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# Economic and Social Council
## Committee of Experts on International Cooperation in Tax Matters
### Third session

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# Contents

# I. Introduction and Summary

1. At the Second Annual Session of the Committee of Experts on International Cooperation in Tax Matters in 2006, the Secretariat was asked to coordinate with the OECD Secretariat "as to the manner in which the text of OECD Commentaries is incorporated in the Commentaries to the United Nations Model."[1] This note responds to that request and reflects an informal paper distributed to the Committee itself earlier this year. No comments were received on that informal paper.

2. Ultimately, the Committee's approach to citation of the OECD Model may be affected by a larger question, which has previously arisen in the Committee and on which there appear to be different views: should the UN Commentary aim to be a *comprehensive* Commentary on the Articles of the UN Model, or should it rather only seek to comment in any detail on *differences* between the Articles in the two Models?

3. This paper notes, but does not reach conclusions on that issue, which is separately before the Committee. Instead, it looks at the issue ee 2(T approach to cita)170.000548 0.0932 how cantself 8( b t)6(oe)8(

matter by the UN Committee, it could be mistakenly assumed that the UN Committee is in agreement with the OECD changes, which may not be regarded as appropriate for developing countries for example. The *earlier* OECD Commentary text may also not be readily available once it has been changed or removed, even though there will be many treaties using the wording.[2]

11. Those favouring the UN Model Commentaries *not* dealing with matters where there is agreement with the OECD Commentary often cite the following types of argument:

- the limited UN Committee resources are best used to address only the *differences* between the UN and OECD Models – to seek to comprehensively deal with every aspect of the text of all the Articles text would reduce the Committee's ability to properly address the differences between the two Models, the key issue for developing countries in particular. A disproportionate amount of time could, in particular, be spent on ultimately unproductive discussions about what are effectively minor drafting issues and over-finessing of the text;

- even if the Committee wished to, neither it nor the Secretariat as currently resourced could keep pace with the increasingly regular changes to the OECD Model, and therefore the part of the Commentary shared with the OECD Model would be fated to be always out of date – which reduces the credibility and usefulness of the UN Model; and

- the language adopted by the OECD in its

*at all*, the Committee seeks citation of the OECD Model Commentaries in the UN Commentaries, how can this best be achieved in line with the need to:

- respect intellectual property rights, including by attribution of sources;
- be clear and readable;
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25. The “General Considerations” part at the start of each UN Commentary generally outlines differences from the OECD Model. That could be made clearer, as new Commentary is drafted, by changing the heading to: “General Considerations, including Differences from the OECD Model” and ensuring there is a short and up to date introduction for each new or substantially revised Commentary noting the key differences between the Models in relation to the particular Article.

## V. Extensive Direct Quotation without *either* Quotation Marks or Indentation?

26. It has been suggested that extensive direct quotation of the OECD Model could be used *without* quotation marks or indentation, the usual indications of a direct quotation. There might be several reasons for favouring such an approach. One might be the feeling that, where the OECD Commentary is agreed with, using the same words without quotation d[( Quotatiker indenteste8 quovidT ag-te *without*2hm38es6ldd[ferebeen suCTw [(ersTD[(bye[(2hm5)8ngCoo)iM)38(teetiom the

- using less "solid walls" of OECD text, but instead relying more on key paragraphs, paraphrasing what they say in simpler language in accordance with the "style" of the UN Model (with a footnote reference to the OECD text) and using more linking phrases such as: "… the OECD Commentary then goes on to explain ….": and

- using more headings and subheadings generally, and integrating the OECD extracts more closely into an "issue by issue" approach, with a clear direction where possible about whether the Committee agrees with the OECD interpretation.

32. These approaches could be coupled with a greater emphasis on the key differences between the Model stated early in the Commentaries of each Article – something already done to some extent under the "General Considerations" heading in the Commentaries, but which could be done more explicitly, preferably with a heading for each Commentary that reads "General Considerations, including Differences from the OECD Model".

33. Of course there is some risk that this will involve some further "investment" of time and resources which might in practice distract from the key work on the differences between the UN and OECD Models. That is part of the larger issue for the Committee discussed above, but certainly such a "differentiated" approach is best used in Articles where there are clear differences between the UN and OECD texts and interpretations.

34. There is also a risk that paraphrasing the OECD Model could unintentionally diverge from its meaning, but such a process could equally indicate areas where the OECD Commentary needs clarification or additional text, if it is also to function effectively in the context of the more developing country-oriented UN Model Commentaries. The continued participation of the OECD Secretariat and OECD countries in this UN work should also make it unlikely that the OECD Commentaries would be incorrectly paraphrased.

35. The discussion above has focussed on long quoted extracts from the OECD Model. It should be noted for completeness that for short quotations of a sentence or two imbedded into the UN text, quotations in the normal font and using quotation marks may still be appropriate. Also the quotation marks in front of other indented text, such as "alternative" provisions can be removed and this has been done in the attached Annexes, using a strikethrough mode.

## VI. Article 27 – A Special Case?

*Indentation and quotation marks*

36. The approach just suggested (use of indentation and a reduced font) is not the approach taken in the text of the new Article 27 on Assistance in Recovery and its Commentary as adopted by the UN Committee last year (E/C.18/2006/3/rev.1). That text directly quoted the OECD Commentaries on Article 27 in their entirety (with some relatively minor additions noted below) and did not use quotation marks or indentation.

37. It is probably the case that the formatting issue was not a key area of focus when the text was approved, but as this relates to the broader question of citation by the UN Committee of the

OECD Model, some direction is needed for the Secretariat and those drafting other proposed Commentary.

38. In the opinion of the UN Secretariat, the approach taken for Article 27 is justified as a special case. The text of the Model Article in the UN Model picks up the OECD Article's language with only a small number of clarifications, obviously on the basis that the OECD Model sufficiently explained the provisions, including from developing country viewpoints, and that the Commentary of the whole Article could therefore be adopted. The UN Commentary adds two extra dash points in paragraphs 1 and 9, and extra sentences at the end of paragraph 8 (last four sentences, from "Finally") and the second last sentence of paragraph 28 (the changes are footnoted in Annex 2 of this note), so that in effect almost the UN Commentary is a quotation of the OECD Model Commentary with some additional clarifications.

39. In referring to, and implicitly adopting, the OECD Commentary, there was probably also a recognition that where the OECD text is satisfactory in the context of the UN Model and its purposes, there is a distinct benefit to treaty negotiators, administrators and other users, in consistency between the two Models.

40. While Article 27 of the OECD Commentary is cited without quotation marks or indentation, the initial draft presented to the Committee by the relevant subcommittee gave clear attribution to the OECD Commentary. There was a note in the introductory paragraphs of the Commentary to Article 27 which stated:

> Article 27 of this Model being mainly similar to Article 27 of the OECD Model, most of the

44. A copy of Article 27, as adopted in November, but with the suggested additional footnotes is attached as Annex 2. The issue could be discussed in November as part of an additional agenda item on "Citation of OECD Sources/ Relationship to the OECD Model" or similar, if the Committee saw fit. The proposed changes c

> References to and quotations from the OECD Model Tax Convention, including its Commentaries are [unless otherwise noted] to the version of that Model published in …

50. The "unless otherwise noted" clause would be necessary if there are remnants of earlier versions of the OECD Model in the UN Model which *differ from the baseline OECD version referred to*. As most such references are to the 1997 version of the OECD Model in the current (2001) UN Model, even though the 2000 OECD Model had been published at the relevant time, it will depend on how much of this existing material is updated as to what should be the "baseline" text of the OECD Model for the next UN Model. It would be 1997 or 2005, and provision would need to be made for pointing out non-baseline extracts by some drafting changes.

51. Obviously the optimum solution would be for the UN Model to, as far as possible, reflect consideration of the most recent OECD language, to prevent confusion. A new version of the OECD Model is expected in the first half of 2008, but the 2005 version is the current version.

## VIII. Summary of Suggested Approaches

52. This note suggests that the Committee should

- greater use of subheadings generally, especially for issues of particular relevance to developing countries.

55. Finally, this note suggests that as far as possible the Committee seek to ensure that references to the OECD Model are to the latest available version, and that the references are kept systematically updated.

# Annex 1: Suggested General

# Annex 2: Suggested Specific Article 27 Changes

(Proposed additions in ***bold italics,*** deletions in ~~strikethrough~~ – which appears as underlining in the case of superscript quotation marks removed from indented paragraphs as unnecessary**)**

***Article 27***

**ASSISTANCE IN THE COLLECTION OF TAXES**[1]

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of k( in4Td8(a)Artn4Tddef su)-the 0 n4Tdim Tmittate1(ari Tdori Td8ies of)7( )n4T5(the)6(n4Tike)Cont7ng S m

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be

*a*) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or

*b*) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection

the competent authority of the first-mentioned State shall promptly notify the competent

## COMMENTARY ON ARTICLE 27
## CONCERNING THE ASSISTANCE IN THE COLLECTION OF TAXES[2]

1. This Article provides the rules under which Contracting States[3] may agree to provide each other assistance in the collection

2. The Article provides for comprehensive collection assistance. Some States may prefer to provide a more limited type of collection assistance. This may be the only form of collection assistance that they are generally able to provide or that they may agree to in a particular convention. For instance, a State may want to limit assistance to cases where the benefits of the Convention (e.g. a reduction of taxes in the State where income such as interest arises) have been claimed by persons not entitled to them. States wishing to provide such limited collection assistance are free to adopt bilaterally an alternative Article drafted along the following lines:

"*Article 27*
*Assistance in the collection of taxes*

1. The Contracting States shall lend assistance to each other in the collection of tax to the extent needed to ensure that any exemption or reduced rate of tax granted under this Convention shall not be enjoyed by persons not entitled to such benefits. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:

*a*) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
*b*) to carry out measures which would be contrary to public policy (ordre public)."

*Paragraph 1*

3. This paragraph contains the principle that a Contracting State is obliged to assist the other State in the collection of taxes owed to it, provided that the conditions of the Article are met. Paragraphs 3 and 4 provide the two forms that this assistance will take.

4. The paragraph also provides that assistance under the Article is not restricted by Articles 1 and 2. Assistance must therefore be provided as regards a revenue claim owed to a Contracting State by any person, whether or not a resident of a Contracting State. Some Contracting States may, however, wish to limit assistance to taxes owed by residents of either Contracting State. Such States are free to restrict the scope of the Article by omitting the reference to Article 1 from the paragraph.

5. Paragraph 1 of the Article applies to the exchange of information for purposes of the provisions of this Article. The confidentiality of information exchanged for purposes of assistance in collection is thus ensured.

6. The paragraph finally provides that the competent authorities of the Contracting States may, by mutual agreement, decide the details of the practical application of the provisions of the Article.

7. Such agreement should, in particular, deal with the documentation that should accompany a request made pursuant to paragraph 3 or 4. It is common practice to agree that a request for assistance will be accompanied by such documentation as is required by the law of the requested State, or has been agreed to by the competent authorities of the Contracting States, and that is necessary to undertake, as the case may be, collection of the

revenue claim or measures of conservancy. Such documentation may include, for example, a declaration that the revenue claim is enforceable and is owed by a person who cannot, under the law of the requesting State, prevent its collection or an official copy of the instrument permitting enforcement in the requesting State. An official translation of the documentation in the language of the requested State should also be provided. It could also be agreed, where appropriate, that the instrument permitting enforcement in the requesting State shall, where appropriate and in accordance with the provisions in force in the requested State, be accepted, recognised, supplemented or replaced, as soon as possible after the date of the receipt of the request for assistance, by an instrument permitting enforcement in the latter State.

8. The agreement should also deal with the issue of the costs that will be incurred by the requested State in satisfying a request made under paragraph 3 or 4. In general, the costs of collecting a revenue claim are charged to the debtor but it is necessary to determine which State will bear costs that cannot be recovered from that person. The usual practice, in this respect, is to provide that in the absence of an agreement specific to a particular case, ordinary costs incurred by a State in providing assistance to the other State will not be reimbursed by that other State. Ordinary costs are those directly and normally related to the collection, i.e. those expected in normal domestic collection proceedings. In the case of extraordinary costs, however, the practice is to provide that these will be borne by the requesting State, unless otherwise agreed bilaterally. Such costs would cover, for instance, costs incurred when a particular type of procedure has been used at the request of the other State, or supplementary costs of experts, interpreters, or translators. Most States also consider as extraordinary costs the costs of judicial and bankruptcy proceedings. The agreement should provide a definition of extraordinary costs and consultation between the Contracting States should take place in any particular case where extraordinary costs are likely to be involved. It should also be agreed that, as soon as a Contracting State anticipates that extraordinary costs may be incurred, it will inform the other Contracting State and indicate the estimated amount of such costs so that the other State may decide whether such costs should be

- how should any amount collected pursuant to a request under paragraph 3 be remitted to the requesting State;

- whether there should be minimum threshold below which assistance will not be provided[6].

*Paragraph 2*

10. Paragraph 2 defines the term "revenue claim" for purposes of the Article. The definition applies to any amount owed in respect of all taxes that are imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, but only insofar as the imposition of such taxes is not contrary to the Convention or other instrument in force between the Contracting States. It also applies to the interest, administrative penalties and costs of collection or conservancy that are related to such an amount. Assistance is therefore not restricted to taxes to which the Convention generally applies pursuant to Article 2, as is confirmed in paragraph 1.

11. Some Contracting States may prefer to limit the application of the Article to taxes that are covered by the Convention under the general rules of Article 2. States wishing to do so should replace paragraphs 1 and 2 by the following:

> "1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Article 1. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article. mut26d[( )7y

14. Nothing in the Convention prevents the application of the provisions of the Article to revenue claims that arise before the Convention enters into force, as long as assistance with respect to these claims is provided after the treaty has entered into force and the provisions of the Article have become effective. Contracting States may find it useful, however, to clarify the extent to which the provisions of the Article are applicable to such revenue claims, in particular when the provisions concerning the entry into force of their convention provide that the provisions of that convention will have effect with respect to taxes arising or levied from a certain time. States wishing to restrict the application of the Article to claims arising after the Convention enters into force are also free to do so in the course of bilateral negotiations.

*Paragraph 3*

15. This paragraph stipulates the conditions under which a request for assistance in collection can be made. The revenue claim has to be enforceable under the law of the requesting State and be owed by a person who, at that time, cannot, under the law of that State, prevent its collection. This will be the case where the requesting State has the right, under its internal law

measures of conservancy, it follows that it is the time-limits of the requesting State that are solely applicable.

23. Thus, as long as a revenue claim can still be enforced or collected (paragraph 3) or give rise to measures of conservancy (paragraph 4) in the requesting State, no objection based on the time-limits provided under the laws of the requested State may be made to the application of paragraph 3 or 4 to that revenue claim. States which cannot agree to disregard their own domestic time-limits should amend paragraph 5 accordingly.

24. The Contracting States may agree that after a certain period of time the obligation to assist in the collection of the revenue claim no longer exists. The period should run from the date of the original instrument permitting enforcement. Legislation in some States requires renewal of the enforcement instrument, in which case the first instrument is the one that counts for purposes of calculating the time period after which the obligation to provide assistance ends.

25. Paragraph 5 also provides that the rules of both the requested (first sentence) and requesting (second sentence) States giving their own revenue claims priority over the claims of other creditors shall not apply to a revenue claim in respect of which a request has been made under paragraph 3 or 4. Such rules are often included in domestic laws to ensure that tax authorities can collect taxes to the fullest possible extent.

26. The rule according to which the priority rules of the requested State do not apply to a revenue claim of the other State in respect of which a request for assistance has been made applies even if the requested State must generally treat that claim as its own revenue claim pursuant to paragraphs 3 and 4. States wishing to provide that revenue claims of the other State should have the same priority as is applicable to their own revenue claims are free to amend the paragraph by deleting the words “or accorded any pr

States in which the paragraph may raise constitutional or legal difficulties may amend or omit it in the course of bilateral negotiations.

*Paragraph 7*

29. This paragraph provides that if, after a request has been made under paragraph 3 or 4, the conditions that applied when such request was made cease to apply (e.g. a revenue claim ceases to be enforceable in the requesting State), the State that made the request must promptly notify the other State of this change of situation. Following the receipt of such a notice, the requested State has the option to ask the requesting State to either suspend or withdraw the request. If the request is suspended, the suspension should apply until such time as the State that made the request informs the other State that the conditions necessary for making a request as regards the relevant revenue claim are again satisfied or that it withdraws its request.

*Paragraph 8*

30. This paragraph contains certain limitations to the obligations imposed on the State which receives a request for assistance.

31. The requested State is at liberty to refuse to provide assistance in the cases referred to in the paragraph. However if it does provide assistance in these cases, it remains within the framework of the Article and it cannot be objected that this State has failed to observe the provisions of the Article.

32. In the first place, the paragraph contains the clarification that a Contracting State is not bound to go beyond its own internal laws and administrative practice or those of the other State in fulfilling its obligations under the Article. Thus, if the requesting State has no domestic power to take measures of conservancy, the requested State could decline to take such measures on behalf of the requesting State. Similarly, if the seizure of assets to satisfy a revenue claim is not permitted in the requested State, that State is not obliged to seize assets when providing assistance in collection under the provisions of the Article. However, types of administrative measures authorised for the purpose of the requested State's tax must be utilised, even though invoked solely to provide assistance in the collection of taxes owed to the requesting State.

33. Paragraph 5 of the Article provides that a Contracting State’s time limits will not apply to a revenue claim in respect of which the other State has requested assistance. Subparagraph *a*) is not intended to defeat that principle. Providing assistance with respect to a revenue claim after the requested State’s time limits have expired will not, therefore, be considered to be at variance with the laws and administrative practice of that or of the other Contracting State in cases where the time limits applicable to that claim have not expired in the requesting State.

34. Subparagraph *b*) includes a limitation to carrying out measures contrary to public policy (ordre public). As is the case under Article 26 (see paragraph 19 of the Commentary on Article 26), it has been felt necessary to prescribe a limitation with regard to assistance which may affect the vital interests of the State itself.

35. Under subparagraph *c*), a Contracting State is not obliged to satisfy the request if the other State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice.

36. Finally, under subparagraph *d*), the requested State may also reject the request for practical considerations, for instance if the costs that it would incur in collecting a revenue claim of the requesting State would exceed the amount of the revenue claim.

37. Some States may wish to add to the paragraph a further limitation, already found in

timely and adequate notice of claims against the taxpayer, the right to confidentiality of taxpayer information, the right to appeal, the right to be heard and present argument and evidence, the right to be assisted by a counsel of the taxpayer's choice, the right to a fair trial, etc.);

- whether assistance in the collection of taxes will provide balanced and reciprocal benefits to both States;
- whether each State's tax administration will be able to effectively provide such assistance;
- whether trade and investment flows between the two States are sufficient to justify this form of assistance;

these will be borne by the requesting State, unless otherwise agreed bilaterally. Such costs would cover, for instance, costs incurred when a particular type of procedure has been used at the request of the other State, or supplementary costs of experts, interpreters, or translators. Most States also consider as extraordinary costs the costs of judicial and bankruptcy proceedings. The agreement should provide a definition of extraordinary costs and consultation between the Contracting States should take place in any particular case where extraordinary costs are likely to be involved. It should also be agreed that, as soon as a Contracting State anticipates that extraordinary costs may be incurred, it will inform the other Contracting State and indicate the estimated amount of such costs so that the other State may decide whether such costs should be incurred. It is, of course, also possible for the Contracting States to provide that costs will be allocated on a basis different from what is described above; this may be necessary, for instance, where a request for assistance in collection is suspended or withdrawn under paragraph 7 or where the issue of costs incurred in providing assistance in collection is already dealt with in another legal instrument applicable to these States.

***3. The Committee noted, in respect of the agreement referred to in the paragraphs quoted, that such an agreement shall take into account the differences in development of Contracting States. It could therefore be agreed that all costs, including ordinary costs, will be borne by one State only. In such a case, the Contracting States will have to agree on the costs. These could for instance be determined on the basis of a fixed amount. The OECD Commentary continues as follows:***

*9.* In the agreement, the competent authorities may also deal with other practical issues such as:

- whether there should be a limit of time after which a request for assistance could no longer be made as regards a particular revenue claim;
- what should be the applicable exchange rate when a revenue claim is collected in a currency that differs from the one which is used in the requesting State;
- how should any amount collected pursuant to a request under paragraph 3 be remitted to the requesting State.

***4. In relationship to this paragraph, the Committee noted an issue not specifically mentioned in the OECD Commentary, but consistent with it, of whether there should be a minimum threshold below which assistance will not be provided. The OECD Commentary continues as follows:***

*Paragraph 2*

*10.* Paragraph 2 defines the term “revenue claim” for purposes of the Article. The definition applies to any amount owed in respect of all taxes that are imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, but only insofar as the imposition of such taxes is not contrary to the Convention or other instrument in force between the Contracting States. It also applies to the interest, administrative penalties and costs of collection or conservancy that are related to such an amount. Assistance is therefore not

restricted to taxes to which the Convention generally applies pursuant to Article 2, as is confirmed in paragraph 1.

*11*. Some Contracting States may prefer to limit the application of the Article to taxes that are covered by the Convention under the general rules of Article 2. States wishing to do so should replace paragraphs 1 and 2 by the following:

> "1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Article 1. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.
>
> 2. The term "revenue claim" as used in this Article means any amount owed in respect of taxes covered by the Convention together with interest, administrative penalties and costs of collection or conservancy related to such amount."

*12*. Similarly, some Contracting States may wish to limit the types of tax to which the provisions of the Article will apply or to clarify the scope of application of these provisions by including in the definition a detailed list of the taxes. States wishing to do so are free to adopt bilaterally the following definition:

> "The term "revenue claim" as used in this Article means any amount owed in respect of the following taxes imposed by the Contracting States, together with interest, administrative penalties and costs of collection or conservancy related to such amount:
>
> *a*) (in State A): …
> *b*) (in State B): ..."

*13*. In order to make sure that the competent authorities can freely communwingp61(h if o)-6rmaction orpurmpolsn e Articl,e Contractin. Statesshoucl Articlehisdraftle

*18.* It is possible that the request may concern a tax that does not exist in the requested State. The requesting State shall indicate where appropriate the nature of the revenue claim, the components of the revenue claim, the date of expiry of the claim and the assets from which the revenue claim may be recovered. The requested State will then follow the procedure applicable to a claim for a tax of its own which is similar to that of the requesting State or any other appropriate procedure if no similar tax exists.

*Paragraph 4*

*19.* In order to safeguard the collection rights of a Contracting State, this paragraph enables it to request the other State to take measures of conservancy even where it cannot yet ask for assistance in collection, e.g. when the revenue claim is not yet enforceable or when the debtor still has the right to prevent its collection. This paragraph should only be included in conventions between States that are able to take measures of conservancy under their own laws. Also, States that consider that it is not appropriate to take measures of conservancy in respect of taxes owed to another State may decide not to include the paragraph in their conventions or to restrict its scope. In some States, measures of conservancy are referred to as "interim measures" and such States are free to add these words to the paragraph to clarify its scope in relation to their own terminology.

*20.* One example of measures to which the paragraph applies is the seizure or the freezing of assets before final judgement to guarantee that these assets will still be available when collection can subsequently take place. The conditions required for the taking of measures of conservancy may vary from one State to another but in all cases the amount of the revenue claim should be determined beforehand, if only provisionally or partially. A request for measures of conservancy as regards a particular revenue claim cannot be made unless the requesting State canljsate c0.017ards a parn31red ese hse

***5. The Committee noted in relation to this paragraph that any legal actions contesting the recovery measures taken by the requested State can of course be brought before the competent judicial authorities of that State. The OECD Commentary continues as follows:***

*Paragraph 7*

*29.* This paragraph provides that if, after a request has been made under paragraph 3 or 4, the conditions that applied when such request was made cease to apply (e.g. a revenue claim ceases to be enforceable in the requesting State), the State that made the request must promptly notify the other State of this change of situation. Following the receipt of such a notice, the requested State has the option to ask the requesting State to either suspend or withdraw the request. If the request is suspended, the suspension should apply until such time as the State that made the request informs the other State that the conditions necessary for making a request as regards the relevant revenue claim are again satisfied or that it withdraws its request.

*Paragraph 8*

*30.* This paragraph contains certain limitations to the obligations imposed on the State which receives a request for assistance.

*31.* The requested State is at liberty to refuse to provide assistance in the cases referred to in the paragraph. However if it does provide assistance in these cases, it remains within the framework of the Article and it cannot be objected that this State has failed to observe the provisions of the Article.

*32.* In the first place, the paragraph contains the clarification that a Contracting State is not bound to go beyond its own internal laws and administrative practice or those of the other State in fulfilling its obligations under the Article. Thus, if the requesting State has no domestic power to take measures of conservancy, the requested State could decline to take such measures on behalf of the requesting State. Similarly, if the seizure of assets to satisfy a revenue claim is not permitted in the requested State, that State is not obliged to seize assets when providing assistance in collection under the provisions of the Article. However, types of administrative measures authorised for the purpose of the requested State's tax must be utilised, even though invoked solely to provide assistance in the collection of taxes owed to the requesting State.

*33.* Paragraph 5 of the Article provides that a Contracting State's time limits will not apply to a revenue claim in respect of which the other State has requested assistance. Subparagraph *a*) is not intended to defeat that principle. Providing assistance with respect to a revenue claim after the requested State's time limits have expired will not, therefore, be considered to be at variance with the laws and administrative practice of that or of the other Contracting State in cases where the time limits applicable to that claim have not expired in the requesting State.

*34.* Subparagraph *b*) includes a limitation to carrying out measures contrary to public policy (ordre public). As is the case under Article 26 (see paragraph 19 of the Commentary on Article 26), it has been felt necessary to prescribe a limitation with regard to assistance which may affect the vital interests of the State itself.

*35.* Under subparagraph *c*), a Contracting State is not obliged to satisfy the request if the other State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice.

*36.* Finally, under subparagraph *d*), the requested State may also reject the request for practical considerations, for instance if the costs that it would incur in collecting a revenue claim of the requesting State would exceed the amount of the revenue claim.

*37.* Some States may wish to add to the paragraph a further limitation, already found in the joint Council of Europe-OECD multilateral Convention on Mutual Administrative Assistance in Tax Matters, which would allow a State not to provide assistance if it considers that the taxes with respect to which assistance is requested are imposed contrary to generally accepted taxation principles.