, the service paradigm and the trust paradigm) and that improving the number of tax audits and the quality of tax audits will increase detection and punishment.

Table 5 shows both the tax compliance indexes of the developed EU Member States in Riahi-Belkaoui’s sample and the tax morale index of the less developed EU Member States and associated states in Torgler’s sample. The authors have combined the data, as improvement of the tax morale will lead to higher tax compliance (tax compliance rate = declared income/obtained income). A limitation is that data are drawn from different years. Data for the same year were not available.

In the period verified by Riahi-Belkaoui, the highest tax compliance index could be found in Austria, Denmark, Finland, France, Germany, the Netherlands, Norway, Switzerland and the United Kingdom. Combining the results shown in Table 5 with those in Table 4 teaches us that countries with the lowest tax compliance indexes record the highest growth in tax collection derived from audits. For example, 1.77 vs. 0.99 in Italy and vice versa; 4.49 vs. −0.04 in Switzerland, or 3.96 vs. −1.20 in Norway, with some exceptions (e.g. France and United Kingdom). These indicators are inversely proportional: the lower the tax compliance index the higher the effect of tax audits. However, this assumption is more precise when comparing it with historical trends until the year 2011.

5.5. Arguments (g) and (h): Four-eyes principle: Safeguard against corruption and guard against conflicts of interest among participating parties

A mentioned in section 5.3., joint tax audits guard against conflicts of interest among participating parties and will, due to the “four-eyes principle” being applied, improve the quality

130. A. Riahi-Belkaoui, Relationship between Tax Compliance Internationally and Selected Determinants of Tax Morale (SSRN 2014).

131. These authors do not discuss further how this can be achieved (e.g. by using joint tax audits).

132. Graetz, Reinganum & Wilde concluded that: ... the high compliance rate can only be explained either by taxpayer’s (...) commitment to the responsibilities of citizenship and respect for law or lack of opportunity for tax evasion. For more information, see M.J. Graetz, J.F. Reinganum & L.L. Wilde, The economics of tax compliance: Facts and fantasy, 38 National Tax Journal, pp. 355-363 (1985). Furthermore, Feld & Frey have noted that tax morale is an intrinsic motivation to paying taxes, which has been seen as a main factor in leading people to behave more honestly and to provide correct information, and in improving the tax compliance rate. For more information, see L.P. Feld & B.S. Frey, Trust breeds trust: How taxpayers are treated, Working paper no. 98 (University of Zurich Institute of Empirical Research in Economics 2002).

Riahi-Belkaoui examined international differences and relates these differences to selected determinants of tax morale. He stressed the necessity for a contingency theory of tax compliance that calls on not only economic determinants of tax compliance, but also institutional and moral determinants. Riahi-Belkaoui, supra n. 101.

Torgler has shown – by a simple linear regression in tax morale and the shadow economy – a strong negative correlation between both indicators (countries with low tax morale have a large shadow economy). He concluded that a decrease in tax morale by one unit would lead to an increase in the shadow economy of roughly 20 percentage points. For more information, see Torgler, supra n. 101.

133. The value of tax revenue growth and the growth of complete verification actions between 2007-2011 is analysed in Table 4.
of the audit. A “Protocol Document” may help in preventing joint audit team members exceeding their authority. This is important for advanced economies with high tax morale, as four eyes see more than two. But it is all the more important for developing countries where the tax morale is low and corruption is high. Therefore, for this analysis (on which countries may benefit most if this argument proves to be true), the authors collected information on the size of the shadow economy and on corruption (the corruption perception index).

Numerous studies have determined that tax and social security contribution burdens are among the main causes for the existence of the shadow economy, followed by the intensity of tax regulation and complexity of the tax system. Measuring the shadow economy is one method of measuring the extent of tax evasion because it provides information on the extent of non-compliance.

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134. Joint tax audits have been recognized as anti-corruption instruments in an OECD report addressing MLA. For more information on the important role of MLA in foreign bribery cases, see the OECD, Typology on Mutual Legal Assistance in Foreign Bribery Cases, supra n. 91 and OECD, Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD 2011), available at https://www.oecd.org/dae/anti-bribery/ConvCombatBribery_ENG.pdf.

According to OECD data, tax authorities have the potential to play an important role in the detection of financial crimes, including foreign bribery. For more information, see OECD, Bribery Awareness Handbook for Tax Examiners, supra n. 91; OECD, Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors, supra n. 91; OECD, Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials, supra n. 91.

135. This paper uses the following definition of the shadow economy:

The shadow economy includes all market-based legal production of goods and services that are deliberately concealed from public authorities for any of the following reasons:

1. to avoid payment of income, value added or other taxes;
2. to avoid payment of social security contributions;
3. to avoid the necessity of meeting certain legal labor market standards, such as minimum wages, maximum working hours, safety standards, etc.;
4. to avoid complying with certain administrative obligations, such as completing statistical questionnaires or other administrative forms.

F. Schneider & C.C. Williams. The Shadow Economy, p. 25 (The Institute of Economic Affairs 2013).

136. The Corruption Perceptions Index ranks countries and territories based on how corrupt their public sector is perceived to be. No region or country in the world is immune to the damages of public-sector corruption; the vast majority of the 183 countries and territories assessed score below five on a scale of 0 (highly corrupt) to 10 (very clean). While no country has a perfect score even in Europe, one-third of analysed countries score below 5, indicating a serious corruption problem (average score in the EU-28 is 6). See Transparency International, supra n. 101.


138. Schneider clearly demonstrates that the increase of tax and social security contribution burdens is by far the most important single contributor to the increase in the shadow economy. This factor explains some 35% to 38% or 45% to 52% variance of the shadow economy with and without inclusion of the "tax morale" variable respectively. For more information, see F. Schneider, The Influence of Public Institutions on the Shadow Economy: An Empirical Investigation for OECD Countries, in Tax treaties: building bridges between law and economics p. 56 (M Lang et al. eds., 2010).
Shadow economies and corruption are closely related. Many academic papers study relationships between corruption and shadow economies, viewing them as complementary to each other and highlighting different mechanisms of how they can interact.

Furthermore, numerous studies have identified the negative impacts on tax revenue that are due to corruption. For example, Dos Santos (1995) discussed the negative impact of corruption on tax audits’ collections; Tanzi and Davoodi (1997) found that countries’ institutional qualities have significant relationships with their tax revenues, corruption being a proxy for this quality; Tanzi (1998) suggested that the IMF’s Code of Good Practices on Fiscal Transparency “if followed, would have the effect of reducing corruption”; Friedman et. al. (2000) provided evidence that countries with more corruption tend to collect fewer tax revenues relative to GDP; Iman and Davinan (2007) performed an empirical study of which taxes would yield more revenue by simply reducing the incidence of corruption in the revenue administration; Fenochietto and Pessino’s (2013) empirical analysis showed that less corruption is associated with a lower level of inefficiency in collecting taxes; and Barlow (2014) demonstrated that heightened integrity delivered increased profits.

One of the big challenges for every government is to adopt efficient incentive-oriented policy measures to make shadow economies less attractive. Corruption influences the shadow

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142. The gap between the shadow economies (max 35%) of analysed countries is very high. However, it has to be pointed out that it is not only corruption that is leading to an increase in shadow economies. For example, Georgia has nearly managed to eliminate corruption in public institutions, being ranked 12th out of 43 countries in the European region, but the share of the shadow economy is still the highest among all analysed countries. Changes in leadership and the existence of two separatist territorial entities (Abkhazia and South Ossetia) in the country facilitate the increase of this share. Similar situations are recorded in most former socialist countries, where there is a large discrepancy between the ruling oligarchy clans and the poor population, and the middle class is nonexistent or very small, derived from the first. On the contrary, developed countries, especially the Nordic countries, register a small share of the shadow economy, except the PIGS countries (Portugal, Italy, Greece and Spain). For more statistical information, see 2016 Index of Economic Freedom p. 490 (Ambassador T. Miller et al. eds., The Heritage Foundation & Wall Street Journal 2016) (see http://www.heritage.org/index/book/executive-highlights).

143. As Phan Anh Tú noted “the definitions of corruption developed by the World Bank and Transparency International are commonly used”. These institutions define corruption as “the abuse (misuse) of public power (entrusted power) for private gain.” The authors will use this concept in the meaning of the abuse (misuse) of potential tax inspectors to protect taxpayers from audit for private gain. See more information, P. Anh Tú Entrepreneurship and bribery in a transition economy: Theory and firm-level evidence in Vietnam p. 17 (University of Groningen 2012).
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The higher the level of corruption and of the shadow economy, the lower the level of economic development as measured by per capita GDP.

Table 6 presents the size of shadow economies and the corresponding corruption perception index (CPI) rankings of the EU-28 and its 13 associated states in 2014. These indicators are inversely proportional: the lower is CPI, the higher the size of the shadow economy.

The Table shows increasing trends in the corruption perception index between 2012-2014 in half of the EU-28 and its 13 associated states. One sixth of countries maintain their CPI without changes and a worsening situation can be observed for two sixths of states. The Table also shows that shadow economies are present in all of the EU-28 and its 13 associated states, starting with 6.9% and 7.8% in Switzerland and Austria and ending with more than 40% in Georgia, Moldova, Montenegro and the Ukraine. The EU-28 average of the shadow economy is 18.6%. A clear negative trend is observed in the size of the shadow economy across the states examined (with the exception of Italy, experiencing increases of 0.18% per year between 2008 and 2014).

Moreover, Table 6 shows that advanced European economies, as a group, have a higher CPI (higher than 70) than the rest of the economies analysed in the comparisons. The formerly socialist countries recorded the worst situation in terms of the CPI, the worst being Albania, Moldova and the Ukraine. It is believed, however, that countries like Bulgaria, Croatia, Romania and other formerly socialist countries have experienced considerable success countering corruption thanks to EU accession, the implementation of judicial reforms and an increase of the independence of the national anti-corruption centres. Romania has convicted more than 10,000 civil servants for corruption, including a large number of oligarchs, who seemed to be untouchable. The same situation can be found in Bulgaria and other countries. Another important factor in fighting corruption is the implementation of national monitoring and evaluation systems that provide more effective collaboration among all state institutions involved in this process. Even though the EU accession nations – many of which are now, or are expected to be, members of the European Union – made significant

144. Because of the update to the methodology, CPI scores before 2012 are not comparable over time. Thus, the authors have analysed only the changes during the 2012-2014 period. See http://www.transparency.org/cpi2014.

145. The presence of Italy in the group of the most corrupt countries may seem surprising. Certainly, the fight against corruption in this country is more like a silent war between state institutions and organized criminal groups that has been going on for hundreds of years and has infiltrated practically all state and private institutions at various levels. Italy is the “youngest” democracy of the developed countries that combines a plurality of ethnic and sociocultural groups, differentiated by languages, traditions, customs, crafts, etc., each constantly trying to impose their supremacy and “control” over the country. Mussolini’s dictatorship facilitated some of these groups and tried to exterminate others. Access to any position was conditioned by material or immaterial obligations to those who were promoted. At the same time, it is possible to see some progress in this respect, especially in recent years. P. Gounev & T. Bezlov, Examining the links between organized crime and corruption (Center for the Study of Democracy 2010).

146. J.D. Heskett, Corruption in the Balkans: an examination of the ties between government and crime in several Southeast European countries (Naval Postgraduate School 2013).


changes\textsuperscript{149} to meet the requirements for EU accession, a comparison with the advanced economies shows that EU accession countries still face significant corruption (scoring below 50). Therefore, these countries may benefit most from joint audits if the argument is true that joint audits may be effective in fighting corruption.

Not only do the shadow economy and corruption reduce the tax revenue, governments are losing a significant amount of revenue because of inefficiencies in collecting taxes (Table 7). The Tax Collection Effort – the ratio between actual tax revenue and tax capacity (the maximum level of tax revenue that a country can achieve given its economic potential)\textsuperscript{150} – measures the countries’ efficiency in collecting taxes. Table 7 shows more than one half of the analysed countries are losing up to 20% of their tax revenue.\textsuperscript{151} Approximately half of the countries efficient in collecting taxes (ranging between 60.1% to 80% Tax Collection Effort) are countries with a shadow economy of over 20% and with a CPI of between 0 and 50 (see Table 6 and Table 7).

Thus, countries with a high level of shadow economy, high incidence of CPI (which represent two thirds of analysed countries) and a low level of Tax Collection Effort, such as Albania, Bulgaria, Croatia, Cyprus, Estonia, Greece, Latvia, Lithuania, Moldova, Romania and Turkey, will be more likely to benefit from the use of joint tax audits.

6. So What Do Public Finance Data Teach Us about the Beneficial Effects of Joint Tax Audits for Countries?

The data provided in Tables 1-7 allow for a relative comparison that teaches us which states are likely to benefit most from joint tax audits if the arguments raised in tax literature (arguments (a) – (h)) prove to be valid. In Table 8, the authors provide a comparative overview of the factors that may influence a state’s interest in joint tax audits that have been found by the authors in their analysis of statistical information provided in the Annex to this article (see section 8.). These factors are:

1. cost of collection (section 5.1., Table 2);
2. time to comply (section 5.1., Table 1);
3. number of tax payments (section 5.1., Table 1);
4. percentage of large businesses verification action value in relation to total verification action value (section 5.1., Table 8);
5. MAP caseloads among OECD member countries (section 5.2.);
6. number of tax auditors per taxpayer (section 5.2., Table 3);
7. size of the shadow economy (section 5.5., Table 6);
8. increase of the value of assessments per year as a percentage of GDP as result of increases in the number of completed verification actions (section 5.3., Table 4);

\textsuperscript{149} These changes led to the adoption of many best practices in fiscal fairness, simplicity and transparency, which placed the EU accession countries ahead of other non-advanced economies in terms of fiscal compliance.

\textsuperscript{150} See, for example, Fenochietto & Pessino, supra n. 101.

\textsuperscript{151} Id. Thanks to Fenochietto and Pessino, it can be observed that countries with a high level of development are near their tax capacity. This is particularly the case of Austria, Belgium, Denmark, Finland, France, Italy and Sweden (with a tax effort higher than 90%). They also explain that “the demand for public expenditure is a crucial determinant of the higher level of tax revenue (public choice issue)”. 

Exported / Printed on 22 Jan. 2018 by IBFD.
(9) Tax Collection Effort: an index measurement of the ratio between the share of the actual tax collection in GDP and the predicted taxable capacity.\(^{152}\) It measures how well a country is doing in terms of tax collection, relative to what could be reasonably expected given its economic potential (section 5.5., Table 7);

(10) tax compliance: the degree to which a taxpayer complies (or fails to comply) with the tax rules of his country, for example by declaring income, filing a return and paying the tax due in a timely manner\(^{153}\) (section 5.4., Table 5);

(11) tax morale: the motivation of a country’s citizens to pay taxes, in addition to legal obligations\(^{154}\) (section 5.4., Table 5);

(12) change in numbers of taxpayers between 2010 and 2012 (section 5.2.);

(13) corruption: the abuse of public or private office for personal gain\(^{155}\) (section 5.5., Table 6);

(14) GDP per capita (section 5.1.);

(15) difference between the tax capacity and the real tax revenue (section 5.5., Table 7); and

(16) total tax rates: measures the amount of taxes and mandatory contributions payable by businesses after accounting for allowable deductions and exemptions as a share of commercial profits\(^{156}\) (section 5.1., Table 1).

6.1. Number of countries that may benefit per argument

In Table 8, the authors link the factors provided in this table to the arguments raised in tax literature by mentioning the letter of the respective argument addressed by each of the factors. In comparing countries' benefits, the authors assume that it is more likely that countries will be in favour of joint tax audits if comparison of the statistical data concerning the respective argument shows that the country, in respect of this particular argument compared to the EU average, will benefit more.

Table 8 teaches us the following:

(a) Reduction of compliance costs

Sixteen countries might, relatively, gain most from outputs derived from joint tax audits in respect of their Cost of Collection Ratios, which is over 0.94% of GDP, being the EU-28 average. Twenty countries and 16 countries respectively would benefit from joining their efforts in order to decrease the pressure and labour intensity per tax inspector, as the time to comply and number of tax payment indicators are over the EU average in 20 and 16 countries respectively. Eleven countries have a higher ratio of value of verification actions for large business


\(^{155}\) OECD, Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors, supra n. 83.

organizations than the EU average. These countries where verification actions focus on large business organizations would benefit more than the EU average from a joint control activity.

(b) More effective collaboration between taxpayers and tax authorities

Even though all parties are generally of the opinion that the right amount of tax should be paid, opposing interests can arise as to what is the correct amount. In order to establish a balance between these interests, a joint audit should be considered to *identify and improve further areas of collaboration* in order to avoid new MAP cases. In this regard, *eight countries* with a number of new MAP cases have been initiated over the EU average and thus might proactively seek a more collaborative approach and the application of tax controversy management.

(c) Quality of work

*Twelve countries* have a number of “tax auditor per taxpayer” ratios over the EU average. For these countries, it may be more likely that joint tax audits are a useful tool for *sharing knowledge and building capacity* to improve tax audit practices and the *quality of work* than for the other countries surveyed, though it is submitted other factors, such as level of education, might be factors of importance in determining the most appropriate number of tax auditors. These twelve countries would benefit from joint tax audits as they may use their few personnel available to deal with verification activities in a more efficient way, which ultimately would help to reduce the compliance costs of having to deal with different national systems monitored by different national tax authorities.

(d) Effective tool for deterring tax fraud

Measuring the shadow economy is one method for measuring the extent of tax evasion because it provides information on the degree of non-compliance. Public finance data show that the size of the shadow economy in at least *23 countries* is above the EU average and that they thus might be interested in decreasing the size of their *shadow economies* by using joint tax audits. Joint tax audits have a positive impact on the probability of an increase in tax revenue collection and a decrease in the taxpayers’ evasion behaviour. Table 8 also shows that *16 countries* might be interested due to the successes of tax collection derived from the audit activity, as these countries have reported a yearly increase in revenue collection derived from tax audits.

(e) Effective tool for preventing the free-rider problem of tax authorities

At least *25 countries* might be interested in *avoidance of the tax administration free-rider problem within the European context* as their *tax effort* is higher than the EU average. The free-rider problem is an economic phenomenon, which occurs when the consumer (e.g. company, individual or government) can enjoy a good or service without paying anything (or making a small contribution less than their benefit). The classic example is the case of tax evasion, when the taxpayer is consciously unwilling to pay taxes, expecting to benefit from public goods and services without any payment. As the free-rider problem also addresses governments, the authors consider that all European states should contribute their fair share
to solving cross-border tax issues. Joint tax audits can be viewed as a fair taxation instrument, within the European context, which will increase inter-nation equity.\(^{157}\)

(f) Increase in tax compliance and tax morale levels

At least five countries could be interested in joint tax audits as an instrument to increase taxpayers’ behaviour, as these countries have a tax compliance index lower than the EU average. Ten countries would benefit from improving the taxpayers attitude on paying taxes, as the tax morale index of these countries is lower than the EU average. Nineteen countries would benefit from increasing the taxpayers’ trust in authorities through joint tax audits as the increase in the number of taxpayers in these countries is higher than the EU-28 average.

(g) Less corruption

We can expect at least 26 countries to be interested in the mitigation of tax inspectors’ potential to protect corrupt taxpayers from audit as the CPI is less than the EU average. Twenty-five countries with a GDP per capita less than the EU average might benefit from reducing the damages of public-sector corruption. Eighteen countries might benefit from increasing their tax system effectiveness, as the difference between their tax capacity and real tax revenue is over the EU average.\(^{158}\)

(h) Guard against conflicts of interest among participating parties

Sixteen countries have total tax rates above the EU average. These states would benefit from the improvement of inter-nation equity derived from dealings within the European context and thus these countries might benefit more than the EU average from joint audits as a means to guard against conflicts of interest among participating states.

6.2. Number of positive factors per country

In Table 9 the authors provide an overview of the number of positive factors per country.

Taking the number of positive factors per country as – an admittedly rough – indication, the authors find Poland (12), the Czech Republic (12), Italy (10), Portugal (10), Romania (10), Cyprus (9), Latvia (9) and Slovakia (9) would, in all likelihood, benefit most.

The number of positive factors for countries that, as far as the authors could trace, have performed joint tax audits thus far is remarkably low:
- Finland (3): number of new MAPs, number of tax audits, Tax Collection Effort, change in number of taxpayers;

\(^{157}\) The concept of inter-nation equity, which was developed by Professor Peggy Musgrave, "relates to the distribution of the competence to tax among countries, not to the relative amounts of tax paid by individual taxpayers to their governments". For more information, see N.H. Kaufman, *Fairness and the Taxation of International Income*, 29 Law & Pol’y Int’l Bus., p. 153 (1998).

\(^{158}\) It was demonstrated that the smaller this difference, the better efficiency in collecting taxes. Fenochietto and Pessino estimated countries’ tax effort and capacity using three models (half normal (HN), truncated normal (TN) and truncated normal heterogeneous (TNH)). The authors of this article are using the results of the TNH model because they include corruption and inflation to represent inefficiency/distinguish "observable" heterogeneity, which is more relevant to the authors’ research. The mean of inefficiency depends on the level of corruption and the decay of the inflation level. Distinguishing "unobserved" heterogeneity is interpreted as heterogeneity that should be controlled before estimating the gap (the difference between tax capacity and tax effort). For more information, see Fenochietto & Pessino, supra n. 101.
Joint Tax Audits: Which Countries May Benefit Most?

- France (6): cost of collection ratio, ratio of value of verification actions for large business, number of new MAPs, increase of value of assessments per year as a percentage of GDP, tax effort, total tax rates;
- Germany (7): cost of collection ratio, time to comply, ratio of value of verification actions for large business, number of new MAPs, tax effort, change in number of taxpayers, total tax rate;
- Netherlands (3): ratio of value of verification actions for large business, number of new MAPs, Tax Collection Effort; and
- United Kingdom (3): number of new MAPs, increase of value of assessments per year as a percentage% of GDP, Tax Collection Effort, total tax rates.

A high number of new MAPs is observed for each of the five countries. As the absence of legislation directly allowing for joint tax audits means that the countries need the permission of the taxpayer for joint tax audits, it is not surprising that countries with high numbers of MAPs performed joint tax audits thus far: the joint tax audit suits the interest of both tax administration and taxpayer in such cases. Moreover, each of the five countries has a high ratio of tax effort and could, therefore, perform better in collecting taxes. Three of the five countries experienced a consistent increase in the aggregate value of their verification outputs from large business organizations. This may also explain the interest of these countries in joint tax audits.

7. Final Remarks

The aim of this article is to fill the gap in research by underpinning the need for joint tax audits based on public finance data to give an indication of which of the EU-28 and its associated states would benefit most from joint tax audits and for which reasons. The aim is also to support the OECD BEPS Action 11 concerning methodologies, and to collect and analyse data on BEPS and the actions to address it.

Although the authors acknowledge that public finance data should be interpreted with great care, they do provide evidence that for each of the EU-28, at least two of the arguments (a) – (h) listed above in section 4.1. count. The labour intensity per tax inspector, tax system effectiveness, cost of collection and the number of taxpayers are amongst the factors that may convince authorities in both Western and Eastern Europe to speed up the implementation of such audits. Denmark and the Netherlands might benefit more than average in respect of the joint audit as a tool to reduce the tax effort, and to effectively and efficiently audit large businesses “only”. The United Kingdom would, besides this factor, also benefit more than the EU average from joint audits as a tool to increase the tax revenue. Sweden might benefit more than average from joint tax audits, as the number of tax auditors in Sweden is less than the EU average, whereas the tax effort and the total tax rates are above the EU average. For countries with a low tax morale, low tax compliance and high corruption, such as Albania, Bulgaria, Croatia, Cyprus, Estonia, Latvia, Lithuania, Moldova and Turkey, the “four eyes principle guards against conflicts of interests amongst participants and is a safeguard against corruption” argument may trigger their interest in joint audits. For the Czech Republic,

159. In Finland, the high increase in the number of new MAPs can be observed since 2013. The number of new MAP cases initiated by 2013 and 2014 was 56 per year, which is much more than the EU-28 average. Austria and Italy have the same tendencies.
Greece, Italy, Romania, Slovakia and the Ukraine, public finance data underpin each of the arguments raised in the tax literature.

The results of the authors’ research show that, nevertheless, before a legal framework at an international or European level is developed, it is desirable to further investigate the reasons for joint tax audits and the perceived advantages and obstacles facing the countries that thus far were engaged in joint tax audits. In this respect, the authors recommend pilot projects between countries that may have other interests to those of Finland, Germany, the Netherlands and the United Kingdom (all countries having high numbers of MAPs that – the authors presume – may be most interested in joint tax audits as a tool to reduce tax compliance costs). Pilot projects could also be used to survey the validity of the argument that joint audits raise the quality of work due to the sharing of knowledge and the building of capacity.

The tax administrations involved in the multilateral project described in Annex 4 of the OECD Joint Audit Report 2010 were fully aware of the need to respect bilateral requirements as set out in the relevant income tax treaties, as well as laws relating to domestic disclosure/privacy. But this requires tax administrations to have effective legislation and staff who are well trained on the issue. Pilot projects may be used to identify the flaws.

The authors’ analysis shows many countries may be interested in joint tax audits as a tool to fight fraud and corruption. Taxpayers in such cases will not give consent for the active presence of foreign officers or for the exchange of information. Therefore pilot projects, to investigate how legislation for joint tax audits whose aim is to fight fraud and corruption, are not a viable route. Legislation can only solve that problem.

Article VIII of the US Multistate Compact on interstate audits may serve as an example for developing a multinational legal framework for joint tax audits.

Furthermore, the authors suggest that the multinational legislative framework for joint tax audits should be based on the minimum standards for the protection of taxpayers’ rights, developed by IFA-2015 general reporters Baker and Pistone, for normal audits.

The authors recommend further research on:

- whether or not all benefits and obstacles to joint audits have been identified in tax literature (e.g. an advantage may be that the tax inspectors can support the interests of their businesses vis-à-vis the other jurisdiction);
- legal issues, such as mutual or reciprocal interest in joint audit;
- the enforceability of joint audit mechanisms in both states;
- minimum standards of controlled access to data;
- legislation for joint tax audits in the case of presumed criminal activities, corruption and the like;
- the influence of the size of the countries and multi-level government structures (e.g. Germany, Italy); and
- the influence on the effectiveness and efficiency of joint audits of the organization of the tax administration (e.g. strict separation between negotiators and auditors or not).

Finally, the authors urge tax authorities, the OECD and the European Union to publish data on the use of joint audits, both in the field of direct and of indirect tax.
### 8. Annex: Public Finance Data

Table 1: Paying taxes indicators 2013

<table>
<thead>
<tr>
<th>(No. of tax payments/GDP per capita in USD)</th>
<th>Total tax rates (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Under 30%</td>
</tr>
<tr>
<td>Under 100</td>
<td>Ireland (9/51,873); Switzerland (19/85,231); Luxembourg (23/114,551)</td>
</tr>
<tr>
<td>101 – 150</td>
<td>Denmark (10/59,950); Iceland (26/47,775); Macedonia (FYR) (7/5,215); Cyprus (29/27,300)</td>
</tr>
<tr>
<td>151 – 200</td>
<td>Moldova (21/2,243); Latvia (7/15,126)</td>
</tr>
<tr>
<td>201 – 250</td>
<td>Croatia (19/13,569)</td>
</tr>
<tr>
<td>251 – 300</td>
<td>Slovenia (11/23,164); Serbia (67/6,354); Poland (18/13,826)</td>
</tr>
<tr>
<td>301 – 350</td>
<td>Montenegro (29/7,093)</td>
</tr>
<tr>
<td>Over 350</td>
<td>Albania (34/4,633); Georgia (5/4,267); Bulgaria (13/7,532); Bosnia and Herzegovina (45/4,601)</td>
</tr>
</tbody>
</table>

---

a  Source: Based on PwC: Paying Taxes 2015 and IMF World Economic Outlook Database, October 2015 data. The IMF World Economic Outlook Database, October 2015, provides data on GDP per capita in USD. For total tax rates (%), time to comply (hours), number of tax payments and more information, see PwC, supra n. 101.
Table 2: Comparison of administrative expenditure and staff usage on tax verification/audit activities in 2013

<table>
<thead>
<tr>
<th>Cost of collection ratio</th>
<th>Salary costs as share of administrative costs</th>
<th>Staff usage on tax verification (in FTEs), incl. audit activities as a share of total usage in FTEs</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Under 0.60</td>
<td>Sweden (0.39/70.1/32.5)</td>
</tr>
<tr>
<td></td>
<td>Over 0.60</td>
<td>Norway (0.41/67.3/42.6); Iceland (0.60/68.9/65.4); Estonia (0.40/76.0/67.0); Denmark (0.48/60.9/40.7)</td>
</tr>
<tr>
<td>0.61 – 0.80</td>
<td>Turkey(^b) (0.64/68.3/19.9); Croatia (0.8/57.2/19.8)</td>
<td>Spain(^b) (0.67/72.8/22.6)</td>
</tr>
<tr>
<td></td>
<td>Finland (0.75/64.8/38.9)</td>
<td>Austria(^b) (0.67/83.8/69.8); United Kingdom (0.73/58.0/42.7)</td>
</tr>
<tr>
<td>0.81 – 1.00</td>
<td>Malta (0.95/65.0/12.9); Portugal(^b) (0.99/82.9/16.8)</td>
<td>Lithuania(^b) (0.81/79.0/28.7); Moldova(^b) (1.0/73.6/30.0)</td>
</tr>
<tr>
<td></td>
<td>Ireland (0.85/73.3/30.7)</td>
<td>Israe(^b) (0.94/60.9/40.3); Luxembourg(^b) (0.93/81.0/42.1); Netherlands (0.95/73.2/41.8); Slovenia (0.89/64.9/57.6)</td>
</tr>
<tr>
<td>1.01 – 1.20</td>
<td>France(^b) (1.11/79.9/15.3)</td>
<td>Latvia (1.06/68.6/25.9)</td>
</tr>
<tr>
<td></td>
<td>Cyprus(^b) (1.16/81.2/36.7); Italy (1.05/58.5/38.4); Hungary (1.15/52.4/36.3)</td>
<td>CYPRUS (1.21/84.8/22.5)</td>
</tr>
<tr>
<td>1.21 – 1.40</td>
<td>Czech Rep.(^b) (1.31/72.1/19.0)</td>
<td>Romania (1.21/84.8/22.5)</td>
</tr>
<tr>
<td></td>
<td>Germany(^b) (1.35/79.2/39.6)</td>
<td>Bulgaria (1.25/82.9/42.0)</td>
</tr>
<tr>
<td>Over 1.41</td>
<td>Poland(^b) (1.60/68.7/24.8); Slovakia(^b) (1.43/68.7/22.9)</td>
<td></td>
</tr>
</tbody>
</table>

\(^a\) Source: Based on OECD, Tax Administration 2015, Comparative Information on OECD and other Advanced and Emerging Economies data.

\(^b\) For these countries, social security contributions are collected by separate agencies, not the revenue body. For this reason, social security contributions are not included in the revenue base for “cost of collection” calculation purposes.
Table 3: Comparison of the tax audit system employed staff

<table>
<thead>
<tr>
<th>2011 (total tax administration staff per 1000 citizens)</th>
<th>Active taxpayers per tax administration staff member</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 1000</td>
<td></td>
</tr>
<tr>
<td>Lithuania (1); Turkey (0.6); Bulgaria (1.1); Hungary (1.7); Albania (0.6); Macedonia (FYR) (0.6); Montenegro (0.9); Serbia (0.9); Georgia (0.6); Ukraine (1.2)</td>
<td>Slovenia (1.2); Germany (1.4)</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>1001-2000</td>
<td></td>
</tr>
<tr>
<td>Romania (1.1); Slovakia (1.0)</td>
<td>Moldova (0.5); United Kingdom (1.8); Israel (0.7); Latvia (1.3); Netherlands (1.4); Poland (1.3) Denmark (1.2)</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>2001-3000</td>
<td></td>
</tr>
<tr>
<td>Czech Rep (1.3); Luxembourg (1.8)</td>
<td>Cyprus (1.1); Ireland (1.3); Belgium (1.0)</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>3001-4000</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Portugal (0.9); Norway (1.2)</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Over 4000</td>
<td></td>
</tr>
<tr>
<td>Malta (1.9)</td>
<td>Greece (0.9)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Completed verification actions trends, 2008-2013 († ‡)</th>
<th>Tax revenue growth rate (as % of GDP) over 2008-2013</th>
<th>Value of assessments/total net revenue collections 2008-2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>More than −1.00%</td>
<td></td>
<td>† Norway (−1.20/−0.1)</td>
</tr>
<tr>
<td>−0.99%−−0.50%</td>
<td></td>
<td>† Finland (−0.91/0.57)</td>
</tr>
<tr>
<td>−0.49%−−0.00%</td>
<td>† Lithuania (−0.03/−0.75)</td>
<td>† Slovakia (−0.46/0.16); † Germany (−0.22/0.05); † Switzerland (−0.04/0.06); † Austria (−0.02/0.23); † Luxembourg (−0.01/0.23)</td>
</tr>
<tr>
<td>0.01%−0.50%</td>
<td>† Ireland (0.07/−0.79); † Poland (0.14/−0.75); † Moldova (0.15/−0.75); † Latvia (0.22/−0.85)</td>
<td>† UK (0.45/−0.27)</td>
</tr>
<tr>
<td>0.51%−1.00%</td>
<td>† Israel (0.85/−0.66)</td>
<td>† Spain (0.57/−0.20)</td>
</tr>
<tr>
<td>More than 1.01%</td>
<td>† Cyprus (1.21/−0.62)</td>
<td>† Malta (0.20/0.07); † Czech Rep. (0.24/0.45); † Slovenia (0.38/0.11); † EU-28 (0.04/0.19); † Denmark (0.26/0.47); † Romania (0.24/0.16)</td>
</tr>
</tbody>
</table>

a Source: Based on OECD, Tax Administration 2015, Comparative Information on OECD and other Advanced and Emerging Economies data.
Joint Tax Audits: Which Countries May Benefit Most?

Table 5: Tax compliance and tax morale indexes in EU Member States and associated states

<table>
<thead>
<tr>
<th>Highly Developed states</th>
<th>Tax compliance index</th>
<th>In-transition states</th>
<th>Tax morale index</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Italy</td>
<td>1.77</td>
<td>1. Moldova</td>
<td>1.426</td>
</tr>
<tr>
<td>2. Sweden</td>
<td>1.91</td>
<td>2. Ukraine</td>
<td>1.533</td>
</tr>
<tr>
<td>3. Turkey</td>
<td>2.07</td>
<td>3. Lithuania</td>
<td>1.546</td>
</tr>
<tr>
<td>4. Poland</td>
<td>2.19</td>
<td>4. Estonia</td>
<td>1.560</td>
</tr>
<tr>
<td>5. Portugal</td>
<td>2.18</td>
<td>5. Latvia</td>
<td>1.561</td>
</tr>
<tr>
<td>8. Finland</td>
<td>3.53</td>
<td>8. Romania</td>
<td>1.775</td>
</tr>
<tr>
<td>9. Austria</td>
<td>3.60</td>
<td>9. Czech Republic</td>
<td>1.923</td>
</tr>
<tr>
<td>10. Denmark</td>
<td>3.70</td>
<td>10. Slovak Republic</td>
<td>1.925</td>
</tr>
<tr>
<td>11. Germany</td>
<td>3.77</td>
<td>11. Croatia</td>
<td>1.956</td>
</tr>
<tr>
<td>12. France</td>
<td>3.86</td>
<td>12. Serbia</td>
<td>1.969</td>
</tr>
<tr>
<td>15. United Kingdom</td>
<td>4.67</td>
<td>15. Bosnia</td>
<td>2.172</td>
</tr>
<tr>
<td></td>
<td></td>
<td>16. Bulgaria</td>
<td>2.397</td>
</tr>
<tr>
<td></td>
<td></td>
<td>17. Hungary</td>
<td>2.536</td>
</tr>
</tbody>
</table>

Table 6: The size of the shadow economy and the corruption perception index

<table>
<thead>
<tr>
<th>Distinctive features&lt;sup&gt;a&lt;/sup&gt;</th>
<th>Size of the Shadow Economy (in % of GDP) EU-average 2014 18.6%</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Under 10% 10%-20% 20%-30% Over 30%</td>
</tr>
<tr>
<td>Under 30</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>30.1 – 50</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Slovakia (54/1/14.6/1)</td>
</tr>
<tr>
<td></td>
<td>Romania (69/1/28.1/1); Italy (69/1/20.8/1);</td>
</tr>
<tr>
<td></td>
<td>Greece (69/1/23.3/1); Turkey (64/1/27.2/1);</td>
</tr>
<tr>
<td></td>
<td>Croatia (61/1/28.0/1)</td>
</tr>
<tr>
<td></td>
<td>Albania&lt;sup&gt;c&lt;/sup&gt; (142/=/46.18/1)</td>
</tr>
<tr>
<td></td>
<td>Moldova&lt;sup&gt;c&lt;/sup&gt; (103/=/32.6/1)</td>
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<tr>
<td></td>
<td>Bosnia and Herzeg.&lt;sup&gt;c&lt;/sup&gt; (80/=/32.03/1)</td>
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<tr>
<td></td>
<td>Serbia&lt;sup&gt;c&lt;/sup&gt; (78/1/30.1/1)</td>
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<tr>
<td></td>
<td>Montenegro&lt;sup&gt;c&lt;/sup&gt; (76/1/41.4/1)</td>
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<tr>
<td></td>
<td>Bulgaria (69/1/31.2/1);</td>
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<tr>
<td></td>
<td>Macedonia&lt;sup&gt;c&lt;/sup&gt; (FYR) (64/1/34.49/1)</td>
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<td>50.1 – 70</td>
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<td>Czech Republic (53/=/15.3/1); Spain (37/=/18.5/1);</td>
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<td>Portugal (31/=/18.7); France (26/=/10.8); EU-28 (1/18.6)</td>
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<td>Georgia&lt;sup&gt;c&lt;/sup&gt; (50/=/59.93/1)</td>
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<td>Austria (23/=/7.8); United Kingdom (14/=/9.4/1);</td>
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<td>Luxembourg (9/=/8.1/1); Netherlands (8/=/9.2/1);</td>
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<td>Switzerland (5/=/6.9/1)</td>
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<td>Ireland (17/=/11.8/1); Belgium (15/=/16.1/1); Germany</td>
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<tr>
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<td>(12/=/12.2/1); Iceland&lt;sup&gt;d&lt;/sup&gt; (12/=/15.2/1);</td>
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<td>Norway (5/=/13.1/1); Sweden (4/=/13.6/1); Finland (3/=/12.9/1);</td>
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<tr>
<td></td>
<td>Denmark (1/=/12.8/1)</td>
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<sup>a</sup> Source: Based on Transparency International’s CPI 2014 (see Transparency International, supra n. 101) and Schneider (2015), Krstić & Schneider (2015) and Elgin, and Oztunalz (2010) (data on shadow economy). The most renowned researcher on issues related to the development and size of the shadow economy is Professor Schneider. Nowadays, his work is focused mainly on OECD countries. Thus, in order to cover the most recent data in all 41 countries, the authors used other resources (e.g. Elgin & Oztunalz, supra n. 101, for Israel, the Balkans and
the former USSR countries and Krstić & Schneider, supra n. 101, for data on Montenegro and Serbia). For more information, see supra n. 101.

b Distinctive features (meaning of the brackets in the table): Country rank according to CPI 2014; trends of CPI, 2012-2014 (↑↓); size of the shadow economy; trends of shadow economy, 2008-2014 (↑↓).

c Most recent data for Iceland – 2011; Serbia – 2010; Israel and Montenegro – 2007; Albania, Bosnia and Herzegovina, Georgia, Macedonia (FYR), Moldova and Ukraine – 2008.

Table 7: Countries’ tax capacity and tax collection effort\(^{ab}\)

<table>
<thead>
<tr>
<th>2011 (tax capacity – real tax revenue as % of GDP)</th>
<th>Tax collection effort</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>60.1%-70%</td>
</tr>
<tr>
<td>Under 35%</td>
<td>Albania (10.9%)</td>
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<tr>
<td>35.1%-40%</td>
<td>Bulgaria (13.9%)</td>
</tr>
<tr>
<td>40.1%-45%</td>
<td>Lithuania (17.3%); Romania (14.7%); Slovakia (16.1%); Turkey (13.6%); Switzerland (16%); Croatia (9.2%); Greece (9%); Poland (10.8%); Montenegro (9.3%); Serbia (9.3%); Spain (9%); Hungary (8.6%); United Kingdom (7.8%); France (2%); Italy (0.9%)</td>
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<tr>
<td>45.1%-50%</td>
<td>Estonia (17.1%); Ireland (17.5%); Latvia (17.7%); Czech Republic (13.8%); Germany (10.4%); Iceland (13%); Iceland (13%); Luxembourg (12.3%); Portugal (13.2%); Slovenia (13.9%); Slovakia (13.9%); Ukraine (10.7%); EU level</td>
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<tr>
<td>50.1%-55%</td>
<td>Norway (6.2%); Netherlands (9.5%)</td>
</tr>
<tr>
<td>Over 55%</td>
<td>Belgium (6.6%); Denmark (4.4%)</td>
</tr>
</tbody>
</table>

\(^{a}\) Source: Based on Fenochietto and Pessino (2013) data. See Fenochietto & Pessino, supra n. 101.

\(^{b}\) Data for Bosnia and Herzegovina, Georgia, Macedonia (FYR) and Malta are not available.
Table 8: Factors that may determine a state’s interest in joint tax audits

| (h) Total tax rates (over 42% – average EU), 2013 | + | + | + | + | + | + | + |
| (g) and (h) Difference tax capacity – real tax revenue as % of GDP over 10.58% – average EU, 2011 | + | + | + | + | + | + |
| (g) and (h) GDP per capita (less than USD 33,742 – average EU), 2013 | + | + | + | + | + | + |
| (g) Corruption (less than 6.42 – average EU), 2014 | + | + | + | + | + | + |
| (f) No. of taxpayers, change in % between 2010-2012 (over 1.8% – average EU), 2012 | + | + | + | + | + | + |
| (e) and (f) Tax morale (less than 1.94 – average EU Member States) | + | + |
| (e) and (f) Tax compliance (less than 3.3 – average EU Member States) | + |
| (e) Tax effort (over 0.67% – average EU), 2011 | + | + | + | + | + | + | + |
| (d) Increase of value of assessments per year as % of GDP, 2008-2013 | + | + | + | + | + | + |
| (d) Shadow economy (over 18.6% – average EU), 2014 | + | + | + | + | + |
| (c) No. of tax auditors per taxpayer (over 2320 – average EU), 2011 | + | + | + | + | + |
| (b) No. of new MAP cases initiated (over 46 per year – average EU), 2006-2014 | + | + | + | + | + |
| (a) Ratio of value of verif. actions for large business in total value of verif. actions (over 27% – average EU), 2013 | + | + | + | + | + | + |
| (a) No. of tax payments (over 12 – average EU), 2013 | + | + | + | + | + |
| (a) Time to comply (over 189 hours (h) – average EU), 2013 | + | + | + | + | + | + |
| (a) Cost of collection ratio (over 0.94% – average EU), 2013 | + | + | + | + | + | + |

Country/reason (latest available data)

| | Albania | Austria | Belgium | Bulgaria | Bosnia and Herzegovina | Switzerland | Cyprus | Czech Republic | Germany | Denmark | Estonia | Greece | Spain | Finland | France |
| | + | + | + | + | + | + | + | + | + | + | + | + | + | + | + | + | + |

Exported / Printed on 22 Jan. 2018 by IBFD.
Joint Tax Audits: Which Countries May Benefit Most?

<table>
<thead>
<tr>
<th>Country/reason (latest available data)</th>
<th>Georgia</th>
<th>Croatia</th>
<th>Hungary</th>
<th>Ireland</th>
<th>Israel</th>
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<th>Luxembourg</th>
<th>Latvia</th>
<th>Moldova</th>
<th>Montenegro</th>
<th>Macedonia (FYR)</th>
<th>Malta</th>
<th>Netherlands</th>
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<tr>
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<tr>
<td>(g) and (h) Difference tax capacity – real tax revenue as % of GDP over 10.58% – average EU, 2011</td>
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Source: Based on the authors’ analysis.
Table 9: Overview of number of positive factors per country

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Source: Based on authors' analysis.