



TAX LAW

TECHNICAL NOTES

Legislating for Fair and Effective Tax Collection

Irving Aw, Brendan Crowley, Cory Hillier, Rose Nyongesa,
Lydia Sofrona, and Christophe Waerzeggers

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Overview

Fair and effective tax collection is critical to the success of any tax system in raising revenue and should be properly legislated. Voluntary payment of taxes by taxpayers is always preferred and should be encouraged and supported by the tax procedure legal framework. However, the law should also provide for protective measures to prevent taxpayers from frustrating tax collection efforts by taking either themselves or their assets out of the tax administration's reach. As a last resort, the tax administration should be able to compel the recovery of outstanding tax debts from taxpayers or certain third parties through different legislative measures. Such powers should however be complemented by adequate safeguards for taxpayers.

This note focuses on the key issues that should be taken into consideration in designing tax law provisions to support fair and effective tax collection.

Executive Summary

Nonpayment of taxes can have several causes, such as lack of tax certainty or ineffective deterrence against noncompliance. These could be addressed by designing comprehensive, clear, and simple rules in substantive and procedural tax legislation, by having a well-designed advance tax rulings regime, as well as an effective interest and tax penalties regime, in place.

However, there might also be cases where taxpayers do want to pay their taxes but may be unable to do so because of financial constraints or other difficulties. Several mechanisms can be deployed in tax legislations to assist taxpayers in paying their taxes in such cases. Credits and amounts owed by the government to the taxpayer could be used to offset against the taxpayer's tax liability. Where offsets are insufficient to extinguish the tax liability, tax administrations may also choose to grant payment facilities such as installment arrangements.

Tax legislations should contain various protective measures to prevent noncompliant taxpayers from frustrating the collection of taxes. Tax clearance mechanisms can be helpful in certain situations but should not be unduly burdensome or impede legitimate transactions.

Tax legislations should also contain necessary measures to prevent taxpayers from taking their assets outside the reach of the tax administration, with appropriate safeguards. The use of tax liens supported by a proper lien registration system can be effective in securing the tax administration's claim on the properties of noncompliant taxpayers. The power to instruct third parties holding a taxpayer's assets to refrain from dealing with those assets can be applied in a preemptive manner where tax liability has not yet fallen due and therefore should be accompanied by appropriate safeguards to prevent abuse. Any ability of the tax administration to disregard fraudulent conveyances of a noncompliant taxpayer's assets for tax collection purposes should not invalidate bona fide transfers. Travel restriction orders against taxpayers with outstanding tax liabilities can also be used to prevent noncompliant taxpayers from taking themselves out of the jurisdiction, subject to constitutional constraints in a given jurisdiction and adequate due process safeguards. Partial payment of disputed tax amounts by a taxpayer can mitigate some of the nonrecoverability risks pending resolution of disputes where they arise but must be carefully designed to ensure fairness to impecunious taxpayers with legitimate cases.

Finally, tax legislations should provide for means of compelled recovery of taxes as a last resort measure. In cases where the prevalence of super-priority status for tax debts over other debts is reduced, the importance of having other forms of compelled recovery measures becomes heightened. These include (1) the ability to recover tax debts directly from third parties that owe money or will owe money to the taxpayer, including employers and banks; (2) the power of distraining and selling assets of the taxpayer; and (3) imposing secondary liability on managers and controlling members of entities. Given the intrusiveness of these measures, particular care should be taken in their design to safeguard the legitimate interests of taxpayers and bona fide third persons—while the tax administration should deploy these tools proportionately, generally giving priority to less intrusive measures before deploying more intrusive ones. Tax debts that have become unrecoverable should be able to be written off, but the process surrounding their write-offs should be carefully circumscribed to ensure appropriate transparency and accountability.

The design of powers relating to protective measures or measures to compel payment of taxes is influenced by various factors. These include the design and effectiveness of the legal provisions in a jurisdiction for overall debt recovery, the ability and capacity of the court system to play a role in authorizing the use of powers without creating undue delay, the nature of each specific power, and the burden it places on the taxpayer or a third party. Where appropriate, it may be preferable to rely on well-developed broader debt recovery provisions within a country's legal framework than introduce special powers for tax debt. The ultimate form of any protective and compelled recovery provisions to be adopted by a given country would need to take into account the country's specific legal tradition and system—including any constitutional and other relevant domestic laws¹—as well as its political and administrative structure and fiscal policies.

Similar considerations apply on the distribution of powers between the tax administration and the court system for the application of recovery measures. While this greatly depends on specific country circumstances, a balance must be struck between efficient administration of the framework and adequate and timely taxpayer protections, including an effective appeals system. Key design considerations include a more active role of the courts for more pervasive measures and ensuring access to judicial review of the measures taken by the tax administration.

Where a protective or compelled recovery measure is being designed, appropriate safeguards should be put in place to ensure that powers are not misused. Key considerations in the design of appropriate safeguards include (1) a clear legal framework on collection and recovery powers, preferably consolidated in a separate tax procedures act to ensure uniform application for all tax debts; (2) robust governance structures in the application of measures, including clear and transparent

¹ For example, general (civil) law, administrative law, bankruptcy law, and laws on civil and administrative procedures.

conditions in the exercise of discretion; (3) a statutory collection due process framework, including ensuring prompt taxpayer access to emergency recourse measures against recovery actions; and (4) a staged and proportional application of more intrusive measures, including court oversight of the measures taken where appropriate.

There are distinct advantages to unifying tax procedures more generally across tax types in particular when administered by the same tax administration. Unifying tax procedures across tax types vastly improves the transparency and predictability of the tax system as a whole, further supporting voluntary compliance. This approach also facilitates the development by the tax administration of modern tax collection and debt management policies and processes consistent across all types of taxes administered by it. Finally, it reduces the overall complexity of the tax legislation, regardless of the choice of legal instrument (for instance, a single law on tax procedures or codification of all relevant procedural rules in a separate chapter of the tax code).

Sample provisions to illustrate the legal techniques discussed in this note are in the appendices. Appendix 1 contains some sample protective measures discussed in the “Protective Measures” section, while Appendix 2 illustrates compelled recovery provisions discussed in the “Compelled Recovery of Taxes” section. These sample provisions are general in nature and simplified and do not take into account the individual circumstances of any particular tax and broader legal system.

The remainder of this note is organized as follows. The “Encouraging Voluntary Payment of Taxes” section covers the legislative methods by which the voluntary payment of taxes by taxpayers could be encouraged. The “Protective Measures” section discusses some common protective measures that prevent taxpayers from either taking themselves or their assets out of the tax administration’s reach. The “Compelled Recovery of Taxes” section considers common legislative tools that can be used to compel the payment of taxes by taxpayers or certain third parties. The note also briefly discusses collection of taxes in time of crisis, focusing on lessons learnt during the COVID-19 pandemic.

Encouraging Voluntary Payment of Taxes

It is always preferable for taxes to be collected from taxpayers on a voluntary basis. A carefully designed set of incentives and disincentives is essential to provide the necessary impetus for voluntary and timely tax payment. One of the key ways to promote voluntary compliance is to have an effective interest and tax penalties regime in the domestic tax legislation (Waerzeggers, Hillier, and Aw 2019). Advance tax ruling regimes can also be useful in encouraging voluntary tax compliance (Waerzeggers and Hillier 2016). This section discusses other legal design features of a tax system that can be considered to support voluntary compliance.

Offsets and Installment Arrangements

Before taking more aggressive collection action—such as seizing property owned by the tax debtor—the tax administration will commonly first take steps to offset the tax arrears or consider granting payment facilities to the debtor. Offsets would typically be applied against tax refunds and other credit balances (including, for value added taxes) that may be owed to the taxpayer. A specific legal provision would commonly be adopted to support the offsetting of amounts. Such a provision should be designed to interact appropriately with any general (civil) law provisions that might apply to debt offsets. It would usually enable any credit, refund, or other amount owing to a taxpayer to be applied or offset against, or otherwise dealt with by the tax administration to reduce, in whole or in part, the taxpayer's outstanding tax debt. While consideration could be given to further extending the possibility to offset tax debts against other public monies owed to the taxpayer, in particular where such non-tax payments are also managed by the tax administration, safeguards may be needed depending on the nature of such non-tax entitlements (for instance, to avoid hardship situations where social benefit payments may be involved).

Often, taxpayers with outstanding tax liabilities are willing to pay their taxes but are not able to make payment for the full amount immediately, even after taking into account offsets. Therefore, tax administrations should have the ability to either grant a payment extension or enter into more flexible installment payment arrangements with such taxpayers. Installment arrangements could be made available either on request on a case-by-case basis or through an administrative or statutory installment program that taxpayers can avail to without application, subject to the satisfaction of certain conditions. In either case, these arrangements should have a clear legal basis and be subject to transparent procedures, supported by administrative guidance for taxpayers explaining the circumstances in which an installment arrangement may be available. For example, installment arrangements may be considered in cases where the tax authority determines, on the basis of a financial statement prepared by the taxpayer, that the taxpayer faces a genuine hardship—as opposed to mere inconvenience—if it were to pay the tax debt in a single payment. The tax administration should also have the power to require collateral or other forms of security from a taxpayer as a condition for delayed or installment payment arrangements, based on clear risk assessment criteria (in particular, in cases of lengthy installments) on a case-by-case basis.

As installment payment arrangements represent a deferral of the collection of taxes, it is generally necessary to charge interest on the running balance of the tax debt to preserve the real value of the tax amount and preserve horizontal equity. However, some countries waive the whole or a portion of the interest due to encourage immediate payment of the principal, including through electronic means.² A cost-benefit analysis is necessary to weigh the interest forgone against the benefits of moving taxpayers to an electronic payment system, which could be easier and cheaper to administer compared with manual processing by tax officers. In designing such a system, the amount of interest foregone could also be limited by prescribing a smaller number of interest free installments for taxpayers who have higher tax liabilities, for example, corporate taxpayers.

In designing an installment arrangement or program, consideration should be given to the number and frequency of installments, as well as the duration of the installment period and any consequences for missing an installment payment. As a general rule, the number of installments and duration of the installment period should be kept to the minimum necessary to facilitate voluntary payment of taxes. It is also common to require that taxpayers be compliant as to their filing obligations as a condition for entering into an installment program. Even though the charging of late payment interest will preserve the present value of the tax amount, delayed tax payment would have an impact on the cash flow of the budget, especially when installments span the fiscal year. Moreover, in particular where collateral is not required, a longer installment period presents higher risks of default and noncollection of tax. It is also common to provide for the whole balance of the tax outstanding to become immediately payable when a taxpayer defaults in the payment of any installment, unless another installment payment arrangement has been entered into with the taxpayer. However, for the reasons set out earlier, successive installment arrangements should be avoided.

² For example, Singapore allows for interest-free installments when payments are made electronically, with a view to encourage taxpayers to adopt electronic means of payment.

Waivers and Write-Offs

Some countries permit tax officials to waive part of the main tax liability of a taxpayer on a discretionary basis. This is not generally recommended for a number of reasons. First, horizontal equity is compromised as compliant taxpayers are effectively penalized for having paid their taxes in full and on time. Second, it creates a disincentive for taxpayers to pay their taxes in a timely fashion by generating expectations that the amount could eventually be reduced under a compromise. Third, without clear criteria and guidelines on how tax officials should exercise this power and strong governance of the tax administration in terms of accountability and transparency, there is potential for tax officials to abuse this power for personal benefit or be otherwise pressured to exercise this power inappropriately.³

Where a jurisdiction nevertheless chooses to include a waiver power in the tax legislation, care should be taken to ensure that any inevitable discretion is highly circumscribed and subject to sufficient safeguards. Such safeguards should include the following:

1. A limited number of circumstances, clearly defined in law, in which a waiver can be granted, such as in the case of proven undue hardship, further clarified in administrative guidance (including, for instance, on the nature of the supporting documentation to be provided by the applicant).⁴
2. Internal checks and balances for granting waivers, such as the requirement that waiver decisions (a) be signed off by a tax official of a sufficient level of seniority and (b) be fully documented and reviewed—perhaps by a committee—in particular in the case of large debts. Consideration could also be given to limiting the aggregate amount of tax that can be waived in any given period.
3. Transparency and accountability arrangements, such as through public reporting of total amounts waived. The tax waiver system could also be subject to audit by the Auditor General (or other similar body).

Some countries also distinguish between the time limit(s) for raising tax assessments and for collecting tax once a timely assessment is raised.⁵ This includes a time bar on collection once an assessment has been raised but recovery has been unsuccessful, which can be restarted or extended in certain circumstances. For example, Canada adopts an initial recovery period of up to 10 years, while South Africa adopts a recovery limitation period of 15 years from the time the assessment of tax becomes final.

However, tax debts that have become unrecoverable or the recovery of which has become unreasonable should be able to be written off. This should apply to tax debts: (1) which, while not (yet) legally time-barred, have become uncollectible after all legal recovery measures have been exhausted (for example, after a final dividend has been paid under bankruptcy or liquidation proceedings), or (2) for which the cost of collection would disproportionately exceed their value (for example, very small amounts, or in situations where the taxpayer cannot be located, or where the taxpayer's assets are located in another jurisdiction with which there is no agreement for cross-border assistance in the collection of taxes),⁶ or (3) when the taxpayer has no funds or other assets (for example, where a company has ceased operations and there are no assets or where a debtor has died and left no assets). This ensures that public accounts reflect a “true and fair view” of the government's fiscal position. Similar to waivers, such write-off decisions should be able to be taken only by tax officers with a sufficient level of seniority and be subject to internal review. To ensure accountability and transparency, the tax administration should keep records of and regularly publish any amounts written off as being uncollectible. Except where the amount has become irrecoverable at law, the debtor is not absolved from ever having to pay the liability (that is, the debt may be re-raised and action taken to collect it if, for example, the debtor's financial position improves).

Crisis Events

Given their extraordinary powers, tax administrations also have an important role to play in easing pressures on taxpayers facing unforeseen crisis events. The COVID-19 pandemic provided a stark illustration of this, with potential lessons for other types of acute crises affecting large sections of the taxpayer population. These are presented in Box 1.

³ To the extent that tax waivers or write offs constitute taxable income under the ordinary rules, the issue of their tax treatment will need to be addressed.

⁴ Similar considerations apply in the context of waiver of tax penalties. See Waerzeggers, Hillier, and Aw (2019, p. 10).

⁵ There is often no statute of limitations for raising assessments in the case of fraud or evasion.

⁶ Cross-border assistance in the recovery of tax claims may be facilitated through a bilateral legal instrument such as a double tax convention or multilateral legal agreements such as the Convention on Mutual Administrative Assistance in Tax Matters. See OECD (2023): [A Toolkit for Establishing a Function for Cross-Border Assistance in the Recovery of Tax Claims](#)

Box 1. Tax Collection in Times of Crisis: Lessons from the COVID-19 Pandemic

The extraordinary challenges posed by the COVID-19 pandemic forced many countries to adjust their tax recovery rules and practices. The extraordinary health emergency measures many jurisdictions took to contain the COVID-19 pandemic—such as lockdowns and travel and other restrictions on business operations and government services—caused acute difficulties to both taxpayers and tax administrations. To respond to those, and to provide short-term relief to taxpayers, many countries also took measures to ease tax collection pressures on taxpayers.

Measures taken to ease tax collection pressures in response to the COVID-19 pandemic may also be usefully considered in other emergency situations, such as natural disasters or other calamities that affect the ability of large sections of the taxpaying population to meet their tax obligations for reasons beyond their control.¹ Following are the commonly considered measures:

- *Payment extensions* for taxpayers facing cashflow difficulties, including longer installment periods, relaxing the requirements for granting delayed payment of arrears and deferral of the commencement date of installments payments.
- *Remission—in whole or in part—of penalties and interest* to encourage compliance.
- *Expedited refunds*—including by way of tax debt offsets—to provide taxpayers with short-term cashflow relief.
- *Temporary suspension of enforcement actions*, within limits to avoid circumstances in which tax debts would become permanently unrecoverable (for example, as a result of statute of limitations).

In many instances, such measures can be introduced relatively quickly through administrative action. While legislative action may be required in some circumstances (for instance, where statutory deadlines are concerned), existing legal frameworks often already allow tax administrations to quickly develop administrative approaches to ease immediate tax collection pressures on taxpayers in times of crisis such as through the kinds of measures summarized earlier, supported by taxpayer guidance (for instance, by relaxing conditions for—and automating as much as possible the processing of—payment extensions, installments, refunds, and so on).

Sources: *Tax Law Design Considerations When Implementing Responses to the COVID-19 Crisis* (IMF LEG Special Series on COVID-19, April 2020); *Tax and Customs Administration Responses* (IMF Fiscal Affairs Department Special Series on COVID-19, April 2020); CIAT/IOTA/OECD (2020), *Tax Administration Responses to COVID-19: Measures Taken to Support Taxpayers*, OECD, Paris; *Observatory on the Protection of Taxpayers' Rights—The IBFD Yearbook on Taxpayers' Rights 2020 and 2021*.

¹ While the COVID-19 pandemic is the most far-reaching, countries may face calamities with similar effect on their taxpayers. For example, Australia introduced measures aimed specifically to assist taxpayers affected by the bushfires in 2019/20. Columbia also introduced similar tax measures following hurricane Iota in 2020.

Protective Measures

Tax legislation should also provide for protective measures to prevent taxpayers from taking either themselves or their assets out of the tax administration's reach. While voluntary payment of taxes by taxpayers is ideal, it is unrealistic to expect all taxpayers to be compliant. Tax legislation should therefore be able to prevent taxpayers from taking measures to frustrate the tax collection process.

Sample generic provisions for protective measures discussed in this section are set out in Appendix 1.

Tax Liens

Tax administrations should be empowered to effectively tackle attempts by noncompliant taxpayers to frustrate tax collection by disposing of their properties and property rights to related parties. One way to prevent such behavior is to provide for the ability by the tax administration to file a tax lien on the properties and property rights of the noncompliant taxpayers. A tax lien is a legal claim that secures the government's interest in the noncompliant taxpayer's properties, including those acquired in the future for the duration of the lien.⁷ This may affect the taxpayer's ability to obtain credit, thus providing impetus for the taxpayer to have the tax lien removed swiftly by paying off the tax debt. Ordinarily other collection measures, including compelled recovery from third parties (see the "Compelled Recovery of Taxes" section), would have been attempted before the tax authority would move to apply a lien.

A lien registration system should be in place to notify the public of the existence of tax liens. This could be achieved by relying on an existing security registration framework or by way of a tax lien register separately maintained by the tax authority. Taxpayers should be given adequate written notice prior to the filing of the tax lien unless there are good reasons to believe that such notification could jeopardize tax collection efforts. Taxpayers should also have the right to a fair review of the decision to impose a lien by an independent tax tribunal or by the courts.

Preservation of Assets

The temporary preservation of a taxpayer's assets held by them and third parties can be a useful means of ensuring the adequacy of assets to pay off any tax liability when it becomes due. Where there are good reasons to believe that a taxpayer will not pay tax when due and will take steps to frustrate the recovery of tax, the tax administration should be able to temporarily prevent the taxpayer and third parties that hold, control, or manage the taxpayer's assets from dealing with those assets. A third party that fails to refrain from dealing in the taxpayer's assets when ordered to do so, without reasonable cause, should be made personally liable for the taxpayer's tax liabilities to the extent covered by those assets.

Unlike a tax lien which applies only when a taxpayer fails to pay a tax by the due date for payment, the preservation of assets is meant to be a preventative measure that could be applied based on reasonable suspicion that a taxpayer will be noncompliant when the tax falls due and will take steps to frustrate the tax collection process. To prevent abuse of such power by the tax administration, the tax administration should be required to seek an order from the courts to confirm that the preservation of assets is indeed warranted in these circumstances. Once issued, the tax administration should be required to issue an assessment as soon as possible and seek to recover the tax assessed. Alternatively, where no prior court order is required, the preservation measure should automatically expire if the tax administration fails to make an assessment within a prescribed period of time (for instance, within six months), with the taxpayer having the right to separately challenge the validity of the preservation measure.

Tax Clearance Certificates

Tax clearance certificates are issued by the tax administration as a confirmation that a taxpayer's tax affairs are in order at their date of issue. Tax clearance certificates can be legislated as mandatory requirements to carry out certain transactions such as applications for grants, public sector contracts, starting a business, or applications for employment in public office, and they may even be issued to a taxpayer who has tax arrears where the arrears are covered by an installment arrangement.⁸ Where the tax clearance certificates have a wide application, it is necessary that the tax administration IT systems are able to support on time delivery, not to hinder ordinary activities and business transactions.

⁷ See the "Compelled Recovery of Taxes" section on the issue of priority of tax debts more generally.

⁸ For example, see Ireland's tax clearance certificate framework: <https://www.revenue.ie/en/starting-a-business/tax-clearance/index.aspx>. In Uganda, a tax clearance certificate is required, inter alia, for providing goods or services to the government or for providing warehousing, clearing or forwarding services.

Special consideration should be given to nonresidents as the ability to compel recovery of taxes from nonresidents is often practically constrained. Because nonresidents often have few or no assets in a jurisdiction, there is a risk that any outstanding tax liability cannot be effectively enforced once they leave the jurisdiction. Withholding and tax clearance certificate mechanisms are commonly used to ensure the proper collection of tax on gains derived on certain disposals of in-jurisdiction assets by nonresidents. This usually imposes a requirement for the purchaser—or other parties involved in the transaction (for example, notaries)—to withhold tax on payments made to the nonresidents, unless the latter is able to show a tax clearance certificate issued by the tax administration. Such a tax clearance certificate will not be issued to a vendor that is a foreigner (unless it can be demonstrated that no tax is owed, including a loss that was realized on the disposal) and therefore provides certainty to the purchaser on their withholding obligations.⁹

The tax clearance certificate mechanism can also be usefully deployed in the context of company dissolution.¹⁰ Once a company is fully dissolved, no more assets remain against which the tax administration may seek to enforce any of the company's outstanding tax debts. A requirement that a company produces and files, as part of the winding down process, a tax clearance certificate proving that all outstanding taxes have been paid and that no taxes are due, ensures that corporate assets are not dissipated before corporate taxes are fully accounted for and paid up. Similarly, in the context of business and corporate reorganizations, in Belgium, the transferee of a going concern can be held liable for prior tax debts pertaining to the going concern unless the transferor obtained a tax clearance certificate prior to the transfer.

Fraudulent Conveyances

Tax administrations should not be prevented from recovering taxes because of fraudulent conveyances made by noncompliant taxpayers. To prevent the recovery of tax debts by the tax administration, a taxpayer may deliberately dispose of properties to related parties (including their related companies and relatives) or even unrelated third parties for no or inadequate consideration, such that the pool of assets available for distribution on insolvency to creditors, including the tax administration, is reduced. Such conveyances should be disregarded for the purposes of collecting tax debts.¹¹

Care should be taken to ensure that the rule does not invalidate genuine transfers that are not motivated by an intent to frustrate tax collection efforts. Relevant requirements for the transfer to be able to be disregarded could include that (1) the transferor taxpayer is liable for tax at the time of transfer and (2) the transfer has occurred within such period of time provided under domestic bankruptcy laws that allow for conveyances made for the purpose of defeating creditors to be disregarded. In addition, all reasonable efforts must have been made to collect the tax from the transferor taxpayer before the rule is applied.

Purchasers of the property should be able to recover any consideration paid to the taxpayer as well as any incidental costs incurred in respect of the purchase as a debt owed to them by the taxpayer. This will provide some degree of relief for a bona fide third-party purchaser that has acquired the property at a substantial discount but without intent to collude with the taxpayer to impair the tax administration's enforcement efforts.

Receivership and Other Custodial Arrangements

Special consideration should be given to cases where a person is placed in the custodial responsibility for the property of a taxpayer that is dead (administrators and executors) or in the process of winding up (receivers and liquidators). To prevent the premature dissipation of assets before the tax liabilities of the taxpayer are determined, such custodians should be required to inform the tax administration of their appointment in a timely manner for a tax assessment in respect of the taxpayer to be raised accordingly. The custodians should generally be allowed to dispose of assets held in such capacity only after all outstanding tax liabilities of the taxpayer have been settled. Personal liability for the amounts that they are required to set aside should also be provided for, with joint and several liabilities if there are two or more appointed persons in respect of the same taxpayer, subject to the issue of priority of tax debts as discussed in the "Compelled Recovery of Taxes" section.

⁹ Other administrative design features would be necessary to ensure the effective collection of any tax that may be imposed on the disposal gains of an asset where both the vendor and the purchaser are nonresidents. This is discussed in detail in the chapter on "Implementation Challenges and Options in the Platform for Collaboration on Tax (PCT)" toolkit on the taxation of offshore indirect transfers. See Platform for Collaboration on Tax (2020).

¹⁰ In practice, some countries impose broad tax clearance requirements on all outbound payments when made by resident payers to nonresident payees. Such broad-ranging formalities may be at odds with IMF member countries' international commitments under Article VIII, Section 2, of the Articles of Agreement of the IMF, prohibiting the imposition of restrictions on the making of payments and transfers for current international transactions without the approval of the Fund.

¹¹ While similar rules usually exist in general (civil) law to protect private sector creditors (for example, *actio pauliana*), depending on the legal system, these may not apply to tax debts. Even when they do, it might be advisable to specify their application in tax matters to ensure they properly interact with tax procedural rules and policies.

Travel Restrictions

Imposing travel restrictions can be an effective tool for tax administrations to prevent taxpayers from avoiding paying tax by fleeing the jurisdiction. It is not uncommon for tax legislation to give tax administrations the power to impose travel restrictions on persons with outstanding tax debts. However, such departure prohibition orders on leaving the country are measures of last resort: they should be limited to situations where such a measure could be justified and provide due process protections for taxpayers. They should also only apply where a personal exposure exists (for example, prohibition should not apply to a legal representative on account of their client's liability, unless the representative themselves may be found guilty of an offence). Similarly, a departure order should not be able to be imposed on other persons (for example, asset manager, or any person with an interest related to the tax payments) where no personal liability or exposure exists for the tax debt.

A departure prohibition order imposes a significant restriction on the normal right of a tax debtor as it restricts their mobility and deprives them of their liberty to travel outside the country. The ability to legislate for this measure will therefore depend largely on constitutional constraints and is likely to integrate a judicial process.¹² Constitutions may also provide for a right to freedom of movement, which may prevent the ability for tax administrations to issue travel restriction orders against certain errant taxpayers (Waerzeggers, Hillier, and Aw 2019). Therefore, it is generally considered appropriate that travel restriction orders be granted by a court to ensure that they are indeed warranted under the circumstances or at least subsequently confirmed by court order in circumstances where the order is required to be issued immediately (for example, because the tax debtor is about to leave the country).¹³ Once validly issued, such travel restrictions could be effected by way of a certificate from the tax authority to the immigration department containing the particulars of the tax outstanding and a direction that the person be prevented from leaving the country without paying the tax or furnishing security to the satisfaction of the tax administration. An—or a less intrusive—alternative would be to require a taxpayer to provide security (by bond, deposit, letter of guarantee, or any other satisfactory manner) for tax payable (or tax that will become payable), in whole or in part.

Collection of Disputed Amounts

It can be useful to allow recovery of some or all of a disputed amount of tax pending resolution of the dispute to reduce any risk of nonrecoverability posed by the taxpayer dissipating assets before the matter is resolved. However, such a requirement should be carefully designed with several considerations in mind. Apart from its usefulness as a protective measure in tax recovery, it may also serve to discourage frivolous or vexatious litigation by taxpayers. On the other hand, the “pay now, argue later” approach, which sets a requirement to pay the disputed tax (in whole or in part) as a condition precedent for an administrative and judicial tax appeal—whether as a legal requirement or practically through the continued imposition of late payment interest and penalties—can operate unfairly against taxpayers with legitimate cases but who lack the funds to pay the tax—and may raise principled concerns of a constitutional nature.¹⁴ To mitigate the harshness—and potential constitutional inconsistency—of such a rule, some jurisdictions allow a taxpayer to appeal if they pay a certain percentage (for example, 30–50 percent) of the disputed amount, which is fairer than requiring all of the tax to be paid and relatively easy to administer but can still operate unfairly on impecunious taxpayers with legitimate cases. Other jurisdictions (for example, Greece) allow the taxpayer to appeal after payment of the nondisputed amounts, but suspension of collection is offered only if a certain percentage of the disputed amounts is paid (for example, 30–50 percent).¹⁵ This is perhaps a more balanced approach safeguarding the taxpayer's right to an effective remedy, which includes the right to access courts. Other jurisdictions provide for the tax to be recoverable pending the outcome of the appeal but vest the tax authority with the discretion not to pursue recovery, in whole or in part, depending on the particular circumstances (for example, the taxpayer's documented inability to pay or the principled nature of the dispute). This allows for balancing of the revenue risk against the particular circumstances of the taxpayer but is also more difficult and resource-intensive to administer because of the case-by-case judgment required.

Regarding payment and suspension of interest, (1) if collection of the disputed amounts is suspended, interest should generally accumulate on outstanding amounts; (2) if the taxpayer's appeal is ultimately upheld, paid amounts should be refunded, including interest. If it is a concern that—despite interest being due on the outstanding amount—taxpayers systematically appeal assessments to postpone payment, the tax administration could require that the taxpayer posts security for whole or part of the disputed amount, against which payment can immediately be executed once a final decision on the dispute is reached.

¹² It is likely that within a country context, travel restrictions will be provided also under the general framework for state debt recovery (for example, for social security contributions).

¹³ See, for example, *Australia—Gazal v. Deputy Commissioner of Taxation* [2024] NSWSC 1 (January 8, 2024), available at: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2024/1.html>.

¹⁴ For an overview of country approaches toward recovery of disputed tax claims, see Fritz, Kargitta, and Seer (2023).

¹⁵ This can be particularly important when the administrative appeal stage is a mandatory step before the judicial appeal.

Compelled Recovery of Taxes

One of a tax authority's most aggressive enforcement tools involves the seizure of a tax debtor's—both financial and nonfinancial—assets and the interception of third-party amounts owing to the tax debtor. These may include a tax debtor's wages, bank deposits and securities, accounts receivables (that is, money owed to a tax debtor by its customers), other monies owed or payable to the tax debtor by third parties, as well as movable (for example, vehicles, business equipment and inventory) and immovable (for example, real estate) property. These enforcement tools are important because tax administrations should have the means to compel recovery of tax debts from taxpayers as a last resort.

As a general rule, tax administrations should recover tax debts compulsorily only after other collection attempts have failed. These would have included telephone or email reminders, a legal warning letter and contemplation of installment arrangements, or circumstances where installment arrangements were not respected. Compelled recovery action could also be considered when efforts to contact the debtor have failed or where the account history indicates that compelled recovery is the best course of action (that is, there are existing tax debts for which garnishments are already active). Tax administrations should choose a method of collection that is least disruptive to taxpayers before engaging those that are more disruptive but should not be precluded from taking more drastic measures if there are risks of the taxpayer taking action to defeat the recovery of tax.

The use of such disruptive collection measures as a matter of last resort is also necessary to prevent any perceived inappropriate use or abuse of such powers by the tax administration. Such a perception is particularly likely to be formed where the performance of the tax administration and its staff is assessed based on the collection of tax debt and can have a negative impact on the tax morale and public perception of the tax administration's legitimacy. As such, it is generally recommended that a garnishee order or distraint power be issued or exercised only by authorized officers of sufficient seniority, having taken into account the particular circumstances of the taxpayer and having determined that the exercise of the powers in those circumstances is fair and equitable and consistent with the administration's published policies in this area. In any case, legal safeguards against improper exercise of powers should be provided, for example, a requirement that every escalation point must be notified (in writing) and that the taxpayer is given the opportunity to pay prior to the implementation of harsher measures.

Some jurisdictions provide for the ability for tax administrations to recover tax debts only when authorized by court order or require a court order for more disruptive measures. However, there are a number of considerations to be made as to whether tax administrations should be required to systematically go to court before they can compulsorily recover tax debts. First, in many countries, the judicial and bailiff systems are overburdened, resulting in slow and low rates of recovery of taxes. Second, where tax administrations are not granted preferential creditor status (which accords priority to tax debts in a liquidation proceeding before the courts), tax administrations may end up recovering little or even nothing after instituting court proceedings. As such, tax legislation should generally allow tax administrations to recover taxes directly from noncompliant taxpayers or certain third parties without first having to go to court in all cases, subject to adequate statutory due process safeguards for taxpayers, such as the requirement to give notice and the opportunity to appeal.

It is noted that a number of jurisdictions (such as Australia) have removed super-priority status for tax debts in recent years. The rationale for such removal is rooted in fairness to other creditors and recognizes that tax administrations have a number of tools at their disposal to encourage payment of tax debts that private sector creditors do not have, for example, penalties, high interest rates, and garnishee powers. Also, tax administrations may have better information on the taxpayer's financials (for example, through periodic reporting) than business creditors, in general, and can therefore be expected to collect taxes more efficiently instead of relying on the ability to be paid ahead of other creditors. The need for preferential creditor status may therefore be considered to be diminished where the tax laws contain effective collection powers supported by an effective interest and penalty regime.

A middle ground approach is to provide for preferential status for tax debts, except against secured creditors whose security has been registered. Such an approach seeks to strike a balance between the effective enforcement of taxes and fairness to secured creditors (the lack of which can create a negative impact on credit markets). Another approach could include retaining super-priority status for specific kinds of tax debt (for example, value-added tax or payroll tax).

Sample generic provisions for the compelled recovery of taxes discussed in this section are proposed in Appendix 2.

Recovery from Third Parties

Tax administrations should also be able to direct third parties that owe money or will owe money to the taxpayer to make payments directly to the tax administration. Tax administrations can typically apply this power, sometimes referred to as a garnishee order, on an administrative basis (without prior court approval) by simply issuing an order to a third party with

instructions to transfer to the tax administration any monies (in whole, in part, or according to some payment schedule defined by the tax authority) owed or held on behalf of the tax debtor in satisfaction of a tax debt. Examples of such third parties would include employers, banks or financial institutions, tenants and debtors of the taxpayer, or custodians holding assets on their behalf. In this regard, it is important for the tax administration to be able to seize both a tax debtor's deposits held with their bank or financial institution and other financial assets (such as securities) which may also be held by those institutions for the account of the tax debtor. The amounts that could be subject to recovery should be defined comprehensively to include present and future amounts: (1) owed to the taxpayer; (2) held for or on account of the taxpayer; (3) held on account of a third person for payment to the taxpayer; and (4) held by a person who has authority from a third person to pay the amount to the taxpayer.

Typically, tax administrations will either issue a notice of seizure upon the third party or compulsorily appoint the third party as an agent. The third party should be expressly required by law to cease payments to the taxpayer and to pay to the tax administration the amount owed to the taxpayer, up to the amount of outstanding tax debt (including interest and penalties). In addition, the law should make it clear that the third party is deemed to have discharged their debt owed or amount payable to the taxpayer to the extent of the payments they have made to the tax administration.

Direct recovery of tax debts from a taxpayer's bank account is a common and convenient way for tax administrations to recover tax debts from third parties. However, there must be adequate protections in place to ensure that taxpayers do not suffer undue hardship as a result of direct recovery. Generally, tax debt should only be recovered directly from the bank account(s) of taxpayers who have established tax debts and who have failed to pay or reached an acceptable payment arrangement. Notice should be given to taxpayers at the same time or immediately after the order is served on the bank. Taxpayers should have the right to make an urgent application to the court for review of such order. Some jurisdictions also provide for a threshold amount of tax debt to be exceeded before direct recovery is considered as an option, as well as a minimum amount to be retained in the bank account to avoid causing undue hardships to taxpayers.¹⁶ More generally, it is common to exclude some portion of a taxpayer's assets from direct recovery, specifically those that are considered to be necessities of life (for example, tax debtor's residence and personal effects up to a certain threshold) or items that are essential to earning present and future income (for example, tools of trade). However, a tax debtor could still be required to realize assets (for example, downsize an extravagant residence) so that only those housing and items which are necessary for maintaining daily life are retained.

Where the third party is the employer of the taxpayer, it would be appropriate for the law to provide for a certain reasonable amount of their salary and wages to be excluded from payment to the tax administration. The amount to be excluded is, again, to ensure that taxpayers will have the means to meet their basic needs.

Distrain

Many jurisdictions provide the tax administrations with a power of distraint or seizure. Distraint or seizure means the ability for the tax administration to take control of the movable properties of a noncompliant taxpayer and sell them. The sale proceeds are used to discharge the tax debt, and any excess amount is paid to the taxpayer from whom the properties were distrained.

Care should be taken in designing provisions for a power of distraint to ensure its effectiveness and fairness. Properties that are subject to a secured interest (including any floating charge that crystallizes upon the act of distraint) are usually not available for distraint, unless the tax administration is granted preferential creditor status by law. Obstructing the tax administration, for example, by removing, hiding, or denying access to the property that is the subject of a distraint action, should attract penalties. Tax officers should only distraint properties to the extent as is reasonably necessary.

In addition, there must be adequate protections to ensure that the power of distraint does not lead to undue hardship for taxpayers. Examples of such protections include (1) a minimum tax debt threshold before an act of distraint is taken; (2) the exclusion of certain properties from a distraint action, for example, basic household goods and assets that are jointly owned with another person; (3) measures to ensure that the tax administration obtains the best price reasonably possible from the sale of the distrained property, for example, by way of a public auction, with any amounts received from the sale of assets in excess of the tax debt to be promptly refunded to the taxpayer; (4) adequate notice to be given to the taxpayer on the exercise of the power of distraint and the right to challenge the exercise of the power; and (5) an ability for taxpayers to make an urgent application to the court for review of the distraint order.

In limited circumstances, tax administrations should be able to sell the property seized on an urgent basis without the need for a public auction. This would commonly be the case where the property that is the subject of distraint is of perishable nature.

¹⁶ For instance, in the Netherlands, there are limits both to the amount (up to EUR 500) for, and the frequency (up to twice a month in the course of not more than three consecutive months) with which the tax administration can recover tax debts directly from a taxpayer's bank account. Furthermore, the taxpayer is entitled to keep at their disposal income or assets equivalent to the tax-free amount corresponding to their personal income tax bracket.

Secondary Liability of Managers and Controlling Members of Entities

The recovery of taxes from entities such as corporations can be problematic. The liabilities of the members of an entity are typically limited to the value of their respective investment in the entity, and the piercing or lifting of the corporate veil is generally allowed only in limited cases. Similarly, directors and managers are usually not held personally liable for the entity's debts including tax debts.

To improve the recoverability of tax debts of an entity, the managers and controlling members of the entity could be made secondarily liable for such tax debts. Transferring or imposing a personal liability on company directors and managers is a powerful deterrent and enforcement tool. Some tax administration laws provide for the personal imposition of a tax liability of a tax debtor on a third party. This is typically imposed on a natural person. For example, the tax administrations in the United States and Canada can hold the corporate directors of a business personally liable in the event that they were required but *knowingly* failed to collect and remit to the government taxes withheld or collected from the business' employees or customers (for example, "pay-as-you-earn" wage withholding taxes and value-added tax). However, such secondary liability should not apply to directors or managers who have exercised the degree of care, diligence, and skill that a reasonably prudent person in the position of the director or manager would have exercised in preventing the failure to pay tax.¹⁷ A manager or controlling member who has paid taxes as a secondary liability should be allowed to recover the tax paid from the entity as a debt owed to the manager.

Box 2 consolidates the key considerations when designing appropriate safeguards for the application of protective and compelled recovery measures.

Box 2. Key Considerations When Designing Appropriate Safeguards for the Application of Protective and Compelled Recovery Measures

- Set out in legislation the tax administration's collection enforcement powers and the general rules for their application.
- Offer procedural protections to taxpayers (including third-party debtors) through appropriate notice and swift appeal recourse.
- Ensure compatibility between the administrative appeals process and any emergency judicial recourse against enforced collection action.
- Provide legal safeguards against improper exercise of powers, for example, it is required that at every escalation point in the collections process, the taxpayer be notified (in writing) and given the opportunity to pay prior to the implementation of harsher measures.
- Limit the circumstances in which the tax authorities can prohibit a taxpayer from leaving the country and ensure the legislation includes due process safeguards such as requiring judicial approval before or shortly after the tax authorities issue a departure prohibition order.
- Extend third-party liability to company managers and controlling members under clearly prescribed conditions.
- Provide for active internal oversight, especially where the collections action may have significant consequences (such as closing down a business or seizing/selling assets).
- Include an offsetting provision to enable any amounts owed to a tax debtor by the tax authorities to be applied or offset against the taxpayer's debt.
- Offer the possibility of settling tax debt in installments, while providing for clear and transparent eligibility and access criteria, minimizing discretion.
- Set up a framework to ensure that recovery powers do not lead to undue hardship for taxpayers. Examples in respect of distraint proceedings would include (1) a minimum tax debt threshold before an act of distraint is taken; (2) the ability for taxpayers to make an urgent application to the court for review of the distraint order; (3) ensuring the taxpayer's minimum necessary for living, by providing that a minimum amount is retained in one designated bank account; and (4) the exclusion of certain properties from a distraint action (for example, basic household goods and assets that are jointly owned with another person).

¹⁷ Different jurisdictions may have different rules defining how this liability applies. For instance, in Belgium, the rules on the liability of managers of an entity or persons responsible for its day-to-day management (that is, all persons who, in fact or in law, hold or have held the power to manage an entity, with the exception of judicial representatives) are that if an entity fails to pay the wage withholding tax or value-added tax, the managers of the entity are jointly and severally liable for the payment of the withholding tax or value-added tax if this failure is attributable to a fault which they have committed in their management. This joint and several liability may be extended to the other directors of the entity if a fault contributed to the failure.

Appendix 1. Sample Protective Provisions

DRAFTING NOTE: The title “Director-General” is used for the purposes of the sample provisions in both Appendices 1 and 2. However, this title should be substituted with the actual designation used in a particular country such as “Commissioner” if that is the title that applies.

1. Tax Lien

- (1) If a person fails to pay a tax by the due date for payment, a lien in favor of the Director-General may be created in the amount owing (together with interest, penalty, and costs of collection that may accrue) on all properties belonging to the person and has priority as against all other rights, except as otherwise provided in this section.
- (2) The Director-General shall be considered to have created the lien if they serve the person with a notice in writing specifying the person’s name and Taxpayer Identification Number, the assets covered, the extent of the lien, the tax to which the lien relates, and the details regarding the Director-General’s power of sale under section [X].
- (3) A lien created under subsection (2) shall not have effect until:
 - (a) where an interest in land or buildings is covered by the lien, the Director-General files an application to register the lien under subsection (4); and
 - (b) in any other case, the notice creating the lien is served on the person.
- (4) Where the Director-General creates a lien over an interest in land or buildings, the [Registrar of Titles] shall, without fee, register the lien on the title of the interest in land or buildings.
- (5) Where a lien over an interest in land or buildings is released, the [Registrar of Titles] shall, within [15] days and without fee, remove the entry of the lien from the title of the interest in land or buildings.
- (6) Any transaction by the Director-General under this section shall be exempted from [stamp duty and any other transaction taxes].
- (7) The lien imposed under this section is not valid against the interest of another person who is a purchaser (referred to in this section as a “third-party purchaser”) from the person, a holder of a security interest granted by the person, or other lien holder specified in regulations, if the interest arises:
 - (a) before the third-party purchaser has actual knowledge of the lien; or
 - (b) before notice of the lien has been duly registered in an official register of security interests in the jurisdiction, whichever first occurs.
- (8) Regulations may prescribe procedures for filing notice of a lien and may prescribe categories of interests against which the lien is not valid even though notice of the lien has been filed.
- (9) The Director-General may file an action in the [Court] to enforce the lien imposed by this section.
- (10) A lien shall be released when the person pays in full the amounts referred under subsection (1) to the Director-General.
- (11) An affected person may apply to the Director-General for a release of the lien on the person’s property and a decision by the Director-General not to release a lien may be appealed to the [Court].

2. Preservation of Assets

- (1) This section applies when the Director-General has reasonable cause to believe that:
 - (a) a person will not pay the full amount of tax owing when due; and
 - (b) the person will take steps to frustrate the recovery of the tax, including the dissipation of the person’s assets.
- (2) If this section applies, the Director-General may make an application to the [Court]¹⁸ for an order (referred to in this section as an “asset preservation order”) for the preservation of the assets of the person and prohibiting any other

¹⁸ References to “Court” in the sample provisions are understood to refer to the competent court in each jurisdiction.

persons (referred to in this section as a “third person”) holding, controlling, or managing assets belonging to the person from transferring, withdrawing, disposing, or otherwise dealing with the assets.

- (3) The Director-General may take such steps as necessary to secure the assets of the person, including seizure of the assets, pending making an application for an order under subsection (2), which application shall be made within 24 hours from taking steps to secure the person’s assets.
- (4) The [Court] shall issue an asset preservation order when satisfied that the requirements in subsection (1) are satisfied and the order shall be served on the person and third persons having custody, control, or management of the person’s assets.
- (5) An asset preservation order is valid for [30] days and may be extended by the [Court] on application by the Director-General.
- (6) A person whose assets are the subject of an asset preservation order may, within [15] days of being served with the order, apply to the [Court] to discharge or vary the order.
- (7) When the [Court] has issued an asset preservation order, the Director-General shall, within [30] days of service of notice of the order, determine the tax due by the person to whom the order relates and serve a notice of a tax assessment on the person and commence recovery of the tax assessed.
- (8) An asset preservation order automatically expires upon service of a notice of assessment under subsection (7) unless the [Court] extends the order upon application by the Director-General under subsection (5).
- (9) A third person who preserves funds pursuant to an asset preservation order is, for all purposes, deemed to have acted within the authority thereof and such third person and all other persons concerned are indemnified in respect of the actions taken in connection with the order, against all proceedings, civil or criminal and all process, judicial or extrajudicial, despite any provisions to the contrary in any written law, contract, or agreement.
- (10) A third person who, without reasonable cause, fails to comply with an asset preservation order served on the third person is personally liable for the amount specified in the order.

3. Fraudulent Conveyances

- (1) A transfer of a person’s property to a third person (referred to in this section as a “third-party purchaser”) is disregarded if:
 - (a) the person fails to pay a tax by the due date for payment;
 - (b) the person is liable for the tax at the time of the transfer or the transfer occurs within [2] years before the due date of payment;
 - (c) the value received by the person in consideration for the transfer is below the fair market value of the property transferred;
 - (d) the person is insolvent at the time of the transfer or becomes insolvent as a result of the transfer; and
 - (e) the Director-General has made all reasonable efforts to collect the tax due.
- (2) A third-party purchaser to whom subsection (1) applies may recover as a debt owed to the third-party purchaser the consideration paid for the property and any incidental costs incurred in respect of the transfer.

4. Appointed Persons

- (1) An appointed person shall notify the Director-General of their appointment within [14] days after being appointed.
- (2) The Director-General shall notify the appointed person of the amount that appears to the Director-General to be sufficient to provide for payment of tax owing, or that will become owing, by the person whose assets are in the possession or care of the appointed person, within [two months] of the Director-General receiving a notification under subsection (1).
- (3) Subject to subsection (4), an appointed person shall:
 - (a) not dispose of an asset situated within the jurisdiction held in the appointed person’s capacity as appointed person, without the prior permission of the Director-General until the earlier of: (i) the date on which the appointed person is notified under subsection (2); or (ii) the date on which the [two-month] period specified in subsection (2) has expired without the Director-General notifying the appointed person of the tax payable;

- (b) set aside out of the proceeds of sale of an asset the amount notified by the Director-General under subsection (2), or a lesser amount as may be agreed with the Director-General; and
- (c) be personally liable for the amount of tax notified in subsection (2) to the extent of an amount required to be set aside under subsection (4), if the appointed person fails to comply with the requirements of this section.
- (4) Subsection (3) shall not prevent an appointed person from paying the following in priority to the amount notified under subsection (2):
 - (a) debt that has priority, in law or equity, over the tax referred to in the notice served under subsection (2); or
 - (b) the expenses properly incurred by the appointed person in the capacity as such, including the appointed person's remuneration.
- (5) Where there is more than one appointed person in respect of a person, the obligations and liabilities under this section shall apply jointly and severally to both appointed persons but may be discharged by any one of them.
- (6) In this section, "appointed person" means a person who, with respect to an asset situated in the jurisdiction, is:
 - (a) a liquidator of a company or other entity;
 - (b) a receiver appointed out of court or by a court;
 - (c) a trustee in bankruptcy;
 - (d) a mortgagee in possession;
 - (e) an executor, administrator, or heir of a deceased individual's estate;
 - (f) conducting the affairs of an incapacitated individual; or
 - (g) a successor in a corporate reorganization.

5. Recovery of Tax from Persons Leaving the Country

- (1) This section applies when the Director-General has reasonable grounds to believe that a person may leave the jurisdiction without paying:
 - (a) tax that is [or will become] payable by the person; or
 - (b) tax that is [or will become] payable by a company in which the person is a controlling member.
- (2) When this section applies, the Director-General may issue a notice in writing:
 - (a) requiring payment of the tax payable, within the time specified in the notice; or
 - (b) requiring security to the satisfaction of the Director-General for the payment of a tax that is [or will become] payable, within the time specified in the notice; or
 - (c) prohibiting the departure of the person to whom this section applies (referred to as a "departure prohibition notice") to the [Chief Immigration Officer] stating:
 - (i) the name, address, and Tax Identification Number of the person to whom the notice applies; and
 - (ii) the amount of tax that is or will become payable by the person or by the company in which the person is a controlling member.
- (3) The Director-General shall, as soon as practicable after issuing a departure prohibition notice under subsection (2), serve a copy of the notice on the person named in the notice, but the non-receipt of a copy of the notice by the person named in the notice does not invalidate the notice.
- (4) On receipt of a departure prohibition notice in relation to a person, the [Chief Immigration Officer or an officer authorized by the Chief Immigration Officer] shall, so far as is permitted by law, prevent the person named in the order from departing the jurisdiction, including the seizure and retention of the person's passport, certificate of identification, visa, or any other document authorizing the person to leave the jurisdiction.
- (5) A departure prohibition order shall remain in force until it is revoked by the Director-General.
- (6) A person to whom a departure prohibition notice applies may, at any time, apply to the [Court] to discharge or vary the notice.
- (7) The Director-General shall revoke a departure prohibition notice if:

- (a) the tax specified in the departure prohibition notice is paid in full; or
 - (b) a satisfactory arrangement for payment of the tax is made.
- (8) As soon as practicable after making a decision to revoke a departure prohibition notice, the Director-General shall notify the [Chief Immigration Officer] and the person named in the notice and reverse any measures taken under subsection (4).
- (9) No proceedings, criminal or civil, or any process, judicial or extrajudicial, may be instituted or maintained against the State, or a taxation, customs, immigration, police, or other officer for anything lawfully done under this section, despite any provisions to the contrary in any written law, contract, or agreement.
- (10) Only the Director-General is permitted to exercise powers under this section.
- (11) In this section, “controlling member”, in relation to a company, means a member who beneficially holds, directly or indirectly, either alone or together with a related person or persons:
 - (a) fifty percent or more of the voting rights attaching to shares or other ownership interests in the company; or
 - (b) fifty percent or more of the rights to dividends attaching to shares or other ownership interests in the company;
or
 - (c) fifty percent or more of the rights to capital attaching to shares or other ownership interests in the company.

Appendix 2. Sample Compelled Recovery Provisions

6. Third-Party Debtors

- (1) If a person fails to pay tax by the due date for payment, the Director-General may, by notice in writing, require a third person (referred to in this section and in section [X—Compliance with Notice] as a “third party”) who:
 - (a) owes or may subsequently owe money to the person;
 - (b) holds or may subsequently hold money for or on behalf of the person;
 - (c) holds money on account of some other person for payment to the person;
 - (d) acts as a guarantor under a security given to the Director-General; or
 - (e) has authority from some other person to pay money to the person,to pay the amount specified in the notice to the Director-General by the date stated in the notice.
- (2) The following apply to a notice served under subsection (1):
 - (a) the amount specified in the notice as payable by the third party shall not exceed the amount of the unpaid tax by the due date;
 - (b) a third party is not liable to pay an amount in excess of the amount that the third party owes or may owe to, or holds or may hold for the person;
 - (c) the date for payment by the third party specified in the notice shall not be before the date that the amount owed by the third party to the person becomes due to the person or held on the person's behalf;
 - (d) the notice remains in force until the person pays the amount specified in the notice or the Director-General revokes the notice;
 - (e) the notice may specify amounts of tax owing by the person under more than one tax law.
- (3) The amount that a notice under subsection (1) requires to be paid from salary or wages payable to the person shall not exceed [20] percent of the amount of each payment of salary or wages (after the payment of income tax).
- (4) A notice under subsection (1) can be served on a third party in relation to an amount in a joint account only when:
 - (a) all the holders of the joint account have unpaid tax liabilities; or
 - (b) the person can withdraw funds from the account (other than a partnership account) without the signature or authorization of the other account holders. This does not apply in the case of a partnership, and only applies to the proportion of the account that the person represents in relation to the number of persons that share the joint account, which is deemed to be in equal shares, unless the Director-General or the person proves otherwise.
- (5) As soon as practicable after service of the notice on the third party, the Director-General shall serve the person with a copy of the notice, but the non-receipt of a copy of the notice by the person named in the notice does not invalidate the notice.
- (6) Amounts payable to the Director-General by a third party shall be treated as tax and, once due, may be recovered as tax.
- (7) The Director-General shall credit an amount paid by a third party under this section against the tax liability of the person.
- (8) The following shall be treated as money owed to a person:
 - (a) money currently owing or that may subsequently become owing to the person;
 - (b) money held or that may subsequently be held for or on account of the person;
 - (c) money held or that may subsequently be held on account of a third person for payment to the person;
 - (d) money held by a person who has authority from a third person to pay the money to the person; and
 - (e) in relation to a third party that is a financial institution, amounts that the person holds in an account with the institution.

- (9) The Director-General shall, by notice in writing to the third party, revoke or amend a notice under subsection (1) if the person has paid the tax due or has made an arrangement satisfactory to the Director-General for payment of the tax.

7. Compliance with Notice

- (1) A third party who pays the Director-General pursuant to section [X] (Third-Party Debtors) is:
- (a) treated as having acted with the authority of the person and of all other persons concerned; and
 - (a) indemnified in respect of the payment against all proceedings, civil or criminal, and all processes, judicial or extrajudicial, despite any provisions to the contrary in any written law, contract, or agreement.
- (2) A third party who claims to be unable to comply with a notice under section [X] (Third-Party Debtors) may notify the Director-General, in writing and within [7] days of receiving the notice, setting out the reasons for the third party's inability to comply with the notice.
- (3) The Director-General may, upon the receipt of a notice by a third party:
- (a) accept the notification and cancel or amend the notice under section [X] (Third-Party Debtors); or
 - (b) reject the notification.
- (4) The notice filed by a third party under this section shall have no effect unless the Director-General cancels or amends the third party notice issued under subsection [X] (Third-Party Debtors).
- (5) Where a third party:
- (a) fails to pay an amount of tax specified in a notice within [15] days of the later of the date:
 - (i) of service of such notice; or
 - (iii) on which any money comes into their hands or becomes due by them to the person; and
 - (b) has:
 - (i) not given a notification under subsection (2) of this section; or
 - (ii) given such notification which has been rejected by the Director-General,

the provisions of this Part shall apply to such amount as if it were tax due and payable by the third party, the due date for the payment of which was the date upon which such amount should have been paid to the Director-General under this section.

8. Distraint Proceedings

- (1) If a person fails to pay tax by the due date for payment, the Director-General may issue a notice (referred to as a "distraint notice"), in writing, for the recovery of unpaid tax owing by a person by distraint and sale of the movable property of the person.
- (2) A distraint notice shall specify:
- (a) the person against whose property the notice is issued;
 - (b) the tax liability to which the notice relates and the unpaid amount; and
 - (c) the property against which the distraint proceedings are to be executed, and the location of the property.
- (3) For the purposes of executing a distraint notice, the Director-General or authorized officer may:
- (a) at any time, enter any house or premises described in the notice authorizing the distraint proceedings;
 - (b) at the cost of the person, engage such persons as the Director-General considers necessary to assist in the execution of the distraint notice; and
 - (c) request a police officer to be present while the distraint is being executed.
- (4) The property that is the subject of the distraint notice shall be identified by attaching a notice stating the property has been impounded for failure to comply with a tax obligation.

- (5) Subject to the payment of tax, the property distrained shall be detained, either at the premises where the distraint was executed or at such other place as the Director-General may consider appropriate, at the cost of the person for the following period:
 - (a) for perishable goods, such period as the Director-General considers reasonable having regard to the condition of the goods; or
 - (b) for any other goods, a period of not less than [21] days after the issuance of the distraint notice.
- (6) The property distrained may be sold by public auction or in such other manner as the Director-General may direct when the person does not pay the tax due, together with the costs of the distraint, within the detention period under subsection (5).
- (7) The Director-General shall apply the proceeds of a disposal under subsection (6) in the following order:
 - (a) toward the cost of taking, keeping, and selling the property distrained upon;
 - (b) toward the unpaid tax liability of the person as specified in the distraint notice;
 - (c) toward any other unpaid tax liability of the person;
 - (d) the remainder of the proceeds, if any, shall be paid to the person.
- (8) Where the proceeds of disposal are less than the sum of the costs of the distraint and the tax payable, the Director-General may recover the shortfall.
- (9) No proceedings, criminal or civil, or any processes, judicial or extrajudicial, may be instituted or maintained against the Government, the Director-General, an officer authorized to act under this section, or a police officer, or any other person for anything lawfully done under this section, despite any provisions to the contrary in any written law, contract, or agreement.
- (10) A distraint notice shall be revoked when the person pays in full the amounts referred under subsection (1) to the Director-General.
- (11) An affected person may apply to the Director-General for a revocation of the distraint notice and a decision by the Director-General not to revoke a distraint notice may be appealed in Court.

9. Liability for Tax Payable by an Entity

- (1) If an entity fails to pay tax by the due date for payment, every person who is or has been a manager or a controlling member of the entity at any time since the relevant time is jointly and severally liable with the entity and every other such person for payment of the tax.
- (2) Subsection (1) applies irrespective of whether the entity ceases to exist.
- (3) Subsection (1) does not apply to a manager or controlling member who has exercised the degree of care, diligence, and skill that a reasonably prudent person in the position of the manager or controlling member would have exercised in preventing the initial and continuing failure to pay tax.
- (4) Amounts payable to the Director-General by a manager or controlling member under this section are a personal tax liability of such persons.
- (5) If a manager or controlling member pays tax by reason of a liability under subsection (1), they may recover the payment from the entity and from other such persons who were liable for the claim as a debt due.
- (6) A manager or controlling member of an entity may not be assessed for an amount under this section after the period of limitations for collecting the relevant tax from the entity has expired.
- (7) In this section:

“entity” means any taxpayer other than an individual, including a partnership, a trust, or an unincorporated body;

“controlling member”, in relation to an entity, means a member who beneficially holds, directly or indirectly, either alone or together with a related person or persons:

 - (a) fifty percent or more of the voting rights attaching to shares or other ownership interests in the entity; or
 - (b) fifty percent or more of the rights to dividends attaching to shares or other ownership interests in the entity; or
 - (c) fifty percent or more of the rights to capital attaching to shares or other ownership interests in the entity.

- (d) “manager” of an entity includes a person purporting to act as a manager of the entity and, in the case of an entity, includes a director, the chief executive officer, and the chief financial officer of the entity; and
“relevant time” is [6] months before the events that gave rise to the entity’s tax liability.

References

Fritz, Carika, Sascha Kargitta, and Roman Seer. 2023. "Recovery of Disputed Tax Claims." *World Tax Journal* 15 (1). p.15.

OECD. 2023. "A Toolkit for Establishing a Function for Cross-Border Assistance in the Recovery of Tax Claims". Global Forum on Transparency and Exchange of Information for Tax Purposes.

[A Toolkit for Establishing a Function for Cross-Border Assistance in the Recovery of Tax Claims](#)

Platform for Collaboration on Tax. 2020. "The Taxation of Offshore Indirect Transfers: A Toolkit."

<https://www.tax->

[platform.org/sites/pct/files/publications/PCT Toolkit The Taxation of Offshore Indirect Transfers.pdf](https://www.tax-platform.org/sites/pct/files/publications/PCT_Toolkit_The_Taxation_of_Offshore_Indirect_Transfers.pdf)

Waerzeggers, Christophe, and Cory Hillier. 2016. "Introducing an Advance Tax Ruling (ATR) Regime." Tax Law IMF Technical Note 2/2016, IMF Legal Department, May.

<https://www.imf.org/external/pubs/ft/tltn/2016/tltn1602.pdf>

Waerzeggers, Christophe, Cory Hillier, and Irving Aw. 2019. "Designing Interest and Tax Penalty Regimes." Tax Law IMF Technical Note 1/2019, IMF Legal Department, January.

<https://www.elibrary.imf.org/view/journals/008/2019/001/008.2019.issue-001-en.xml>