

# **CIAT MANUAL FOR IMPLEMENTING AND CARRYING OUT INFORMATION EXCHANGE FOR TAX PURPOSES<sup>\*</sup>**

## **GENERAL AND LEGAL ASPECTS OF INFORMATION EXCHANGE**

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<sup>\*</sup> The rest of the modules contain an adaptation of OECD's manual and CIAT examples.

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# CIAT MANUAL FOR IMPLEMENTING AND CARRYING OUT INFORMATION EXCHANGE FOR TAX PURPOSES

## GENERAL AND LEGAL ASPECTS OF INFORMATION EXCHANGE

The purpose of this Manual is to provide the CIAT member countries a general overview of the application of information exchange provisions, in particular those of the CIAT Model Agreement on Exchange of Information, which may serve as technical and practical guide to the respective tax administration officials in charge of such exchange and thus contribute to render it effective. The Manual could also be used in training programs on the subject matter while also being a useful guide for the tax administrations in designing or reviewing their own manuals and even, in negotiating new agreements.

The Manual is structured on the basis of modules. This first module deals with the general and legal aspects of information exchange. The other modules deal with particular aspects of information exchange and refer to the following topics:

### ***Mechanisms for exchanging information***

- Information Exchange upon Request Module.
- Spontaneous Information Exchange Module.
- Automatic Information Exchange Module.
- Specific Activities (Industries) Information Exchange Module.
- Simultaneous Examinations Module.
- Examinations Abroad Module.

### ***Useful information for processing exchange***

- Country Profile, regarding information exchange.
- Information Exchange Instruments and Models.

Some of these models might be unimportant for certain countries, such as, for example, the one relative to Examinations Abroad, with respect to which some member countries have made some reservations about its application in the CIAT Model. The modular structure considers such differences by allowing each country to select and use only those modules related to their information exchange policies and, of course, to the

agreements they may already have entered into.

First of all, the modules focus on information exchange according to the instruments provided in the CIAT Model. However, when appropriate, they maintain the wording used in the different topics of the OECD Manual. Likewise, when appropriate, reference is made through footnotes, to Article 26 of the OECD Model Agreement, since almost all of the clauses on information exchange of the agreements to avoid double taxation that are in force in the CIAT member countries, are based on this article.

The Manual examines information exchange according to the CIAT Model and the revised text of Article 26 of the OECD Model Agreement approved in 2004. When the new text differs from the previous version of Article 26, explanations have been included in the respective footnotes, in keeping with the criterion of the OECD Manual. This is particularly important, given that the clauses of the agreements in force to avoid double taxation are mainly based on previous versions.

## **1. The changing environment**

The last decades have witnessed the unprecedented liberalization and globalization of the national economies. The CIAT member countries and an increasing number of nonmember countries from throughout the world have eliminated or limited controls on foreign investment and rendered flexible or eliminated exchange controls. While the tax administrations continue to be confined in their respective jurisdictions, taxpayers operate globally. Such unbalance and differences in the national tax systems created the need to face harmful tax practices of all kinds, by focusing on improving transparency and cooperation between the tax authorities and resorting ever more to better and greater cooperation in tax issues. In a broader context, efficient tax cooperation contributes to guarantee that taxpayers having access to cross-border transactions, will not also additionally have greater possibilities for tax evasion and avoidance. Cooperation in tax issues also reflects the basic principles that participation in the globally economy involves benefits as well as responsibilities. The sustainability of an open world economy depends on international cooperation, including cooperation in tax affairs.

The struggle against fraud, evasion and elusive tax practices has always been one of the most complex aspects faced by the national tax administrations. Even more important is the need for continuous dependency on the resources required to face, with greater levels of updated knowledge and training, the speedy changes in the internal and external economic activity, as a consequence of developments in communication technology. In that sense, the countries with greater relative economic development, even though the tax administrations may lag behind in the unceasing modifications that take place in the respective socioeconomic contexts, have been concerned about facilitating the tax administrations the necessary means for adjusting to the aforementioned modifications. On the other hand, in most of the developing countries, the administrations are not satisfactorily following up the modifications observed in the international economy.

The intensity of bilateral and multilateral economic relationships between the developed countries has contributed to establish sound working relationships in the tax area, which means that the treasuries of said countries have an increasing level of communication and cooperation that allows them to control the taxpayers carrying out activities in several national tax jurisdictions. However, the treasuries of the developing countries, in general have not followed the same guidelines, in spite of the growth of direct investments, of their participation in international trade and payments for external technological and financial services taking place in those countries.

The increasing interdependence of the countries, as a result of economic internationalization, affords a new opportunities to the treasuries of both categories of countries, so that within the framework of resolute governmental cooperation, they may agree on administrative support and assistance programs that may basically allow the developing countries to achieve greater efficiency in complying with the objectives of their tax administrations, as well as to exchange the information that may be necessary to effectively combat fraud, evasion and/or internal and international tax avoidance.

A key element of international cooperation in tax affairs is the exchange of information. It is an effective means for countries to maintain sovereignty over their own tax bases and to guarantee the correct allocation of the rights of taxation among the various national jurisdictions or, more precisely, when such exchange is based on tax treaties between the contracting States. The exchange of information may be based on a number of different exchange mechanisms provided in the internal legislation and/or in international agreements. The exchange of information is every more carried out through specific agreements based on Tax Information Agreements Models such as that of CIAT.<sup>2</sup>

Finally, it should be concluded that through tax information exchange Agreements the tax administrations may obtain multiple benefits, in addition to those indicated. Some of them involve, for example, improving collection as a result of the greater examination capacity afforded by those agreements, either directly or through the broadest voluntary compliance that such greater capacity promotes, as well as learning and acquiring experience about the tax systems of other States and the mechanisms used by the taxpayers at the international level, to avoid correct and timely compliance with tax obligations.

## 2. Purposes of the information exchange

From the standpoint of the specific agreements, such as the CIAT Model, information is mainly exchanged to assist one of the contracting parties in administering or applying its national tax law, **preventing and/or** combating tax avoidance, evasion

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<sup>2</sup> Outside the context of the specific agreements, and as was traditionally done, the information exchange was traditionally based on a provision inspired in Article 26 of the OECD Model Code, incorporated to the broader agreements to avoid double income taxation.

and fraud.<sup>3</sup>

### 3. Legal bases of information exchange

There is a number of international legal instruments whereby information exchanges may be carried out for tax purposes:

- The clauses provided in the bilateral or multilateral agreements to avoid double taxation are generally based on the OECD's Income and Capital Model Agreement, the United Nations Model Agreement on Income and Capital or the Andean Community's Model approved through Resolution 40;
- International instruments specifically designed for purposes of administrative assistance in tax affairs<sup>4</sup>, such as tax information exchange agreements based on the CIAT Model Agreement, the OECD's 2002 Model Agreement on Information Exchange on Tax Affairs and the Council of Europe/OECD Agreement.
- Within the European Community, the EC Directive on Mutual Assistance (Directive 77/799/EEC as updated) and for the exchange of information for VAT purposes, Regulation No 1798/2003, and for excise duties, Regulation No. 2073/2004..
- International judicial assistance agreements such as the European Convention on Mutual Assistance in Penal Affairs (as extended to tax aspects through Additional Protocol of March 17, 1978) in cases of prosecution for tax violation or the Inter-American Convention of Mutual Assistance in Penal Affairs (as extended through Optional Protocol of May 23, 1992) in cases of tax violations.

The national law can also stipulate procedures to provide assistance to foreign jurisdictions. For example, some countries allow the provision of information to another jurisdiction, subject to certain conditions and safeguards (e.g. reciprocity and confidentiality of information), even in the absence of an international agreement and based exclusively on their national tax provisions.

When more than one legal instrument may be used as basis for the exchange of information, the issue of concurrence of solutions could be resolved as it is generally

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<sup>3</sup> It being the case of clauses provided in agreements to avoid double taxation comparable to article 26 of the OECD Model Convention, there is another essential objective which is to determine events to which the rules of the respective agreement will be applied, regardless of the fact that one may consider a second objective similar to that of the specific agreements, extension of purposes, the latter of which has been acquiring importance in the latest versions of said Model.

<sup>4</sup> From the juridical standpoint, public international law has recognized the figure of the so-called *executive agreements* according to U.S. law. These are simplified agreements wherein the legislative body does not intervene, since they involve rules in force that are incorporated in international treaties or in the internal legislation.

done in the very instruments<sup>5</sup>. When the applicable instruments include more than one provision on information exchange and there are no national rules to the contrary, the competent authorities are generally free to choose the most appropriate instrument in keeping with the situation. In these cases, it would be desirable that the competent authorities agree on a common approach to determine the mechanism to be used in accordance with the specific circumstances.

**Example:** It could occur that in an agreement to avoid double income taxation between two contracting States, the exchange of information is provided in a clause similar to article 26 of the OECD Model Convention and for the application of this clause an agreement on “Rules for the Application of Information Exchange” may have been approved. Subsequently, these same states entered into a specific information exchange agreement that also considers income tax among the taxes to which this agreement is applicable.

#### 4. Assistance in penal tax cases

Article 4, section 1 of the CIAT Model Agreement allows the exchange of information in cases involving tax violations<sup>6</sup>. Depending on the nature of the legal system of the contracting parties, as well as facts and circumstances of any case in particular, there may also be alternative legal instruments<sup>7</sup> through which there may be a possible exchange of information when in an inquiry or investigation there are indications of penal issues and in certain situations, the countries prefer to use said instruments<sup>8</sup>, bearing in mind that the information must refer to the purposes covered by the agreement.

Since the term “competent authority” generally refers to an authority from the sphere of the Ministry of Finance which has been defined in the agreement or its authorized representative, the judicial authority of a country cannot directly transmit requests for information to another country based on the CIAT Model Agreement.<sup>9</sup>

The field staff initiating the request for information from another country should first of all inform its competent authority of the existence of any penal aspect in the investigation. The basis on which the information will be sought will then be determined by the competent authority.

If the competent authority requests information of a particular type or in a particular manner, for the penal tax processes, the capacity of the competent authority required

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<sup>5</sup> See paragraph 5.2 of the Commentary on Article 26 of the OECD Model Convention.

<sup>6</sup> Idem. Article 26 of the OECD Model Convention.

<sup>7</sup> For example, legal mutual assistance treaties or national legal provisions that may allow for exchanging information on penal issues, even in the absence of international agreements.\_

<sup>8</sup> For example, when there is a request for the seizure of original records for verification purposes and the requested country can only take such measures if the request is based on a mutual legal assistance treaty.

<sup>9</sup> Idem. Article 26 of the OECD Model Convention.



to comply with such request, will depend on the national law of the requested Contracting State.<sup>10</sup>

## 5. Assistance in tax collection

Article 1 of the CIAT Model Agreement does not provide for assistance in tax collection, in the sense of empowering the competent authorities to use their collection powers on behalf of the other contracting party. However, the scope of the Model Agreement covers the exchange of information for the “collection of taxes” and thus, the information that may contribute to the collection of national taxes may be exchanged between the contracting parties.<sup>11</sup>

If the countries negotiating an agreement based on the CIAT Model would decide to include clauses on assistance for collection, such instruments as article 27 of the OECD Model Convention could serve as reference.

### EXAMPLE REQUEST FOR ADMINISTRATIVE NOTIFICATION

The European Community has recently modified and updated the instruments that allow for the exchange of tax information, with respect to VAT as well as direct taxes. Thus, in both cases, this possibility has been stated in an innovative manner, including regulation on assistance for notifications:

Thus, the COUNCIL’s REGULATION (EC) No 1798/2003 of October 7, 2003, in relation to administrative cooperation in the sphere of value added tax which repeals Regulation (EEC) No. 218/92, provides the following in its articles 14, 15 and 16:

*The requested authority shall, at the request of the requesting authority and in accordance with the rules governing the notification of similar instruments in the Member State in which it is established, notify the addressee of all instruments and decisions which emanate from the administrative authorities and concern the application of VAT legislation in the territory of the Member State in which the requesting authority is established.*

*Requests for notification, mentioning the subject of the instrument or decision to be notified, shall indicate the name, address and any other relevant information for identifying the addressee.*

*The requested authority shall inform the requesting authority immediately of its response to the request for notification and notify it, in particular, of the date of notification of the decision or instrument to the addressee.*

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<sup>10</sup> For example, the national law will determine the type and forms (e.g. testimony of witnesses) of the means for collecting the relevant information.

<sup>11</sup> Idem. Article 26 of the OECD Model Convention. However, in its latest versions, Article 27 of the OECD Model Convention provides for assistance in the collection of taxes.

And since it could not be otherwise, Directive 77/79 relative to mutual assistance between the competent authorities in the area of direct taxes (income and net worth and insurance premiums) in its wording amended by Directive 2004/56/EC of April 21, introduces article 8 bis with the following sections:

### *Notification*

1. *At the request of a competent authority of a member State, the competent authority of another Member State shall, in accordance with the rules governing the notification of similar instruments in the requested Member State, notify the addressee of all instruments and decisions which emanate from the administrative authorities of the requesting member State and concern the application in its territory of legislation on taxes covered by this Directive.*
2. *Requests for notification shall indicate the subject of the instrument or decision to be notified and shall the name and address of the addressee together with any other information which may facilitate identification of the addressee.*
3. *The requested authority shall inform the requesting authority without immediately of its response to the request for notification and shall notify it, in particular, of the date of notification of the instrument or decision to the addressee.*

In this way, in the texts governing the exchange of tax information in the European Economic Community, assistance in notification is expressly stated. The system chosen has been that of opting for the legislation of destination, in such a way that an instrument or decision is deemed notified in response to the formalities established in the Country where the notification is actually made, and not those required in the requesting Country. Therefore, the requested authority will report the date on which the notification has been made to the addressee, according to the procedures established for such purpose.

## **6. Forms of information exchange**

The CIAT Model Agreement expressly provides for a wide range of forms or modes of exchanging information<sup>12, 13</sup>.

The traditional modalities expressly provided in the CIAT Model Agreement are:

- *Specific or upon request exchange of information.* The exchange of information upon request deals with a situation in which the competent authority of a country requests particular information from the competent authority of another contracting party.

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<sup>12</sup> The CIAT Model Agreement includes specific articles dealing with information exchange upon request, spontaneous information exchange and automatic information exchange, as well as simultaneous tax examinations and tax examinations abroad. See Articles 4, 5 and 6.

<sup>13</sup> Article 26 of the Model Convention includes provisions for the broad exchange of information but without mentioning its modalities, although without limiting them either.

- *Regular or automatic exchange of information.* The information that is automatically exchanged is generally information covering many individual cases of the same type, usually consisting of details about income that is originated in sources from a country, for example, interest, dividends, royalties, pensions, etc. This information is obtained on a routine basis by the country sending it (generally through reports on payments made by the taxpayers) and is available for being transmitted to the counterparts in treaties. Normally, the competent authorities interested in the automatic information exchange agree in advance on the type of information they wish to exchange on this basis. To improve the efficiency and effectiveness of automatic information exchanges, it is important that the contracting parties consider and make an effort to agree on details for effectively carrying out such exchanges, by establishing standard formats on paper or electronically, as is already been done by several countries.<sup>14</sup>
- *Spontaneous exchange of information.* The information is spontaneously exchanged when one of the contracting parties obtains information in the process of administration of its own tax laws and, considering that it may be of interest to one of its contracting parties in the treaty, transmits it without the latter having requested it. The effectiveness of this form of information exchange mainly depends on the ability of the examiners in determining, during the course of an examination, information that may be pertinent to a foreign tax administration. Although this is not expressly provided in the Model Agreement, it is convenient that the competent authority of the contracting party that provides spontaneous information, request feedback from the receiving tax administration, since it may result in a corresponding tax adjustment on the part of the contracting party sending it. Positive feedback also constitutes an incentive for tax examiners to continue to provide spontaneous information.

In addition, the CIAT Model Agreement also provides other mechanisms for information exchange, such as:

- *Simultaneous tax examinations.* A simultaneous examination is an agreement between countries to simultaneously and independently examine, each in its territory, the tax situation of taxpayers on which they may have a common or related interest, with a view to exchanging any pertinent information they may thus obtain. The differences existing among the countries with respect to the statute of limitations constitute an important practical consideration to be taken into account for the selection of cases. Such examinations are particularly useful in the area of transfer pricing and the identification of tax evasion schemes that involve low taxation jurisdictions.

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<sup>14</sup> The OECD has designed a standard format on paper as well as a standard electronic format (known as the OECD Standard Magnetic Format or "SMF"). The OECD has also designed a "new generation" transmission format for automatic exchange (known as the Standard Transmission Format or "STF") to eventually replace the SMF.

- *Visit of authorized representatives of the competent authorities.* Under certain circumstances it may be useful to travel to a foreign jurisdiction to gather information for a particular case. Nevertheless, such visit must be authorized by the foreign jurisdiction, since otherwise it would involve a violation of sovereignty. Thus, the decisions as to whether or not authorize such visits and if so, if the presence of foreign tax officials would require the taxpayer's consent, (as well as any other terms and conditions for such visits) are at the exclusive discretion of each country. The tax officials must be authorized representatives of the competent authorities. Such presence abroad may take place at different instances. It may be at the request of the country seeking the information, if it is considered that it will facilitate understanding of the request and the gathering of information. It may be at the initiative of the requested competent authority to reduce the cost and burden of information gathering. In a number of countries, the authorized representatives of the competent authorities of the other country may participate in a tax examination and frequently that turns out to be very valuable for arriving at a clear idea of the business and other relationships which the resident of a country could have with its foreign associates.
  
- *Exchange of general information on lines of economic activity:* A general information exchange at the level of lines of economic activity does not refer to a specific taxpayer but rather to a line of economic activity in its totality, such as the pharmaceutical or oil industry. An exchange at the entire level of a line of economic activity, may involve meetings among representatives of contracting parties for discussing the way in which a particular economic sector operates, the financing schemes, the way in which prices are determined, the tax evasion trends identified, etc.

## 7. Authority for exchanging information

In most countries, ***international relationships procedures*** are competency of the Ministry of Foreign Relations. In principle, therefore, official contacts with foreign countries should be undertaken through diplomatic channels. In the case of information exchange of tax issues, this may not turn out to be very practical. Generally, the competent authority is determined in the specific agreements and conventions and is a high level official of the Ministry of Finance (either from the treasury of the tax administration) or an authorized delegate thereof. The CIAT Model Agreement provides for said designation in its article 3, section 1, paragraph a)<sup>15</sup>, and expressly establishes in Article 7, section 2, the power given to the designated competent authorities to directly communicate among them.

The function carried out by the competent authority is generally centralized at the Tax Administration in the case of specific information exchange agreements, or at the Ministry of Finance, when dealing with agreements to avoid double taxation. In this latter case, there is the possibility of delegating the competent authority function to an

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<sup>15</sup> Idem. Article 3(1) (f) of the OECD Model Convention.

entity of the tax administration, as regards the application of the information exchange clauses. The existence of this central body facilitates cooperation and the necessary consistency with respect to the information exchange policy. There are also situations in which certain responsibilities of the competent authorities may be delegated to a local level, for example, in cases wherein works are carried out at the border areas, where direct and speedy contacts between the local tax authorities on each side of the border constitute the only way for an effective exchange of information. However, this does not imply that the competent authority is no longer involved. Thus, in the cases of delegation of functions, it will be necessary to establish certain arrangements between the competent authorities (e.g., the types of information that may be exchanged, the pertinent topic to which this exchange may be applied, the process for keeping the pertinent authorities involved).

Currently the trend is to centralize competency for the exchange of information at the superior body of the tax administration, as regards the negotiation and conclusion of the specific administrative agreements as well as the delegation to that body of matters related to the use of Article 26 of the Model Convention.<sup>16</sup>

## 8. Scope of the exchange of information

Article 1 of the CIAT Model Agreement promotes the broad exchange of information<sup>17</sup>. Nevertheless, it should not be understood that it allows for “fishing expeditions”; that is, requests for speculative information that is unrelated to any investigation or examination in process.<sup>18</sup> Although the CIAT Model Agreement does not expressly provide it, it is advisable that with respect to requests for specific information, a determination be made as to the minimum data to be provided by the requestor to facilitate the processing of the request. In general, when a country fails to provide important data for information upon request, considered as necessary in the list determined by mutual agreement between the parties, such omission could lead the requested competent authority to believe that the request is a “fishing expedition”.

The information exchange covers all the information that is anticipated as relevant for the administration or application of the national laws of the contracting parties or, as stated in article 4, section 1 of the CIAT Model Agreement “for administering and ensuring compliance with its national laws as regards the taxes comprised in the present Agreement, including the information for the determination, assessment and collection of said taxes, for the recovery and execution of tax credits, for the research

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<sup>16</sup> The OECD has a general list of competent authorities in the member countries of said organization (and some nonmembers).

<sup>17</sup> Idem. Article 26 of the OECD Model Convention.

<sup>18</sup> In the case of Article 26 of the OECD Model Convention, such exclusion could be understood as stated in the rule when referring to “foreseeable relevance”. The former version of Article 26 of the Model Convention used the term “necessary.” The change from “necessary” to “foreseeable relevance” did not change the effect of the provision, but rather made it more explicit in the sense of rejecting the “fishing expeditions.”

or prosecution of presumptive tax offenses and violations to the tax laws and regulations.”<sup>19</sup>

Paragraph 3 of the commentaries to article 4 of the CIAT Model Agreement provides some examples on exchange for the application of the national laws that have been taken from the commentaries to article 26 of the OECD Model Convention and which may afford some illustrations.<sup>20</sup>

### **Examples:**

**1. A resident company in state A provides goods to an independent resident company in state B. State A wishes to know from state B, the price paid for such goods in state B for the purpose of correctly applying the provisions of its internal law.**

**2. A resident company of state A sells goods through a resident company in state C to a resident company in state B. The companies may or may not be related. There is no Agreement between states A and C, as well as between states B and C. Under the Agreement between States A and B, state A, for the purpose of ensuring the correct application of the provisions of its internal law regarding the benefits obtained by resident company in its territory, requires information from state B regarding the price paid for the goods by the resident company in state B.**

**3. State A, for purposes of applying its tax to a company located in its territory, requests state B to inform, in keeping with the Agreement between A and B, about the prices determined by the resident company in state B, or a group of companies that are residents of or located in state B, with which the company located in state A has no commercial contacts, for purposes of allowing direct comparison of the prices fixed by the company located in state A, for example: prices fixed by a company or group of companies having a dominant position.**

An information request for the administration or application of the national laws or,

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<sup>19</sup> Article 26 of the OECD Model Convention also provides for the exchange of information to comply with the provisions of the convention. Several treaties to avoid double income taxation previously entered into and still in force, limit the exchange of information to this latter objective (that is, exchange of information for purposes of application of the convention).

<sup>20</sup> On their part, paragraphs 7 and 8 of the Commentary to Article 26 of the OECD Model Convention shows examples of the scope of the exchange in the application of said article. For example, for the application of Article 12 of the OECD Model Convention (payment of royalties), the country of residence may request the source country about the amount of royalties transferred to one of its residents, the source country may ask the country of the beneficiary of the royalties, if it is a resident and if it is the beneficiary owner of the royalties, in order to exempt it from the withholding. In addition, for the application of Articles 7, 9, 23 A and 23 B of the OECD Model Convention, information could also be requested for the adequate allocation of earnings between related companies in different states or between a parent company in one state and a permanent establishment in another State. The necessary information for the application of Article 9 also includes information on ownership and control with respect to a foreigner, in order to determine whether or not the companies are related in accordance with the meaning of Article 9.

according to Article 1 of the CIAT Model Agreement for preventing and combating tax fraud, evasion and avoidance,<sup>21</sup> could refer to any or all of the following items:

- tax domicile of an individual or corporation;
- the tax “status” of a legal entity;
- the nature of income in the source country;
- income and expenses appearing in a tax return;
- the records of transactions (for example, to determine the amount of commissions paid to a company from another State);
- constitutive documents of an entity or documents regarding subsequent changes of stockholders/partners;
- name and address of the entity at the time its establishment and all the subsequent changes in name and address;
- number of entities established in the same address as the requested entity;
- names and addresses of the directors, managers and other employees of a company for the pertinent years, evidence (contracts and bank statements of account) of their remuneration, social security payments and information on their occupation with respect to any other entity;
- bank records;
- accounting records and financial statements;
- copies of invoices, commercial contracts, etc.;
- the price paid for goods in a transaction between independent companies in both States;
- information that may involve a so-called triangular situation, wherein, in transactions between two companies, each located in a contracting party, a company from a third country, C intervenes (with which neither country A or B has an instrument for information exchange). In this case, States A and B may exchange information with respect to transactions with the company in State C for the correct taxation by their resident companies;
- prices in general (for instance pricing information on similar transactions in another country to check the prices charged by a domestic taxpayer, prices in general, necessary to check the prices charged by their taxpayers even if there

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<sup>21</sup> Idem. Article 26 of the OECD Model Agreement.

are no business contacts between the taxpayers. For instance, country A may wish to check prices charged by its taxpayers by reference to transfer pricing information on similar transactions in country B, even if there are no business contacts between the respective taxpayers in countries A and B.

The scope of the information exchange according to the CIAT Model Agreement, as was already commented, also expressly allows the exchange of information that will not be specifically on any taxpayer, such as statistics, information on an industry in particular, tax evasion trends, administrative interpretations and practices.<sup>22</sup>

## 9. Persons covered

The exchange of information is not limited to the information related to issues of the residents of the contracting parties, and the CIAT Model Agreement does provide anticipates it, on establishing that the information exchange will take place, regardless of whether the person referred to in the information, or in whose power it may be, is a resident or national of the contracting States.<sup>23</sup> Frequently, the tax administration of one of the contracting parties may be interested in receiving information on activities carried out in the other contracting party, by a particular person resident in a third country, since a tax obligation of the latter as nonresident taxpayer may be at stake (Example 1). Likewise, there are situations wherein it is conceivable that one contracting party may be interested in receiving information about a resident of a third country who is not subject to tax in any of the contracting parties, for example, when such information is important for the taxation of a third party that may be a taxpayer or resident of the requesting party (Example 2). Of course, the contracting parties cannot provide information on residents from third countries that is not maintained by their authorities or is not in possession or control of persons within their territorial jurisdiction (Example 3).<sup>24</sup>

### Examples:

**1. Banco Atlas, resident in country A has branches in country B as well as in country C. Banco Atlas is devoted to trading in financial assets and its operations in countries A, B, and C are carried out on a highly integrated basis. In the process of determining the taxable income of the branch of Banco Atlas in country B, the competent authority of country B requests information to country C, with whom it has an information exchange agreement, in relation to the operations of the branch**

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<sup>22</sup> Although not explicitly, this type of exchange would also be covered by the OECD Model Agreement.

<sup>23</sup> See Article 1, paragraph 2 of the CIAT Model Agreement and Article 26, paragraph 1 of the OECD Model Convention.

<sup>24</sup> This concept of territorial jurisdictional limitation is implicit in Article 4, section 7 of the CIAT Model Agreement and in Article 26 of the OECD Model Convention and determines that the requested tax administration is not obliged to provide information on those cases.



of Banco Atlas (company domiciled in a third country with branches in countries B and C, whose earnings may be taxed by those countries) in that country.

2. The Apis company, manufacturer of components, resident in country A, sells components to a related distributor in country B and to nonrelated distributors in country C. The customs authorities of country C register information on the prices charged by the Apis company to the distributors of country C. With respect to an audit of the income tax on the transfer prices declared by the distributor resident in country B, the competent authority of country B requests information to country C, with whom it has an information exchange agreement, in relation to the import prices invoiced by the Apis company (domiciled in a third country without being subject to taxes of country B or country C), to the distributors of country C.

3. A trust has three trustees. Trustees A and B live in Country Y. Trustee C lives in Country Z. Trustees A and B were involved in a transaction but declined to provide, to the tax authorities of Country Y, information concerning the transaction, on the basis that the necessary documents are held by Trustee C, who is refusing to provide them with copies. The competent authority of Country Y asked the competent authority of Country Z to obtain copies of the relevant documentation from Trustee C.

## 10. Taxes covered

The information exchange according to the CIAT Model Agreement refers to the administration and application of taxes covered by the Agreement, which means that the extension of the exchange, as regards the taxes covered, exclusively depends on what the parties decide when negotiating the agreement and, of course, and in keeping with what is allowed by the respective sets of laws<sup>25</sup>

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<sup>25</sup> Article 2, paragraph 1 of the CIAT Model Agreement would include the taxes to which the contracting parties agree to apply it. The OECD Model Convention is an instrument whose preponderant purpose, since its origin, has been to avoid international double taxation of income and net worth. In previous versions, which are the ones that served as basis of most of the agreements in force, it provided that information exchange should refer to taxes stipulated in the respective agreement, which are exclusively income tax and net worth tax. (Example 1). As it currently reads Article 26 provides that the exchange of information applies to taxes “of every type and description”, noting that the exchange is not limited to Article 2 (Taxes Covered by the Agreement), (Example 2). In this way, Article 26 of the Model Agreement, in its current version came to extend the exchange not only to taxes covered under its article 2 (income and net worth), but potentially to every type of tax.

Examples:

1. Country A and country B have entered into a tax agreement based on previous versions of the OECD Model, that is, the agreement in general only covers income tax and net worth tax and the article on information exchange will be conditioned to such limitation. The competent authorities may refuse to fulfill a request, for example, based on the fact that sales taxes are not covered by the agreement.

2. Country A and country B have entered into a tax agreement based on the current OECD Model, that is, even though the agreement in general, only covers income and capital taxes, the article on information exchange does not include such restriction. The competent authority of country A requests certain information on the transactions of a person resident in country B for purposes of determining the obligation with respect to the sales tax of a person resident in country A. The

**Example: Country A and country B have entered into a tax information exchange agreement, based on the Model Agreement, in whose article 2 it was determined that for both countries, the agreement will be applied to income tax and to value added tax. The competent authority of country A requests information to country B regarding the net worth tax. The competent authority of country B is not obliged to provide it.**

## **11. Years covered**

The period of time when the tax situation may be examined by the administration varies from one country to another and the beginning of the fiscal year does not always coincide with the calendar year. When there is a significant time difference between the moment in which the information is provided and the year to which it refers, there may arise problems in the statute of limitations. These problems as to whether the use of information may be affected by time, must be resolved through the rules on the statute of limitations of the country where the information is to be used. In certain countries, the sending of a request for information on a case subject to tax examination, will suspend the statute of limitations.

With respect to the entry into force and effective dates of the agreements, which will also influence the provisional aspect of the information to be exchanged, the CIAT Model Agreement has no explicit rules on that matter, nevertheless, in the Commentaries to its article 9 it is stated that some Contracting States may agree that the entry into force will take place following the exchange of ratification instruments confirming that each party has fulfilled the required procedures or that, in keeping with the OECD Model Agreement it is determined that the Agreement will enter into force after a certain period of time, following the exchange of ratification instruments or the confirmation granted, in the sense that each State has fulfilled the requirements provided for such purpose. In those same commentaries to article 9, it is noted that an aspect deserving of special attention in the negotiation of the Agreement is the possibility of its retroactive application as regards the information to be exchanged and to limits to which such retroactivity could be subject in each of the Contracting States.<sup>26</sup>

## **12 Obligation to exchange information**

It is important to emphasize that the exchange of information is obligatory. This is derived from the CIAT Model Agreement and explicitly from its Article 4 (8), which reads “**8. RULES FOR EXECUTING A REQUEST.** Except as provided in numeral 7 (limitations to the exchange) of this Article, the provisions of the foregoing numerals

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competent authority in country B cannot refuse to comply with the request on the basis that sales taxes are not otherwise covered by the agreement.

<sup>26</sup> See also Commentary 10.3 to Article 26 of the OECD Model Convention.

shall be interpreted as imposing to a contracting State the obligation to use all the legal means and to display its best efforts for executing a request.”<sup>27</sup>

The obligation to exchange information as determined from the transcribed rule, is not limited to information included in the tax files maintained by a tax administration. When the requested information is not available in the tax files, the requested party must put into practice its measures for collecting and obtaining said information from the taxpayer(s) or third parties. This may include special investigations or special examination of the business accounts maintained by the taxpayers or other persons. Whether the requested party may be interested or not in the information for its own tax purposes is irrelevant. The information should be provided even though the requested party may not need the information for the administration or application of its own tax laws.<sup>28</sup>

In some cases, the contracting parties may request information in a particular format to satisfy its verification requirements or other legal requirements. When it is specifically requested and to the extent permitted by its national law, the competent authority should try to obtain the information in the particular requested format. Such format typically includes the testimony of witnesses and authenticated copies of original records.<sup>29</sup>

### **13. Limitations to the exchange of information**

The legal obligation to provide information is excluded in various situations. These exceptions are included in numeral 7 of Article 4 of the CIAT Model that deals with limitations to the transmission of information.<sup>30</sup> Only in rare cases when the exceptions are applied, the contracting parties are not obliged to provide information. The decision whether or not to provide information when the previously described situations may arise is then left at the discretion of the requested contracting party. It is logical that a competent authority may decide to provide information even though there is no obligation to do so. If a competent authority decides to provide the information, it will be acting within the framework of the agreement and must abide by its provisions.<sup>31</sup>

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<sup>27</sup> The obligation to exchange, in Article 26 of the OECD Model Convention responds to the use of the word “must” in its first sentence.

<sup>28</sup> See numerals 5 and 6 of Article 4 of the CIAT Model Agreement and paragraph 16 of the Commentary to Article 26 of the OECD Model Convention.

<sup>29</sup> See numeral 6 of Article 4 of the CIAT Model Agreement and paragraph 10.2, of the Commentary to Article 26 of the OECD Model Convention.

<sup>30</sup> These limitations are provided in paragraphs 3 to 5 of Article 26 of the OECD Model Convention and in a larger number of situations than those provided in the CIAT Model Agreement.

<sup>31</sup> For example, in the case of application of article 26 of the OECD Model Convention, when a request is related to information that involves reserved data on industrial processes, a competent authority may provide such information, if it considers that the laws and practices of the requesting State, jointly with the obligations on confidentiality imposed by paragraph 2 of this article, guarantee that the information will not

The rest of this section deals with the arguments that may be used to refuse to provide the information. Reference is also made to some arguments that cannot be used to justify that refusal.<sup>32</sup>

### **13.1. Tax secrecy**

Tax secret refers to the provisions of the national law that guarantee that the information related to a taxpayer and its situation continues to be confidential and is protected from unauthorized disclosure. Therefore, it is essential for cooperation through the exchange of information that such confidential information continues to enjoy a similar level of protection when it is exchanged with other countries. For this reason, any information provided by a contracting party must be treated as confidential.<sup>33</sup> Since the information exchange instrument and the national law applicable in the receiving country protect confidentiality, the provision of information cannot be denied by alleging that it would be contrary to the national rules on tax secrecy.

### **13.2 Reciprocity**

Reciprocity in relation to the exchange of information means that a contracting party, when compiling information for the other contracting party, would only be obliged to obtain and provide such information if the requesting party could obtain it in similar circumstances under its own laws and in the normal process of administration.

#### **Example:**

**Contracting state A requests information to contracting State B and the latter, even though it may have the possibility of obtaining and transmitting the information requested, may refuse to provide it because obtaining and transmitting such information in similar circumstances would be against or count not be obtained in accordance with the laws or in the normal process of administration of the requesting State A.**

Such condition of reciprocity was considered inapplicable in the CIAT Model Agreement; therefore, it is not included in numeral 7 of its article 4, which deals with

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be used for unauthorized purposes, which the rules on reserved data of industrial processes or confidentiality endeavor to protect. If the requested party decides to provide the information, it must indicate that it involves reserved data in order that the requesting party may adopt the pertinent measures to guarantee strictest confidentiality.

<sup>32</sup> The arguments, whether admissible or not, will be different in some cases, depending on whether they deal with the application of article 4 of numeral 7 of the CIAT Model Agreement or article 26, second paragraph of the OECD Model Convention, since the latter admits certain hypotheses for the refusal that are not considered in the CIAT Model.

<sup>33</sup> Article 4, numeral 9 of the CIAT Model Agreement and article 26, paragraph 2, of the OECD Model Convention.

limitations to the exchange.<sup>34</sup> Likewise, as stated in paragraph 18 of the commentaries to article 26 of the OECD Model Convention, which does adopt it<sup>35</sup>, the demand for reciprocity may result in a very small or perhaps no exchange of information. Due to the implications resulting from the incorporation of this concept, it is advisable that the Tax Administrations inquire about the scope of the information systems available in the other state, prior to entering into an agreement.

In those cases wherein it is decided to take into consideration the reciprocity condition, it might be difficult for the competent authority, in practice, to determine in every situation if the requested party could obtain and provide the requested information under similar circumstances. In cases where a country can only provide assistance if the reciprocity condition is fulfilled, the counterpart to the treaty could be requested to include a declaration confirming that the reciprocity condition is fulfilled in each request for information. The inclusion of such declaration would then avoid the additional administrative burden that would otherwise result if the competent authority of the requested counterpart would have to make additional questions prior to the processing of the request.

### **13.3 Public policy /Public Order**

Another reason to refuse to provide information relates to the concept of public policy/public order.<sup>36</sup> The commentaries to article 4, numeral 7 of the CIAT Model<sup>37</sup> explain the meaning of the term “public policy” which generally refers to the vital interests of a country; for example, when the requested information deals with a state secret. A case of “public policy” may also arise, for example, when a tax investigation in another country was motivated by a racial or political persecution. Thus, this limitation rarely arises in practice.

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<sup>34</sup> On the other hand, the OECD Model Convention provides, in addition to the commented reciprocity condition, that a requested party is not obliged to provide information which the requesting party could not obtain itself in the normal process of administration. The underlying idea of the reciprocity concept is that a contracting party should not take advantage of the information system of the other contracting party if it is broader than its own system. See Article 26, paragraph 3, sub-paragraphs a) and b) of the OECD Model Convention. The commentaries to that article provide greater details on paragraphs 15 to 15.2. The previous version of the commentary to Article 26 included a less detailed analysis of the principle of reciprocity; however, the recently added paragraphs should be understood not as modifications, but rather as clarifications.

<sup>35</sup> The term “reciprocity” in the context of article 26 of the OECD Model relates to legal reciprocity, that is, the conditions under which there is a legal obligation to obtain and provide the information. “Legal reciprocity” must be distinguished from broader reciprocity aspects (on occasions it is known as “de facto” or “objective” reciprocity), which includes aspects as the balance in the volume of requests made and the respective costs incurred by the competent authorities for obtaining and providing information.

<sup>36</sup> See article 4, numeral 7 of the CIAT Model Agreement and Article 26, paragraph 3, subparagraph c) of the OECD Model Convention.

<sup>37</sup> See Commentaries to Article 26 of the Model Convention (paragraph 19.5)

### **13.4 Industrial, commercial and other secrets**

As in the case of the reciprocity condition, the limitation regarding the commercial, industrial professional secret or commercial or professional procedures was considered inappropriate in the CIAT Model Agreement, therefore, it is not considered in numeral 7 of its article 4, which deals with the limitations to the exchange, on considering that such limitation could give way to an excessive application of that limitation which is difficult to control.<sup>38</sup>

#### **Example:**

**When responding to a request from country B, within the framework of information exchange based on a clause equivalent to article 26 of the OECD Model Convention, the competent authority of country A undertakes a general investigation of the pharmaceutical company Cirrus, resident in country A. As a result, the competent authority of country A verifies that it would be exposed to transmit highly valuable commercial information with respect to the manufacture of a product. The competent authority of Country A could refuse to provide information to country B, or, at least, omit a part thereof. If an Agreement based on the CIAT Model would apply, such refusal would be inappropriate.**

### **13.5 Privilege of reserve of the law professionals**

The CIAT Model does not anticipate either that a contracting party may refuse to provide information in cases in which the information is a confidential communication between a client and an attorney, requestor or other legal representative recognized as such.<sup>39</sup>

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<sup>38</sup> On the other hand, Article 26 of the OECD Model Convention clearly provides that there is no obligation to provide information that may disclose some industrial, business, commercial or professional secret or in relation to commercial processes. However, the commentaries to the OECD Model explain that these secrets should not be interpreted in a very broad sense. In particular, the financial information, including books and records, because of their nature, do not constitute an industrial, business or other secret. In rare cases where a problem related to an industrial, business or other secret may arise, the decision as to whether or not to provide such information is left at the discretion of the requested State. When in a particular case, a contracting party decides not to provide certain information on such bases, it should omit the details of the industrial, commercial or other pertinent documentation and provide to the other contracting party, the remaining information. The role of the competent authority is to determine whether or not it is sensitive information and the authorities compiling the information should initially indicate what could be sensitive. Ordinary tax secrecy protects the industrial and business secret, but, in general, neither the taxpayer or a third party has the right to refuse to provide such information to its tax administration.

<sup>39</sup> Article 26 of the OECD Model Convention, does admit it. Even so, the rules about what constitutes a confidential communication should not be interpreted or applied in such a broad manner so as to constitute an obstacle to the effective information exchange. In particular, no reserve privilege should be attributed to documents or records delivered to a recognized attorney, requestor or legal representative in an attempt at preventing such documents or records from being disclosed. In addition, it would be expected that a requested party would verify and question, if necessary, on behalf of the requesting party, the validity of a reserve claim by a law professional if such validity were in dispute.

### **13.6 Bank secrecy**

In most of the countries, the banks and similar financial institutions must protect the confidentiality of the financial affairs of its clients. This obligation (“bank secrecy”) not only protects the bank information from being disclosed to third parties, but also may affect access to such information by the government authorities, including the tax authorities.

The CIAT Model Agreement provides that bank secrecy cannot be the base for refusing to provide information nor does it consider it within the general limitations listed in its article 4, section 7.<sup>40</sup> Thus, the competent authorities of the contracting parties must have authority to access, either directly or indirectly, through a judicial or administrative proceeding, the information maintained by banks or other financial institutions and to provide such information to the other contracting party.

### **13.7 Information maintained by proxies, agents, trustees and information on participation in corporations**

A request for information cannot be denied only because proxies or persons acting as agency or trustee maintain the information or because the information deals with participation in a corporation. The CIAT Model Agreement expressly disapproves such denial<sup>41</sup>. The commentaries provide more details on this issue.<sup>42</sup>

**Example 1: During a tax investigation, A, a resident of Country Y, claims that payments he made to B, a resident of Country Z, were in relation to services provided by another individual, C, whose identity and place of residence is unknown to A. The competent authority of Country Y believes C may be resident in Country Y and asked the competent authority of Country Z to obtain information concerning the identity of C from B, notwithstanding that B appears to have been acting in an agency/fiduciary capacity.**

**Example 2: An investigation by the tax authorities in Country Y, in relation to Company A, revealed payment of royalties to Company B which is resident in Country Z. Believing that the payments may be for the ultimate benefit of individual C, a resident**

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<sup>40</sup> See article 4, numeral 2 of the CIAT Model Agreements. Article 26, paragraph 5 of the Model Convention is stated in the same sense. Paragraph 5 was added in the current version of Article 26 and there was no equivalent provision in the previous version. However, the Commentary to Article 26 explains that the addition of paragraph 5 should not be interpreted as if it were suggesting that the previous version of Article 26 did not authorize the exchange of banking information and goes on to say that the great majority of the OECD member countries already exchanged banking information according to the previous version of Article 26. See paragraph 19.11 of the Commentary to Article 26.

<sup>41</sup> See Article 4, numeral 2 of the CIAT Model Agreement and Article 26, paragraph 5 of the OECD Model Agreement. Paragraph 5 was added in the current version of Article 26 and in the previous version there was no equivalent provision.

<sup>42</sup> See Commentary to article 4, numeral 2, and see paragraphs 19.12 to 19.15 of the Commentary to Article 26 of the OECD Model Convention.

of Country Y, the competent authority of Country Y approaches the competent authority of Country Z to obtain information about the company and the payment it received. Company B claims that the individual who controls the company was an ex-employee of Company A and if his identity is revealed this could lead to the commencement of a civil action against that individual. Notwithstanding the protestations of the company, the competent authority could not decline the request for details of the ownership of Company B.

### **13.8 National tax interest**

The concept of “national tax interest” describes a situation wherein a contracting party can only provide information to another contracting party if it is interested in the information requested for its own tax purposes. Refusing to provide information cannot be based on a requirement of national tax interest and a contracting party must use its measures to compile information although it may only be called upon to obtain and provide information to the other contracting party.<sup>43</sup> It could be said that there are no longer countries invoking a national tax interest.

### **13.9 Request in accordance with the terms of the instrument whereby it is formulated**

In some cases, the agreements may explicitly establish that a contracting party may refuse to provide information when the request is not made in accordance with the provisions of the Agreement. Although there is no such clause in the CIAT Model Agreement, it could be agreed between the contracting parties, especially on demanding that specific basic data be included in the specific requests to facilitate the exchange process. In that way and in relation to a specific request, the requesting party should provide certain information to the competent authority of the requested party. The fact of omitting said information could allow the requested party to reject the request, since the latter has not been made “in keeping with the Agreement.” The CIAT Model Agreement as well as the OECD Convention are less formal in that sense and allow greater freedom to the competent authorities, even though the following basic principal is equally applicable: the requesting party must prove the importance of the requested information for an examination or investigation in process; if this were not so, one could be faced with what is called “fishing expedition”, and then the requested party could refuse the request. Of course, before

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<sup>43</sup> Article 4, numeral 6 of the CIAT Model Agreement and Article 26, paragraph 4 of the OECD Model Convention. Paragraph 4 was added in the current version of Article 26 to explicitly consider the obligation to exchange information in situations wherein the requested State does not need the information requested for national tax purposes. In the previous version, this obligation was not expressly stated in the Article, but was reflected in the Commentary. Paragraph 16 of the Commentary to Article 16 established that this obligation was clearly evident because of the practices followed by the Member countries that showed that on compiling information requested by a counterpart to a treaty, the contracting states frequently use the special powers of examination or investigation provided by their laws for purposes of applying their national taxes, although they themselves do not require the information for such purposes. Thus, the addition of the new paragraph 4 must be understood as a mere clarification.



rejecting the request on this basis, the requested party must endeavor to receive a clarification from the competent authority in relation to this matter.

### **13.10 Nondiscrimination**

A competent authority may refuse to provide information in cases that involve discrimination of a national from the requested Party. This rule is included in Article 4, numeral 7 d) of the CIAT Model Agreement.<sup>44</sup> This aspect may only arise in exceptional circumstances and thus, may be considered of little practical relevance.

### **13.11 Nonobligation to accept measures that are against their laws and regulations**

The basic reason with respect to this limitation is that one should not request a contracting party to do more – but likewise not less – than what it could do if its own taxation were at stake. Thus, when the information held by the competent authority is not sufficient to respond to a request, a contracting party should take all the pertinent measures for the compilation of information, including special investigations or examinations of the business accounts, provided it could adopt similar measures, in accordance with its laws and regulations, for its own tax purposes.<sup>45</sup>

In the case of the CIAT Model Agreement there are less possibilities for applying this limitation, inasmuch as it does not consider the possibility of a State refusing to provide information that is not obtainable during the normal course of its administrative practices, as well as not expressly denying its use, when the information requested relates to information: from financial entities, proxies or persons acting as agents or trustees; with respect to the identification of stockholders or partners of a corporation or other collective entity; or in the power of the Tax Administration.<sup>46</sup>

### **13.12 Nonobligation to provide information not obtainable according to national laws**

In the case of the CIAT Model Agreement, this limitation is also rendered relative for the reasons stated in the previous paragraph.<sup>47</sup>

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<sup>44</sup> In the context of the OECD Model Agreement, the rule originates in the first sentence of Article 26 paragraph 1 (“...to the extent taxation under same is not contrary to the Convention”) read together with Article 24, paragraph 1.

<sup>45</sup> The OECD Model Convention provides that a Contracting State is not obliged to apply administrative measures that are contrary to its legal and administrative practice, Article 26, paragraph 3, subparagraph a) of the Model Convention. Formerly, Article 26, paragraph 2, subparagraph a).

<sup>46</sup> Article 4, numerals 2 and 7 of the CIAT Model Agreement.

<sup>47</sup> Article 26, paragraph 3, subparagraph b) of the OECD Model Convention provides that a Contracting State is free to refuse to provide information if it cannot be obtained according to its national law or cannot be obtained in the normal process of administration. However, both models that of CIAT and the OECD

## **14. Measures for the Compilation of Information**

The requested information may already be available to the tax administration of the requested party or may require special measures for the compilation of information<sup>48</sup>. The particular measures for the compilation of information that may be more adequate in an individual case will depend on all pertinent events and circumstances. The measures for compiling information could include the following types:

- Question a person that may be aware of information or may be in possession, custody or control of information.
- When voluntary cooperation cannot be achieved, a person should be requested to appear at some specified time and place to testify.
- When the person does not appear at the specified time and site, the appropriate measures should be taken to oblige the person to appear.
- Request the presentation of books, documents, records or other tangible property.
- Question the person presenting the books, documents, records or other tangible property with respect to the purposes for which and the mode in which it is or was maintained.
- Place the person testifying or presenting the books, documents or other tangible property under oath.
- Achieve access to and search the facilities for the purpose of locating and obtaining books and records or other tangible property to be examined.
- Produce reliable and correct copies of books, documents, records or other tangible property.
- Allow the competent authority of the requesting State to provide written questions which the person testifying or providing books, documents, records or other tangible property is required to answer.

## **15. Rights and Safeguards of Procedures**

The national laws may establish a diversity of rights and safeguards of procedures

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provide that regardless of the national law or national administrative practice, one Contracting party cannot use bank secrecy or reject a request, because the information may be maintained by a proxy or person acting as agent or trustee, or because it may be related to a participation in a corporation. Thus, the results under the CIAT Model Agreement and the OECD Model Convention can both equally mediate the circumstances indicated. See Article 4, numeral 2 of the CIAT Model Agreement and Article 26, paragraph 5 of the OECD Model Convention.

<sup>48</sup> The nature of these measures and their examples are expressly included in article 4, numeral 5 of the CIAT Model Agreement.

for the persons affected by the measures for compiling information or, in general, for the exchange of information. Such rights and safeguards include rules of notification, a right to question the exchange of information following the notification or rights to appeal against the measures for information compilation adopted by the requested party.

Some countries must notify the taxpayer subject to the investigation and/or the person that provided the information in certain circumstances. This may result, for the person notified, in a mere right to be informed about the exchange, a right to be consulted or even a right to question the exchange. Some countries eliminate these requirements for notification in cases of tax fraud or postpone the notification until after the exchange. In both cases, the obligation to notify is eliminated if a federal court determines that the notice would seriously affect the investigation. Therefore, the competent authorities must indicate whether there is suspicion of fraud in their requests, if they wish to avoid the notification. In countries requiring notification, generally the taxpayers have the right to appeal the decision about information exchange.

Given the possible implications of such rights and safeguards for information exchange, the contracting parties must inform each other about their legislation or administrative practice in relation to the notification (and whichever other rights and safeguards of procedures which may be of importance) when concluding a tax information exchange agreement or an agreement with clauses establishing such exchange and subsequently, provided that the pertinent rules are modified.<sup>49</sup>

## **16. Confidentiality of the information received**

Any information received must be treated as confidential.<sup>50</sup> The CIAT Model Agreement provides that the information received can only be disclosed to persons or authorities (including courts and administrative entities) interested in the assessment, collection and application of the taxes covered by the Agreement (including prosecution or the resolution of appeals) as well as the supervision of all of the foregoing, and the information can only be used for such purposes.<sup>51</sup>

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<sup>49</sup> See paragraph 14.1 of the Commentary to Article 26 of the Model Convention.

<sup>50</sup> See article 4, numeral 9 of the CIAT Model Agreement and Article 26, paragraph 2 of the OECD Model Convention.

<sup>51</sup> With respect to the rules on disclosure of information, the CIAT Model Agreement coincides in several aspects with the OECD Model Convention. First, the Model Agreement also allows the disclosure to the supervisory authorities (This is a change with respect to the previous version of Article 26; information could not be disclosed to the supervisory authorities). Second, the OECD Model Convention does not allow the disclosure to any other person, entity, authority or jurisdiction. Finally, the CIAT Model Agreement as well as the OECD Model Convention require that the information be kept confidential and then indicates the names of the persons to whom the information can be disclosed and both Models include the additional requirement that the information be treated “as secret in the same way as the information obtained in accordance with the national law.”

The supervisory authorities are those supervising the authorities of the tax administration and execution as part of the government's general management of the contracting parties.<sup>52</sup>

According to the rules of some countries, special procedural rules may be applied to high confidentiality information. For example, with respect to the provision of banking information, it is possible that some State may request that the requesting competent authority sign a declaration confirming the confidential treatment of the information to be provided.

The rules of confidentiality are applied to all types of information, including information provided upon request, as well as the information transmitted in response to a request. If the provisions regarding secrecy under the national laws of a Contracting State are less restrictive than those of the country that provides the information, one should abide by the rules of the informing country, with which the applicable provisions on confidentiality will impose a restriction to the use of information received from abroad.<sup>53</sup> The local competent authorities are obliged to refer to their competent authorities any issue that may arise in relation to disclosure of the information received.

It could be understood that the information received may also be communicated to the taxpayer, his proxy or a witness. However, although such disclosure is allowed, it is not required. In fact, disclosure to the taxpayer or his proxy may pose a problem in certain cases, for example, when the information is given confidentially and the source of information may have a legitimate interest in not disclosing it to the taxpayer. In a similar manner, the competent authorities would want to maintain the confidentiality of their correspondence with respect to any information exchanged. Therefore, the competent authority that provides information must indicate whether there is any objection to the disclosure of any part of the information provided (including any related correspondence) to the taxpayer, his proxy or a witness. Whenever necessary, the competent authorities should then continue to discuss such aspects with a view to finding a mutually acceptable solution

Since the information may be disclosed to the taxpayer or his proxy, it may also be disclosed to any governmental or judicial authorities in charge of deciding whether the information should be given to the taxpayer.<sup>54</sup> This case may arise in situations wherein a taxpayer who has been denied access to his files by the tax authorities is entitled to request a revision of such decision on the part of a reviewing entity or an appeal. Logically, such entity has to do with the information in order to make its own decisions.

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<sup>52</sup> See paragraphs 12 and 12.1 of the Commentary to Article 26 of the Model Convention.

<sup>53</sup> Article 4, numeral 9 of the CIAT Model Agreement.

<sup>54</sup> See paragraph 12 to the Commentary to Article 26 of the Model Agreement. The previous version of the commentary to Article 26 did not include such clarification. However, no change in substance was being proposed.

Many countries have national laws on the disclosure of information such as freedom of information or other legislation that may allow access to government documents and records. It would be desirable that the provisions of confidentiality in the information exchange instruments have precedence over any other national rule that may allow the disclosure to persons not referred to in the confidentiality provision.<sup>55</sup> Any country which could not adhere to that principle and which is engaged in treaty negotiations should bring this point to the attention of the other contracting party. When this problem may arise as a result of a decision of the court or a subsequent change in legislation, the competent authorities should inform the other competent authorities at the first opportunity. It should be noted that confidentiality provisions of income tax conventions create obligations under international law. Any person facing this request of making known information provided under an income tax agreement or a tax information exchange agreement should consult the competent authority, who must also inform the competent authority that provided the information.

## **17. Use of information for other purposes**

The information exchanged cannot be use for purposes other than those for which it was exchanged in accordance with article 4, section 9 of the CIAT Model Agreement.<sup>56</sup> For example, the tax information obtained according to the Model Convention or the CIAT Model Agreement should not be used for the prosecution of nontax violations. If the information seems to be of value to the receiving party, for another purpose, it should resort to means specifically designed for such purpose, for example, a legal assistance treaty. When there is doubt as to whether the information provided by a foreign competent authority may be used for a purpose other than the tax purpose, covered by the instrument under which it was provided, the local authorities must always consult the competent authority.

However, some countries require that the tax authorities share tax information with other law executing authorities and judicial authorities on matters such as money laundering, corruption of financing of terrorism and as a result, these countries may wish to include specific terminology in their bilateral treaties that allow for sharing the information received in accordance with a tax information agreement with such other authorities.<sup>57</sup>

Likewise, in some agreements based on the CIAT Model, on providing for the taxes comprised, an additional paragraph is added, which stipulates that the information exchanged for the application of those taxes may be used with respect to other taxes whose obligations, according to their internal rules, could be determined in keeping with the data contributed. In this way there is a significant increase in the possibilities of use of the exchanged information.

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<sup>55</sup> Paragraph 12 of the Commentary to Article 26 of the Model Convention expressly clarifies this item.

<sup>56</sup> Idem. Article 26 of the OECD Model Convention.

<sup>57</sup> See paragraph 12.3 of the Commentary to Article 26 of the OECD Model Convention.

## EXAMPLE

Country A has a corporate tax applied at the state level which is calculated on the basis of sales of the active agents of its economy. In addition there is a rate applied by the local administration, whose calculation, among other things, is based on the volume of sales made in the previous fiscal period.

In this assumption, if said Country signs an information exchange agreement with any other Country B, it may request, among others, data relative to sales made by the companies, when the latter are subjected to the control of the tax that is the subject of the exchange agreement.

Now, if Country A obtains important data from the tax administration of Country B, through the application of the tax information exchange Convention or Agreement, relative to the sales figure of some specific company or group of companies such data can only be used by the requesting tax administration (in the assumption, the state tax administration) and only for the application of the taxes comprised in the Convention or Agreement.

The clauses that provide for nondisclosure of information obtained from the other country, allow for providing the data only to the competent persons or authorities for the assessment or collection of taxes comprised in the Convention or Agreement, for the procedures and processes relative thereto and for the resolutions on resources dealing with such taxes. Any disclosure to a different person or authority would be forbidden. The state tax administration should not provide the data received to the local administration, otherwise, there would be a problem of double assessment of the sales figure, for one tax and the other, as quantified by each competent administration.

For this reason, when the Convention is formalized, Country A may propose to Country B and the latter may expressly accept, that the information relative to sales, exchanged for the application of the state tax on benefits, which is comprised in the example of the Information Exchange Agreement, may be used by the local administration to determine the taxes under its jurisdiction.

In this way, Country A cannot make any request with respect to said local tax, but when they affect the latter; it may provide the data transmitted to the local administrative authorities in charge of its assessment or collection.

## 18. Cost of information exchange

The cost aspect is explicitly considered in article 8 of the CIAT Model Agreement and makes a distinction between regular and extraordinary costs. It is proposed that, unless otherwise agreed by the competent authorities, the “regular costs” be covered by the required State, while the “extraordinary costs” should be assumed by the requesting State, it being established that the way of determining the latter will be

through mutual agreement of the competent authorities.<sup>58</sup>

## **19. Use of Taxpayer Identification Numbers (TINs)**

Most of the countries assign Tax Identification Numbers (NITs) to their resident taxpayers, while some countries also assign TINs to nonresidents under certain circumstances. Knowledge of the TINs may be useful for processing information automatically received from a counterpart to a treaty. The provision of TINs is also important either when making or responding to a request or spontaneously providing information, since it will facilitate the prompt identification of the taxpayer. Accordingly, when the provision of the TINs is legally possible, the field tax officials should provide them to their competent authority when making a request or transmitting information (ideally the TINs of the source country as well as the country of residence, if they are known).

In that sense, and in order to overcome the frequent difficulties occurring for the correct and prompt identification of the taxpayers referred to in an information request, it is advisable that the contracting parties, considering the structure of the basic data in their taxpayer files, also agree on other minimum identification data that should be included in their requests for information.

## **20. Terms for responding to an information request**

It is important, as is done by the CIAT Model Agreement<sup>59</sup>, to incorporate in the agreements some provision stating the terms in which the responses to the requests for information should be transmitted. Said Model considers a rule that provides that “The requested State will act with maximum diligence, not exceeding for its response the term of..... days, as of the date of receipt of the request. In case of being unable to comply with the term for the response, of difficulty for obtaining the information or refusing to provide it, the competent authority of the requested State must inform the competent authority of the requesting State, indicating the probable date in which the response could be sent, the nature of the obstacles or the reasons for refusing to provide the information requested, as appropriate”.

As stated in the respective Commentaries, the procedure considered in the CIAT Model Agreement aims, in addition to establishing a specific term for the provision of information, to allow the Requesting State to take advanced note of the inability to obtain the information requested, or that the latter will be provided, although in a term that may turn out to be excessive or untimely, which will allow it to opt immediately for other substitutive actions to obtain the required information.

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<sup>58</sup> The OECD Model Convention does not include any provision on costs and any cost-related problem that may arise, must be discussed by the competent authorities. In any case, it is important that this aspect be considered at an early stage of application of the agreement, in order to achieve a timely and efficient solution in terms of cost.

<sup>59</sup> Article 4, section 8, of the CIAT Model.

**CIAT MANUAL ON THE IMPLEMENTATION OF EXCHANGE OF INFORMATION PROVISIONS  
FOR TAX PURPOSES**

**MODULE ON EXCHANGE OF INFORMATION ON REQUEST**



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# CIAT MANUAL ON THE IMPLEMENTATION OF EXCHANGE OF INFORMATION PROVISIONS FOR TAX PURPOSES

## MODULE ON EXCHANGE OF INFORMATION ON REQUEST

Exchange of information on request describes a situation where one competent authority asks for particular information from another competent authority. Typically, the information requested relates to an examination, inquiry or investigation of a taxpayer's tax liability for specified tax years. Information exchange upon request can be divided into several stages or steps and this section provides guidance on each of these steps:

- Step 1: Preparing and sending a request
- Step 2: Receiving and checking a request
- Step 3: Gathering the requested information
- Step 4: Replying to the request
- Step 5: Providing feedback

### STEP 1: PREPARING AND SENDING A REQUEST

#### **Preliminary considerations**

A request should be made only after a contracting party has exhausted all reasonable avenues for obtaining the information using the authority and information source available within its own territory. Thus, before sending a request, a contracting party should use all means available in its own territory to obtain the information except where those would give rise to disproportionate difficulties. The efforts by the requesting party should also include attempts to obtain information in the other contracting party before making a request, for example by use of the internet, and where practical, commercial databases or engaging diplomatic staff located in that country to obtain publicly available information. The OECD has developed a reference guide on sources of information abroad to assist competent authorities in identifying the types of information available in other countries (See [www.oecd.org/taxation](http://www.oecd.org/taxation)).

#### ***Form of the request***

The request by the competent authority should be made in writing but in urgent cases an oral request may be accepted, where permitted under the applicable laws and procedures, for the

purposes of initiating an enquiry on the condition that it is followed up by written confirmation. In response to demand from its member countries for a fast and secure method for exchanging information electronically, the OECD has developed a procedure for transmitting confidential information using encrypted attachments to email messages.

### ***Content of the request***

Drafting the request in a complete and comprehensive manner is very important. The competent authority should put himself in the position of the recipient of the request and include the information in the request that he would consider important if he were receiving the request. The request should be as detailed as possible and contain all the relevant facts, so that the competent authority that receives the request is well aware of the needs of the applicant contracting party and can deal with the request in the most efficient manner. An incomplete request will increase delays since the foreign competent authority may have to ask for more details to answer the request properly. Also note that certain countries have established checklists of information necessary to carry out certain procedures for obtaining information. For details please see the module on country profiles.

While every case may differ on the particular facts and circumstances, the following **checklist of what to include in a request** seeks to provide some guidance on what could be included in a request. Note that responding to a request should not be delayed by endeavouring to obtain every item on the checklist and that abbreviations should not be used and other relevant information may be added.

1. The reference to the legal basis upon which the request is based.
2. A statement confirming that your tax administration has pursued all means available in its own territory to obtain the information except those that would give rise to disproportionate difficulties.
3. A statement that the request is in conformity with the laws and administrative practices of your country, that your tax administration could obtain the information if it was within your country and that the request is in conformity with the legal instrument on which it is based.
4. The identity of the person(s) under examination or investigation: name, date of birth (for individuals), marital status (if relevant), TIN and address (including email or internet addresses, if known), as well as any other information that may be necessary for identifying the taxpayer.
5. The identity of any foreign taxpayer(s) or entity(ies) relevant to the examination or investigation and, to the extent known, their relationship to the person(s) under examination or investigation: name, marital status (if relevant), TIN (if known), addresses (including email or internet addresses if known), registration number in the case of a legal entity (if known), charts, diagrams or other documents illustrating the relationships between the persons involved.
6. If the information requested involves a payment or transaction via an intermediary mention the name, addresses and TIN (if known) of the intermediary, including, if known, the name and address of the bank branch as well as the bank account number when bank information is requested.

7. Relevant background information including the tax purpose for which the information is sought, the origin of the enquiry, the reasons for the request and the grounds for believing that the information requested is held in the territory of the requested party or is in the possession or control of a person within the jurisdiction of the requested party.
8. The stage of the procedure in the requesting party, the issues identified and whether the investigation is of a civil or administrative nature only or may also have criminal consequences. Where references are made to domestic law it is useful to provide some explanation as the foreign competent authority will not be familiar with your laws.
9. The information requested and why it is needed. Also specify the information that may be pertinent (e.g. invoices, contracts).
10. In the context of an income tax convention, whether the request relates to the application of a tax convention or the administration or enforcement of domestic legislation.
11. The taxes concerned, the tax periods under examination (day, month, year they begin and end), and the tax periods for which information is requested (if they differ from the years examined give the reasons why).
12. The currency concerned whenever figures are mentioned.
13. The urgency of the reply. State the reasons for the urgency and, if applicable, indicate the date after which the information may no longer be useful.
14. Whether a translation should be provided if possible (in urgent cases mentioning that no translation is required could speed up the exchange).
15. If copies of documents or bank records are requested, what type of authentication is necessary, if any.
16. If the information is likely to be used in a court proceeding and the applicable rules of evidence require the information to be in a certain form, the form should be indicated to the other competent authority.
17. Whether there are reasons for avoiding notification of the taxpayer under examination or investigation (e.g. if notification may endanger the investigation).
18. The name, phone, fax number and e-mail address of the tax official who may be contacted if needed, if that person is a delegate of the competent authority.

### ***Language***

The request by the competent authority should be drafted in a simple and clear manner. It should be prepared in the native language of the requesting party and accompanied, where practicable, with a translation into the language of the requested party or a common third language. Alternatively,

where this facilitates effective exchange of information, the request may be drafted only in the language of the requested party or a common third language. Any translation should be left to the competent authority of the requesting party if the foreign language skills are not sufficient at the local level.

When responding to a request for information, special problems may arise in the translation of attached documents such as agreements, business correspondence, invoices etc. If no translation is provided by the requested party, the relevant elements of the attached documents should, where practicable, be identified by the requested party so that the requesting party does not take unnecessary time translating information which may be irrelevant to the request.

### ***Procedure***

The request should be forwarded by the tax examiner to his competent authority through the normal official channels. The competent authority will verify that the request meets all the necessary requirements and then transmit the request to his counterpart in the foreign country.

### ***Impact of requests for information on the statute of limitations***

In certain countries (e.g. France) the sending of a request for information concerning a case subject to a tax examination will suspend the statute of limitations. Tax examiners should refer to their domestic rules on this point.

## **STEP 2: RECEIVING AND CHECKING A REQUEST**

A competent authority should acknowledge receipt of a request as soon as possible. The competent authority will then check whether or not the request is valid and complete, i.e. confirm that:

- it fulfils the conditions set forth in the applicable exchange of information provision;
- it has been signed by the competent authority and includes all the necessary information to process the request;
- the information requested is of a nature which can be provided having regard to the legal instrument on which it is based and the relevant laws of the requested party;
- sufficient information is provided to identify the taxpayer; and
- sufficient information is given to understand the request.

In the process of reviewing whether the request is valid and complete, the competent authority will also consider whether there are grounds for declining the request (see the discussion on “limitations to exchange of information” in the section on General and Legal Aspects of Exchange of Information).

If the competent authority concludes that the request is invalid or incomplete it should notify the applicant party of any deficiencies in the request within a term of 14 days or a number of days agreed by the contracting parties up to a maximum of 30 days following receipt of the request. If it is valid and complete the receiving competent authority will seek to gather the information itself or pass the request on to officials with the necessary investigative and information gathering powers. In some countries the competent authority instructs a local tax office to gather the information and may also impose a deadline within which to report back.

The competent authority may invite a representative of its counterpart to come and clarify the request or to attend the interview of the taxpayer or even to be present in a tax examination when the national legislation thus allows it. This may be a useful option for reducing costs and resource commitments for the requested party. For further information please consult the module on tax examinations abroad.

### ***Request received directly from foreign local tax official***

The unauthorised exchange of information can jeopardise the success of an investigation or prosecution. Local tax officials are not entitled to exchange information directly with their foreign counterparts unless they have received a delegation of powers from their competent authority and an authorization from the foreign competent authority. It may happen that a tax official receives a request which has bypassed his or both competent authorities. In such a case, the tax official should immediately pass it on to his competent authority and the answer should go through the appropriate competent authorities. It may decide to reject the request or to ask its counterpart whether the request is worth processing. If it is the case, the foreign competent authority will produce a new request according to the normal procedure but the tax official should not wait to start gathering the information. See also the general discussion of this point in the section on General and Legal Aspects of Exchange of Information.

## **STEP 3: GATHERING INFORMATION**

Gathering information for another country should be given a high priority because exchange of information is mandatory and a prompt and comprehensive reply is likely to contribute to the same type of treatment in a reverse situation. If the information is not available, the other contracting party should be informed as soon as possible via the competent authority.

In most countries, the governing principle is that the information is to be gathered as if it were sought for domestic tax purposes. Information requested may be of two types:

- information which is already at the disposal of the tax administration (tax return, income declared, expenses claimed, etc.); or
- information obtainable by the competent authority but requiring a more time consuming approach. For example, it may be necessary to interview a taxpayer, to undertake a tax investigation, or to obtain information from a third party such as a bank. Additional information

which is likely to be useful to the requesting country should also be included in the response, even if it is not specifically requested.

As a time-saving measure, a translation of the reply in the language of the requesting party could be prepared if there are language skills at the local or competent authority level. If documents such as contracts are enclosed and cannot be translated the relevant parts of those documents should be identified. Efforts should also be made to pass on the information in a format which meets the requesting party's evidentiary or other legal requirement if so requested (and to the extent allowable under domestic law), e.g. provide authenticated copies of original records.

#### **STEP 4: REPLYING TO A REQUEST**

Based on the information that has been gathered the competent authorities will prepare the reply to the information request. In certain countries the reply may also be prepared by a local tax office and the competent authority will then only review the reply. If prescribed under domestic law, and provided no exceptions apply, the competent authority will then notify the taxpayer. If no notification is required the information will be passed on to the foreign competent authorities with a mention as to the limits on the use of the information. If the information touches upon trade and business secrets, the competent authority may wish to get in touch with the other competent authority in order to establish how the information is to be used and what protective measures that State has according to its internal provisions to protect such secrets.

##### ***Checklist of what to include in the response***

Note that exchanges should not be delayed by endeavouring to obtain every item on the checklist and that abbreviations should not be used

1. The reference to the legal basis pursuant to which the information is provided.
2. A reference to the request in response to which the information is provided.
3. The information requested, including copies of documents (e.g. records, contracts, invoices) as well as any information not specifically requested but likely to be useful based on the information provided in connection with the request. Where reference is made to domestic laws an explanation should be added as the foreign competent authority will not be familiar with these rules.
4. If applicable, explanation why certain information could not be provided or could not be provided in the form requested. Note that the inability to provide the information in the form requested does not affect the obligation to provide the information.
5. For money amounts indicate currency, whether a tax has been withheld and if so the rate and amount of tax.
6. The type of action taken to gather the information.



7. The tax periods for which the information is provided.
8. Mention whether the taxpayer or a third person has been notified about the exchange.
9. Mention whether there are any objections to notifying the taxpayer of the receipt of the information.
10. Mention whether there are any objections to disclosing all or certain parts of the information provided to the taxpayer (e.g. the transmittal letter).
11. Mention whether feedback is requested on the usefulness of the information.
12. A reminder that the use of the information provided is subject to the applicable confidentiality rules (e.g. by stamping a reference to the applicable confidentiality rule on the information provided).
13. The name, phone, fax number and e-mail address of the tax official who may be contacted if needed, if that person is a delegate of the competent authority.

### ***Standard time objectives***

The time required to obtain tax information depends on whether the information is available in the tax files or whether an investigation and/or contact with third parties is necessary. Gathering the information through an investigation or via contact with third parties will naturally take more time. However, a competent authority should seek to provide the requested information within the established term.

If the competent authority of the requested party would have difficulties or inconveniences to submit it within a reasonable term, it should notify any of these situations at the time of reviewing the request or as soon as it is aware of the time that would be required to respond to the request.

## **STEP 5: PROVIDING FEEDBACK**

Feedback is important to improve the tax officials' motivation to provide information. It may also be useful for competent authorities to obtain the resources required, inasmuch as they will serve as indicator of the usefulness of the exchange. The level of detailed feedback which a country may provide will depend on its national laws regarding secrecy.

It is advisable to acknowledge receipt of all the information, including that sent by e-mail.

Regular, timely and comprehensive feedback between competent authorities is important as it:

- enables quality improvements to be made for future information exchanges;
- can improve the motivation of tax officials to provide information; and

- may be useful for competent authorities to obtain the resources they need as it will serve as an indicator of the usefulness of exchange.

Requesting competent authorities should, in appropriate cases, consider providing feedback to requested competent authorities regarding the usefulness of the information supplied. Feedback to the requested competent authority may include details of, for example, additional tax revenue raised, tax evasion methods detected and an overall assessment of how useful the information was to the tax administration. Requested competent authorities should subsequently consider providing any feedback received to their tax administration staff that was responsible for obtaining the requested information. For instance, where the staff of a local tax office invested significant time and effort in obtaining the requested information within a short time frame, a requesting competent authority may be well advised to provide feedback in order to motivate the local office staff to show the same dedication and commitment in connection with any future requests.

## EXAMPLE OF REQUEST FOR INFORMATION

**FROM**

Mr Competent Authority of Country X  
Director of Taxes  
1234 Tax Boulevard  
Capital city 21001 Country X  
phone/fax

**TO**

Mr. Competent Authority of Country Y  
Director of Taxes 567 Free Street  
Freedom City 34002 Country Y

Reference CA/10 01 04 U

\_\_\_\_\_, 2006

Taxpayer under investigation: PC Company  
TIN: 89 67 89 02  
56 A Street  
Blueville 10001  
Country X

**Tax years under investigation:**

01/10/00 - 30/09/01

01/10/01 - 30/09/02

01/10/02 - 30/09/03

**Years for which information is requested:** same years

Dear Mr. Competent Authority of Country Y

**Re: request for information under Article \_\_\_ of the Agreement on Exchange of Information between Country X and Country Y**

This request is presented according to Article \_\_\_ of the Agreement on Exchange of Information between our two countries. Our request concerns PC Company above mentioned. The local tax office of Blueville is presently examining its income tax returns for the tax periods referred to above.

PC company is in the business of importing high tech equipment in the computer industry and selling this equipment to its domestic subsidiaries. During the tax examination it was discovered that funds have been deposited into a bank account (number: 001 678 543 at the State Bank , 1 Bank Street Freedom City 34001 Country Y. We believe the account is in the name of Mr John Smith TIN 57 06 2345 born 15 06 57 address 1 Blue Street, Blueville 10003 who owns 65% of the shares of PC Company and is the executive manager. We believe that the funds deposited into this account are taxable in Country X and have not been reported.

We therefore request the following information for the period under investigation:

Bank records including bank statements, concerning account n° 001 678 543 identified as being used directly or indirectly by PC Company or by Mr John Smith.

If you need more information please contact Mr Green phone: 1234567 fax 12344568. Would you acknowledge receipt of this request and indicate when the information is likely to be provided.

This request is presented according to Article \_\_\_ of the Agreement on Exchange of Information and the information provided will be used only as provided for in such Article.

Sincerely,  
Mr Competent Authority of Country X

## EXAMPLE OF RESPONSE TO A REQUEST

**FROM**

Mr. Competent Authority of Country Y  
Director of ...  
567 Free Street  
Freedom City 34002 Country Y  
Phone: Country X  
Fax:  
Person to contact: Mr. Freed

**TO**

Mr. Competent Authority of Country X  
Director of Taxes  
1234 Tax Boulevard  
Capital City 21001  
\_\_\_\_\_, \_\_\_\_\_ 2006

Dear Mr. Competent Authority,

**Re: your request for information under Article \_\_\_ of the Agreement on Exchange of Information between Country X and Country Y**

Your reference CA/1001 94 U  
Taxpayer PC Company  
TIN 89 67 89 02  
56 A street  
Blueville 10001

Tax Years for which information is requested:

01/10/00-30/09/01  
01/10/01-30/09/02  
01/10/02-30/09/03

On \_\_ \_\_\_\_\_, 200\_, you presented a request for information under Article \_\_\_ of the Agreement on Exchange of Information between our two countries concerning bank accounts identified as being used directly or indirectly by PC Company or by Mr. John Smith the executive manager of PC Company.

Please find enclosed the bank records of the account number n( 001 678 543). Our central file of bank accounts allowed us to identify another account opened on 5.08.92 by Mr. John Smith, City Bank n° 001 725 613, at the Branch located at 56 City Street in Freedom City.

This information is provided under Article 26 above-mentioned and its use is covered accordingly. Please provide information on the usefulness of the information supplied.

Yours sincerely,

Mr. Competent Authority of Country Y

Enclosures:

Bank Account State Bank n° 001 678 543

Copies of 36 bank statements

Bank Account City Bank n° 001 725 613

Copies of 17 bank statements

## EXAMPLES OF INFORMATION EXCHANGE UPON REQUEST

The following examples seek to illustrate typical requests

### **Example 1: Inbound Loan**

Taxpayer T, a resident of country A, pays interest on a loan made by company C, resident in country B. T claims not to be the beneficial owner of C. Tax auditors suspect that T is the beneficial owner of C and that the “loan” was actually an attempt to repatriate previously unreported income earned in country A. (e.g. because company C does not require any collateral or security for the loan or the credit conditions otherwise depart from what is typically agreed between unrelated parties).

The competent authority may request:

- Accounting records/financial statements of C for the relevant years;
- Relevant contracts and the related bank information evidencing the transfers, copies of signature cards on C’s bank accounts;
- All documents indicating the source of the funds if the financial statements show that C did not have the necessary capital to make the loan;
- Information on the identity of the shareholders and/or beneficial owners in company C;
- Formation documents for C.

### **Example 2: Outbound Loan**

Resident taxpayer T grants a loan to company C, resident in B. Unusual credit conditions lead to the suspicion, that T is related to C and that C has made a back to back loan to another person at normal credit conditions, thus shifting considerable profits to C.

The competent authority may request:

- Accounting records/ financial statements of C;
- Related contracts and bank statements on the receipt and on the use of the loan;
- Statement of dividend payments or other payments to shareholders of C;
- Information on shareholders in company C.

### **Example 3: Services Re-invoicing**

Resident company A claims a deduction for services invoiced by company C, resident in foreign country B. However, the tax official auditing company A learns that the services were performed by resident taxpayer T. The income tax return of T only shows income from services provided to C and the amount invoiced by T to C is significantly smaller than the amount invoiced by C to A. The tax auditor suspects that C only acts as a re-invoicing agent because T’s lifestyle far exceeds his declared income. The auditor suspects that C charges T only a small fee for its re-invoicing services

and that the difference between the amount declared by T and the amount invoiced by C (minus its fee) is paid into a bank account held by T with a bank resident in B. (Note that in a variation of this structure T could also be purporting to be an employee of C and then only declare his wage income as taxable income).

The competent authority may request:

- Names and addresses of persons employed by C;
- Invoices of T to C and any payments made to him;
- All accounts payable of C with respect to T for the years under investigation;
- Accounting and financial records of C (in particular any bank records showing transfers by C to T).

#### **Example 4: Import and export transaction using conduit companies**

Resident company T purchases electronic components for use in its manufacturing operations from company C, resident in B. A tax inspector auditing company T becomes suspicious because the price charged by C to T far exceeds comparable prices in the industry. The tax inspector suspects that the amount invoiced is significantly higher than the amount C pays to the producer of the components. The tax inspector further suspects that in reality company C acts as an agent and that its likely paper profits are paid to a third party related to company T.

The competent authority may request:

- Information about direct imports/exports or the imports/exports via C (invoices of the forwarding agents, customs documents);
- Information about size and operation of C's premises and warehouses (e.g. copy of the lease showing size of premises and any rental payments due);
- Information about number of employees of C;
- Information about the persons acting for C, their remuneration, actual salary and social security payments;
- Accounting records/financial statements for C;
- If C claims to be an independent agent: information about the persons acting as agent, names and addresses, their remuneration, proof of the actual salary and social security payments made.

Based on the information provided by the competent authorities of country B the tax inspector is able to prove that company C deposited the difference between the purchase and the sales price (minus a small fee) into an account which A, the sole shareholder of T, has with a bank resident in B. A had not disclosed these payments in his income tax return.



**Other Examples:**

**Shown below is a new example of request for information with the pertinent response.**

**EXAMPLE OF REQUEST FOR INFORMATION**

**FROM**

Mr Competent Authority of Country X  
Director of Taxes  
Av. Colon 1562 (1111)  
Ciudad Grande Country X  
phone/fax

**TO**

Mr Competent Authority of Country Y  
Director of Taxes 567 Free Street  
1012 Lincoln Street  
Springfield City, Country Y  
phone/fax  
Person to contact: Mr. Peter Smith

\_\_\_\_\_, 200\_

Taxpayer under investigation: ZZ S.A.  
Taxpayer: ZZ S.A.  
TIN: 25 225863 33  
Av. Huergo 56738  
Rio Cuarto, Provincia de Cordoba Country X

**Tax years under investigation:**

01/01/02 - 31/12/02  
01/01/02 - 31/12/03  
01/01/04 - 31/12/04

**Years for which information is requested:** same years

Dear Mr. Competent Authority of Country Y

**EXAMPLE OF REQUEST FOR INFORMATION**

Re: request for information under Article \_\_\_ of the Agreement on Exchange of Information between Country X and Country Y

This request is presented according to Article 4 of the Agreement between our two countries. Our request concerns ZZ S.A. above mentioned. The local tax office in the jurisdiction where the Taxpayer in question is domiciled is presently examining its returns for the tax periods referred to above.

ZZ S.A. is in the business of producing fine wines for export. During the tax examination it was discovered that in the aforementioned periods, 90% of its production was exported to three companies located in Country Y and at a significantly lower price to that of the wholesale price determined in our country for those products. Indicated below are the names of the companies to which ZZ S.A. made its exports: WINE A Co., WINE B Co., WINE C Co.

We therefore request the following information for the period under investigation: 1) Accounting records of the aforementioned companies dealing with the transactions carried out between these companies and ZZ S.A., 2) Documents that may allow for determining the resale price of the goods acquired by these companies from ZZ S.A., 3) Wholesale price in Country Y for the goods involved, 4) Identification of the partners and directors of the aforementioned companies.

If you need more information please contact Mr. Lopez at phone: 8523654/fax 8526549. Please acknowledge receipt of this request and indicate when the information is likely to be provided.

This request is presented according to Article 4 of our Agreement and the information provided will be used as indicated in such Article.

Sincerely,  
Mr Competent Authority of Country X

## EXAMPLE OF RESPONSE TO A REQUEST FOR INFORMATION

### FROM

Mr. Competent Authority of Country Y  
Director of Taxes  
1012 Lincoln Street  
Springfield City, Country Y  
Phone:/Fax:  
Person to contact: Mr. Peter Smith

### TO

Mr. Competent Authority of Country X  
Director of Taxes  
Av. Colon 1562 (1111)  
Ciudad Grande Country X  
Phone:/fax:

\_\_\_\_\_, \_\_\_\_\_, 2005

Dear Mr. Competent Authority of Country X,

Re: request for information under Article 4 of the Agreement on Exchange of Information between Country X and Country Y

Your reference:

Taxpayer ZZ S.A.  
TIN 25 225863 33  
Av. Huergo 56738  
Rio Cuarto, Provincia de Cordoba Country Y

Tax Years for which information is requested:

01/01/02-31/12/02  
01/01/02-31/12/03  
01/01/04-31/12/04

## EXAMPLE OF RESPONSE TO REQUEST FOR INFORMATION

On February 10, 2005, you presented a request for information under Article \_\_\_ of the Agreement between our two countries concerning the prices established by companies WINE A Co., WINE B Co., WINE C Co., for the products provided by company ZZ S.A., as well as the identification of their partners and directors and the prices of those goods in Country Y.

In this respect, in relation to the companies and period required, attached you may find:

- Copy of the accounting records and working papers dealing with the purchase, sales, goods, suppliers and sales credit accounts relative to the transactions carried out between the aforementioned firms and ZZ S.A.
- Copy of the sales invoices of the goods acquired from ZZ S.A.
- Copy of the list of directors and stockholders' register
- List with wholesale prices in Country Y of the product in question.

This information is provided under Article 4 of the abovementioned agreement and its use is covered accordingly.

Please provide information on the usefulness of the information supplied.

Yours sincerely,

Mr. Competent Authority of Country Y

***Enclosures:***

Copy of accounting records. Accounts: Purchases, Sales, Goods, Suppliers and Sales Credits relative to transactions carried out between the aforementioned companies and ZZ S.A. Copies of Copy of the list of directors

Copy of the stockholders' register

List with market wholesale prices

## **Examples:**

### **Generation of losses abroad:**

Taxpayer A resident in country A, sets up an economic group with company B, resident in country Y. Within the framework of a tax audit carried out by country X it was found out that although taxpayer A generates large earnings, in several fiscal periods, company B has been showing significant losses. Bearing in mind that in these cases results are consolidated for estimating the world income of the local taxpayer, the tax base is being reduced in country X, with losses in several fiscal periods. Therefore, the auditors of country X must determine whether the frequent losses generated by company B are real, for which purpose they take advantage of the Agreement on the Exchange of Tax Information signed with country X. (In this case, an examination could also be carried out abroad).

The competent authority may request:

- Accounting and financial statements of B for the pertinent periods.
- Support documents of Liability accounts and those that generate negative results, for the pertinent periods.
- Banking records dealing with transactions carried out by company A, corresponding to the pertinent periods.
- List of staff members
- List of suppliers
- Report on the economic situation faced by the sector within the economy of country Y (profit margin, level of protection against imports, tax benefits, etc).

## **Examples:**

### **Diverting earnings from jurisdictions with lower taxation through the use of transfer pricing:**

1) Company A resident in country X exports industrial inputs to company B resident in country Y (which has an extremely beneficial tax system as compared to the system existing in country X). Tax auditors of country X suspect that inputs were traded at a significantly lower price than that of the market. The information which country X has available is not enough to determine the real market price of traded goods and whether there is any type of relationship between companies A and B. Therefore, it resorts to the use of the Agreement on Exchange of Tax Information signed with country Y.

The competent authority may request:

- Accounting Statements of B for the pertinent periods

- Working papers and documents to support the accounts: Sales, Cost of Goods Sold, Sales Results, Sales Credits or any other account that may allow for determining the price and/or earning received from trading the products acquired from company A.
- Copy of the invoices issued to company B by company A.
- List of directors
- Stockholders Register

2) Company A, resident in Country X transfers the right to use a brand (intangible asset) to a related company called B, resident in Country Y. The following year, the tax auditors of country X have difficulties in determining if the amount paid for the intangible asset in question is reasonable, since it is difficult to apply the “arm’s length” principle to this type of assets. The reasons that render this principle inapplicable are that, in general, the intangible asset is unique, difficult to evaluate and for commercial reasons there could be inconveniences in transferring it to third parties.

The competent authority may request:

Accounting records/financial statements of B, in relation to transactions carried out with A, during the pertinent periods

Chart on results, differentiating them according to type of product, to determine the earnings generated from the sale of the goods carrying the brand in question.

Annex on Intangible Assets to determine the number of years in which the asset is amortized and the value for which it was registered in the accounting records.

#### **EXAMPLE:**

**The competent authorities of country “A” request specific information to country “B”.**

#### **Confirmation of deductions**

The tax authorities of country “A” (requesting authority) request information and documentation to country “B” (requested authority), in relation to technical assistance services in the amount of U.S. \$1,150,000.00, provided by a group of resident companies in country “B” for tax purposes.

The authorities of country “A” consider that such assistance was not provided, given that withholdings made according to the treaty entered into by both countries do not coincide with the amount paid by its taxpayer. In addition, some irregularities were detected on reviewing the payments made.

The tax authorities of country “A” requested the tax authorities of country “B”, in keeping with the double taxation treaty they had signed, to provide them the following information and documents:

- Contracts entered into between the group of companies of country “B” and the company in country “A”.

- Form of payment used by company A, to cover its debts to the group of companies of country “B”.
- Working records as well as the name of the staff members that provided technical assistance to the taxpayer of country “A, in said country.
- Confirmation by the competent tax authorities of country “B” of having credited the tax withheld by the taxpayer audited in country “A” to the companies of country “B”.

The competent tax authorities of country “B” responded to the request from country “A”, by making known to its tax authorities that three of the four companies reported the income received as well as the tax withheld, which was credited in country “B”. However, with respect to company B2, the competent authorities of country “B” reported that it is not registered in their data base and that the domicile provided corresponds to a Public Accountants firm, which indicated that they are unaware of the existence of company B.

The tax authorities of country “A” made the pertinent tax adjustments to their taxpayer, determining inappropriate deductions and evaluating the possibility of classifying such action as a tax offense due to the use of false documents.

#### **Example:**

#### **The competent authorities of country “A” receive a request for specific information from country “B”**

The tax authorities of country “A” (requested authority) receive a request for information from the competent tax authorities of country “E” (requesting authority) with respect to the activities of a football player, who for tax purposes is a resident of country “E”. Country “E” requests that the following be verified:

- Certification of documents (Letters from the “X” Football Club) whereby the football player endeavors to prove that the tax withholdings he is crediting in country “E” were actually made.
- Verification of the withholding and payment of the tax for services rendered to the “X” Football Club, as well as verification of the football player’s stay in country A.
- The reasons why the football player ceased to provide his services to the “X” Football Club, the date of annulment of the contract and whether the football player received any compensation.

It must be noted that the governments of countries “A” and “B” in addition to having entered into a Convention to Avoid Double Taxation with a broad clause, also have in force an Agreement for the Exchange of Information, which complements the Convention.

The requested authorities verified whether the request was within the corresponding legal sphere; that is, they mainly determined whether the period requested was still within the powers of verification of the requested authority, and having done this, they undertook the requested investigation.

The tax authorities of country “A” compiled the requested information and proceeded to answer the request made by the competent authorities of country “E”, by providing them a report with a summary of the investigations carried out and confirming the veracity of the football player’s activities.



## Case Study I

### **FACTS:**

The tax administration of country **(A)** is carrying out an examination of the spouses, Mr. and Mrs. S, residents in said country **(A)**.

The tax returns filed in **(A)** do not show income corresponding to payments made for the acquisition of a very representative real estate. In other words, their income would not allow them to purchase a real estate of such great value.

In the verification made, both spouses justify the financing of said purchase by means of a long granted by a banking entity domiciled in country **(B)**. Said loan has been guaranteed by a trust resident on country **(B)**. Mr. and Mrs. **(S)** express that they pay the corresponding commission for the aforementioned guarantee..

On the contrary, it is suspected that the real financing originates from undeclared income from their business in Spain.

### **REQUEST:**

The tax authorities of **(A)** request the following documents:

- a) From the banking entity, the documents describing the loan transaction, with the original signatures of the persons participating in the transaction and description of all guarantees and the individuals signing such guarantees.
- b) From the guaranteeing entity, information with respect to all persons involved in their chain of ownership; that is, and assuming it is a trust, information on the trustors, trustees and beneficiaries. In addition to their accounting records, support documents showing the entries of transactions and payments made and all the documents reflecting the economic relationships with the taxpayers of country showing **(A)**.

## Case Study II.

### **FACTS**

**The tax administration of country (A) is carrying out an examination of a resident company in (A), entity (X) and its main stockholders, two spouses, Mr. (S) and Mrs. (T), also residents in (A).**

The verification made showed some payments supported by an invoice for the rendering of services, in the amount of 350.00 €, whose accomplishment is not sufficiently proven.

In addition, it is documented that the alleged provider of the service is an irregular entity that no longer exists, without a real domicile, without administrative structure and without warehouses or hired staff. The amount of 350.000 € has been paid by means of a check in favor of an entity, which according to investigations made at the banking entity where payment was made, has been entered in the account of a banking entity resident in country **(B)**. Since the service has not been rendered, it is suspected that the payment made through the use of a false invoice, covers the distribution of benefits in favor of the partners that have not been accounted for or declared.

### **REQUEST:**

The tax authorities of **(A)** request the following documents:

a) From the banking entity,

- The documents proving the opening of the account where the check was deposited, showing the original signatures of the persons appearing as holders, proxies, persons authorized and, if appropriate, beneficiaries.
- Assets or liabilities of the aforementioned account through December 31 of the two previous fiscal periods.
- The totality of entries and remaining transactions that would have taken place during a specific time frame.
- Capital yields obtained, as appropriate, for the maintenance of the account indicated during the requested period.

- The documents and other background information relative to the previously indicated data.
- b) From the entity in whose name the account is registered, a trust, information on all the individuals comprising its chain of ownership and their beneficiaries. In addition to their accounting records, the support documents of the transactions, offsetting entries of the aforementioned banking account and all the documents showing the economic relationships with taxpayers **(S)** and **(T)** and other residents in country **(A)**.

### Case Study III

#### FACTS:

Countries **(A)** and **(B)** have a Bilateral Agreement for Exchanging Tax Information.

The tax administration of **(A)** is carrying out a tax verification of Corporation **(X)**, as well as of their only directors and stockholders, Mr. and Mrs. **(S)**. The three taxpayers mentioned are residents in country **(A)**.

The social purpose of entity **(X)** is the rendering of services involving real estate promotion and obtaining urban development licenses. Mr. and Mrs. **(S)** are engineers.

In the tax returns filed in country **(A)**, Corporation **(X)** requested, as deductible expense, the payment of management support services to Corporation **(Y)**, established in country **(B)**. Payment is made by means of direct transfers to the banking account of Corporation **(Y)**, at Bank **(Z)**, also located in country **(B)**.

The services rendered by the latter corporation (Y), according to the invoices and explanations provided, consist of the intermediation of contracts, development of projects and plans, leasing of meeting rooms, urban development studies, procedures and processes regarding licenses before local administrative authorities as well as from other countries of the region and translation services. All of them are specific and instantaneous services, whose actual and effective accomplishment is very difficult to subsequently verify.

The advisers of entity **(X)** express that neither the corporation or its stockholders Mr. and Mrs. **(S)** have any relationship with entity **(Y)**.

Corporation **(X)** denies any type of relationship and considers that the administrative payments are a legitimate expense paid to corporation **(Y)** in country **(B)**. Nevertheless, the examiner suspects that corporations **(X)** and **(Y)** are associated entities and that the latter does not actually render any service to the first one.

The examiner likewise suspects that Mr. and Mrs. **(S)** control Corporation **(Y)** and, in addition, has some indications that the administrative payments are being personally repatriated through credit cards issued by Bank **(Z)**, which are used to pay for personal expenses in similar amounts to those of the expenses allegedly paid to Corporation **(Y)**.

#### REQUEST

The competent authority of country **(A)** sends a specific request to the competent authorities of **(B)**, requesting the following information:

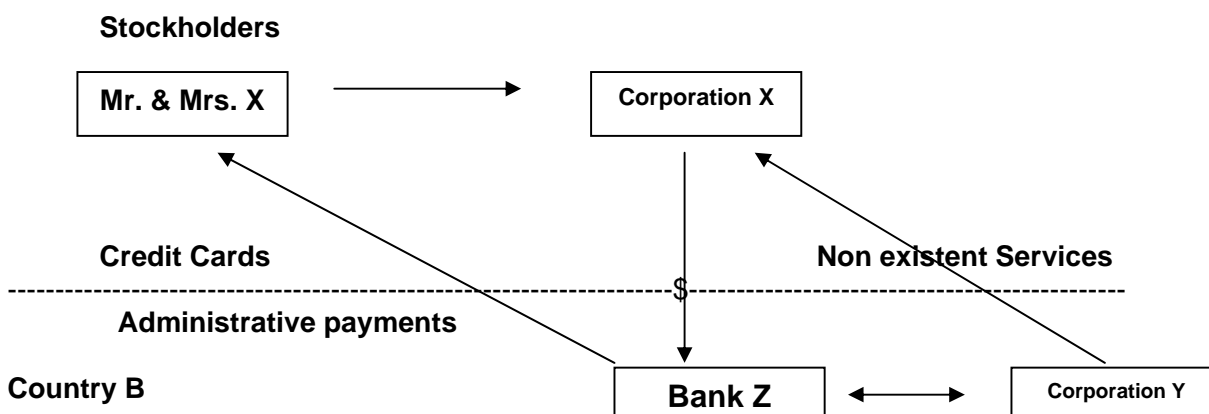
- 1) The identities of the legal owners and actual beneficiaries of Corporation (Y), as well as their tax residence.
- 2) A copy of the pertinent service contracts for the rendering of services between corporations (X) and (Y).
- 3) Confirmation that Corporation (Y) declared the payments received as taxable income in country (B) – provided that such obligation exists -
- 4) Confirmation that the receipt of such payments was registered as income in the financial documents of Corporation (Y).

Additionally, assuming that the relationship between corporation (Y) and Mr. and Mrs. (S), as stated in item one of the request, is confirmed:

- 5) Details of all deposits and withdrawals from the bank account of Corporation (Y) in Bank (Z) during the pertinent period.
- 6) Information relative to the possible issuance of credit cards in the name of Mr. and/or Mrs. (S) and, if appropriate, details on all transactions related to said account in the pertinent period.
- 7) Human and material elements related to the economic activity of (Y).

## SCHEME

### Country (A)



**CIAT MANUAL ON THE IMPLEMENTATION OF EXCHANGE OF INFORMATION PROVISIONS  
FOR TAX PURPOSES**

**MODULE ON SPONTANEOUS EXCHANGE OF INFORMATION**

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# CIAT MANUAL ON THE IMPLEMENTATION OF EXCHANGE OF INFORMATION PROVISIONS FOR TAX PURPOSES

## MODULE ON SPONTANEOUS EXCHANGE OF INFORMATION

### 1. Introduction – What is Spontaneous Exchange of Information?

Spontaneous exchange of information is the provision of information to another contracting party that is foreseeably relevant to that other party and that has not been previously requested. Because of its nature, spontaneous exchange of information relies on the active participation and co-operation of local tax officials (e.g. tax auditors, etc). Information provided spontaneously is usually effective since it concerns particulars detected and selected by tax officials of the sending country during or after an audit or other type of tax investigation.

### 2. Encouraging and Promoting the Use of Spontaneous Exchange of Information

The effectiveness and efficiency of spontaneous exchange very much depends on the motivation and the initiative of the officials in the supplying country. It is therefore important that local tax officials have the reflex to pass on to their competent authority information which would potentially be of use to a tax treaty partner. In this context, tax administrations should consider developing strategies that aim to encourage and promote the use of spontaneous exchange of information. Such strategies might include the mandatory publishing of spontaneous exchange statistics in annual reports and carrying out comprehensive, regular and properly targeted awareness training to local tax officials. Countries should also consider negotiating Memoranda of Understanding and other similar instruments that seek to encourage, promote and facilitate effective spontaneous exchange of information. It should be borne in mind that sending useful information to another country will increase the likelihood of receiving useful information in return.

### 3. When to Consider a Spontaneous Exchange of Information

Several circumstances may arise that could prompt a spontaneous exchange of information. The list below provides examples of where a spontaneous exchange of information should be considered:

- Grounds for suspecting that there may be a significant loss of tax in another country;
- Payments made to residents of another country where there is suspicion that they have not been reported;
- A person liable to tax obtains a reduction in or an exemption from tax in one country which could give rise to an increase in tax liability to tax in another country;
- Business dealings between a person liable to tax in a country and a person liable to tax in another country are conducted through one or more countries in such a way that a saving in tax may result in one of the other countries or in both;
- A country has grounds for suspecting that a saving of tax may result from artificial transfers of profits within groups of enterprises; and



- Where there is likelihood of a particular tax avoidance or evasion scheme being used by other taxpayers.

#### **4. Checklist of what to include when providing information spontaneously**

1. The checklist below provides guidance on what to include when providing information spontaneously. It should be noted that other relevant information may be added, exchanges should not be delayed by endeavoring to obtain every item on the checklist and that abbreviations or acronyms should not be used. The reference to the article in the relevant treaty or other legal basis upon which the information is provided.
2. The identity of the person(s) to whom the information relates: name, date of birth (for individuals), marital status (if relevant), Tax Identification Number (TIN) and address (including email or internet addresses, if known).
3. The identify of person from whom the information was obtained and, if relevant, their relationship to the person(s) to whom the information relates: name, marital status (if relevant), TIN (if known), addresses (including email or internet addresses if known), registration number in case of a legal entity (if known), charts, diagrams or other documents illustrating the relationships between the persons involved.
4. If the information involves a payment or transaction via an intermediary mention the name, addresses of the intermediary, including, where bank information is involved, the name and address of the bank branch as well as the bank account number.
5. The information which was gathered and an explanation why the information is thought to be of interest to the other competent authority (for money amounts indicate the currency and whether a tax has been withheld and if so the rate and amount).
6. Mention how the information was obtained and identify the source of the information provided, e.g. tax return, third party information etc.
7. Mention whether the taxpayer or a third person has been notified about the exchange.
8. Mention whether there are any objections to notifying the taxpayer of the receipt of the information.
9. Mention whether there are any objections to disclosing all or certain parts of the information provided (e.g. the transmittal letter).
10. Mention whether feedback is requested on the usefulness of the information.
11. A reminder that the use of the information provided is subject to the applicable confidentiality rules (e.g. by stamping a reference to the applicable confidentiality rule on the information provided).

12. The name, phone, fax number and e-mail address of the tax official who may be contacted if needed, if that person is a delegate of the competent authority.

## **5. Receiving information provided spontaneously**

When receiving information spontaneously the competent authority of the receiving country should evaluate it and, if warranted, refer it to the appropriate investigative authorities for action.

The competent authority receiving spontaneous information should always request feedback from the investigative authorities on the usefulness of the information and forward this information to the competent authority that spontaneously provided the information. Feedback to the competent authority that spontaneously provided the information may include details of, for example, additional tax revenue raised, tax evasion methods detected and an overall assessment of how useful the information was to the tax administration. Regular, timely and comprehensive feedback between competent authorities is important as it enables quality improvements to be made for future spontaneous information exchanges.

## **6. Scenarios where a spontaneous exchange of information may be useful:**

The examples below demonstrate where information detected by a local tax official could be of use to a tax treaty partner:

- An audit of company X in country A reveals a payment of €40,000 for management fees paid to an unrelated company Y in country B. An examination of the invoices indicates this amount was paid to company Y but an examination of the company X bank account shows two deposits made on the same day, one for an amount of €25,000, the other for €15,000. The auditor observes an entry made in the managing director's diary that states, "Bill Z (the individual who provided the management services) requests payment of €25,000 into the company Y bank account and €15,000 into the Bill Z bank account". Suspecting the second amount may not be disclosed in the accounts of company Y and believing the information could therefore be of use to the tax administration in country B, the auditor initiates a spontaneous exchange of information with country B via the competent authority.
- Information provided anonymously to the tax administration in country A reveals that John X, a resident of country A, has been in receipt of substantial sums of cash deposited into his bank account from his father in country B, who owns a restaurant. John X has told people that his father sends the cash for two reasons: (1) so his father can avoid paying tax on his restaurant business income by sending significant cash takings offshore, and, (2) so he can provide some financial assistance to his son in country A. An audit of John X reveals that he has never lodged a tax return in country A although his bank statements show he has derived large amounts of taxable interest income derived from the cash deposited by his father. The auditor calculates that €50,000 has been periodically deposited into John X's bank account throughout the 2003 tax year. The auditor believes the information gathered throughout the audit would be of use to the tax administration of country B because he suspects the income may not have been reported in that country. The auditor therefore discusses the matter with his competent authority with the view to providing a spontaneous exchange of information to country B. The spontaneous

information exchange will include, among other things, a copy of the auditors report, copies of relevant bank statements and the name of John X's father.

- Country A uses the exemption method for the purposes of avoiding double tax on employment income. Maria, a resident in country A, was exempted from tax in country A because she was employed for more than 183 days in country B during the 2003 tax year. Because the Convention between country A and country B assigns taxing rights on Maria's employment income to country B, country A spontaneously informs country B that it granted a tax exemption to Maria for the 2003 tax year.

**7. Example 01 of spontaneous exchange of information:**

- A. Company A, resident in Country X, provides professional engineering services. In an audit made to this company, it was determined that a high percentage of compensations paid correspond to short-term contracts with residents of Country Y. The audited company apparently has no economic relationships with companies located in Country Y. The examiner assumed that Country Y could be disregarding taxed income, and therefore proceeded to send spontaneous information through its corresponding Competent Authority.
- B. As a result of the audit made to Company A, resident in Country X, it was determined that it had received significant amounts of money by way of cash loans. From the documents contributed by the company it is inferred that said loans originate in Country Y. The auditor in charge considers that this information may serve Country Y to verify whether the company making the loans declared the respective interest. Therefore, the auditor spontaneously sends this information, expressing at the same time the need to obtain feedback to determine whether or not it is a fictitious company and if the loans were actually made according to the conditions reported.
- C. Country X has undertaken action for controlling the financial sector. It was determined that a large number of companies managing credit card systems incorrectly applied the deduction of fees, entertainment expenses or the transfer of funds abroad for the payment of know how and interest. Based on this situation, the auditors determine that many of these companies have their parent companies in country Y, with which Country X has signed an Agreement for exchanging information. Thus, it decides to send this information spontaneously in order for Country Y to determine whether these companies include these items in their returns, and likewise requested that it be provided feedback to verify whether the payments deducted are real.

**8. Examples 02:**

**Spontaneous information received by country "A" from country "E":**

The competent tax authorities of country "A" receive spontaneous information sent by the competent tax authorities of country "E". Such information involved the sale by a national from country "E", of stock options of a multinational company for which he worked in 2002, in the amount of US\$3,000,000.00, amount which was deposited in banking accounts of country "P". For tax purposes, said individual was currently resident of country "A".

The competent tax authorities of country "A", after verifying in their data bases the individual from which country "E" declared the profit obtained in the aforementioned stock operation, determined that in his income tax return for the 2002 fiscal period he did not declare income obtained abroad.

The tax authorities of country "A" undertook a tax examination of the individual and determined differences in his 2002 income tax return, based on spontaneous information received.

### **Country "A" provides spontaneous information to country "S".**

In an examination of company "E" by the tax authorities of country "A", it was determined that said company carried out transactions with three taxpayers from country "S" (S1, S2 and S3). The auditors determined that the taxpayer from country "A" and company S3, had a peculiar way of operating, for which they decided that the competent tax authorities of country "S" should be made aware of this situation since they considered that company S3 could have incurred in a tax irregularity in country "S".

The competent tax authorities of country "A", provided photocopies of all the documents related to the transactions carried out between the taxpayer of country "A" and the taxpayer (S3) of company "S", that would allow the authorities of said country to easily identify those transactions and determine whether or not they were reported.

The amount determined by the tax authorities of country "A" with respect to transactions carried out between company "E" and company "S3" amounted to US\$ 1,500,000.00.

## **9. Examples 03**

### **Other Examples: Capital gains**

Taxpayer M, a citizen of Country A, sold shares of stock in Country B Company on a certain date. The sale resulted in a capital gain to Taxpayer M of \$1,000,000. The taxpayer applied for and received an exemption from tax on the gain under the appropriate Article of the income tax treaty between Country A and Country B. The Competent Authority from Country B informs the Competent Authority from Country A about the gain.

### **Other Example: Wages:**

Taxpayer M, a citizen of Country B, worked in Country A for Country B Company. Taxpayer M claims to be a resident of Country A for tax purposes from date 1 to date 2 (the time under audit). The Country B Company paid wages to Taxpayer M for his activities as an employee in Country A from date 1 to date 2. Taxpayer M received a wages of \$100,000. Taxpayer M reported part of those wages (\$60,000) to Country B and was taxed on this amount. Country B cannot confirm that Taxpayer M reported any of these wages on his Country A tax return, or if he filed a country A tax return. The Competent Authority for Country B informs the Competent Authority for Country A of the wages.

**Other Example: Commissions:**

Country B conducts an examination of Country B Company for Year 1 and Year 2. The purpose of the Country B Company is to export products. The examination revealed that Company B paid a commission of \$2,000,000 to Taxpayer M in both Year 1 and Year 2. Taxpayer M was born in Country B, but currently resides in Country A. The commissions are payment for Taxpayer M's activity as a commercial agent for Country B Company in Country A. However, the commissions are deposited in a Country B bank account. Country B cannot confirm that Taxpayer M reported these commissions his Country A tax return and the Competent Authority for Country B informs the Competent Authority for Country A of the commissions.

**MANUAL ON THE IMPLEMENTATION OF EXCHANGE OF INFORMATION FOR TAX  
PURPOSES**

**MODULE ON AUTOMATIC (OR ROUTINE) EXCHANGE OF INFORMATION**

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# CIAT MANUAL ON THE IMPLEMENTATION OF EXCHANGE OF INFORMATION FOR TAX PURPOSES

## MODULE ON AUTOMATIC (OR ROUTINE) EXCHANGE OF INFORMATION

### 1. What is automatic exchange?

Automatic exchange of information (also called routine exchange by some countries) involves the systematic and periodic transmission of “bulk” taxpayer information by the source country to the residence country concerning various categories of income (e.g. dividends, interest, royalties, salaries, pensions, etc). This information is obtained on a routine basis in the source country (generally through reporting of the payments by the payer (financial institution, employer etc). Automatic exchange can also be used to transmit other useful types of information such as changes of residence, the purchase or disposition of immovable property, VAT refunds<sup>1</sup>, etc. The country of residence tax authority can then check its tax records to verify that resident taxpayers have reported their foreign source income. In addition, information concerning the acquisition of significant assets may be used to evaluate the net worth of an individual, to see if the reported income reasonably supports the transaction. There are an increasing number of countries involved in automatic exchange using different types of media: tapes, diskettes, CD Roms but also paper.

### 2. Benefits of automatic exchange

The foreign source information received on magnetic media or in digital form can be input into the recipient tax data base (often using bridging programs to capture the relevant information) and automatically matched against the income reported by the taxpayer. This is the most cost effective way to process the information. For example the Australian Tax Office's 2004-05 Compliance Program states that 1171 foreign source income data matching audits were completed during the 2003-04 tax year, raising over AUD\$3 million in liabilities. The foreign source information received on magnetic media or in digital form can also be matched manually, as a general procedure or when it could not be matched automatically. The automatic exchange of information on magnetic media also provides opportunities for more effective and efficient distribution of the exchanged information to local tax offices if needed and also for instance for feeding the information into data bases for purposes of risk analysis.

### 3. Legal basis

Automatic exchange can be based on:

- i. The exchange of information article of the bilateral income tax convention between two countries; or
- ii. Article 6 of the Joint Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters; or

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<sup>1</sup> These other types are not at present supported by the standard transmission formats (SMF/STF) developed by the OECD.



- iii. Article 3 of the EU Council Directive 77/799/EEC on Mutual Assistance as last amended or
- iv. The EU Savings Directive 2003/48/EC; or
- v. Article 17 of EU Council Regulation on administrative cooperation in the field of VAT 1798/2003; or
- vi. Council Regulation of 16 November 2004 on administrative co-operation in the field of excise duty; or
- vii. Article 4, paragraph 3 of the CIAT Model Agreement on the Exchange of Tax Information.

#### **4. Agreements or Memoranda of Understanding on automatic exchange**

The exchange of information article of an income tax convention or automatic exchange article of a mutual assistance instrument constitutes the legal basis for automatic exchange of information. In addition, countries may agree to enter into a special working agreement or memorandum of understanding (MOU) setting forth the terms and conditions of the proposed automatic exchange. Such an agreement or MOU typically sets forth the types of information to be exchanged automatically, details about the procedures of sending and receiving the information, the appropriate format to use, and provision of TINs. These agreements or MOU may be published officially and may have a deterrent effect on potential tax evaders and are usually reviewed periodically.

The OECD has designed a Model Memorandum of Understanding between Competent Authorities on Automatic Exchange of Information for Tax Purposes C(2001)21/FINAL that can be used as a basis for an operational working agreement between tax administrations.

The OECD Model MOU provides a list of information that can be exchanged automatically, including:

- change in place of residence from one State to the other State;
- ownership of, and income from immovable property, dividends, interest, royalties, capital gains, salaries, wages and other similar remuneration in respect of an employment, directors' fees and other similar payments;
- income derived by artists and sportsmen, pensions and other similar remuneration, salaries, wages and other similar remuneration for government services, other income such as proceeds from gambling, other items including items on indirect taxes such as VAT/sales tax and excise duties and social security payments;
- commissions and other similar payments, and
- any other information which the contracting countries may consider of interest for tax purposes.

The OECD Model MOU recommends using the OECD Standard Magnetic Format for automatic exchange (or any further updated format recommended by the OECD Council) as well as

providing Tax Identification Numbers (TINs) if available as they facilitate the processing and matching of the information received. It might also be a helpful reference when further inquiries to the other contracting party are necessary. In that respect the OECD Council recommended the use of TINs in the international context in 1997, see C(97)29/FINAL. The OECD Council recommends “that Member countries should encourage non residents recipients of income to disclose their residence country TIN. Member countries should consider making this disclosure mandatory.” In the case of automatic exchange of information on income paid to non residents, having information on the residence country TIN would greatly facilitate the matching of information received by the residence country with the income reported by its own taxpayers. The table in the annex below gives an overview of the use of TINs for domestic purposes and international use of TINs.

## **5. Implementation**

### **5.1 Standardisation of transmission formats and use of new media**

1. Automatic exchange of information requires the standardisation of formats in order to be efficient. In 1981 the OECD designed a paper-based form for automatic exchange which introduced the standardisation of certain pieces of information C(81)39/FINAL. In 1992, taking advantage of technological developments, the OECD then designed the Standard Magnetic Format (SMF) for the transmission of taxpayer information on magnetic tape. Based on country experiences the SMF was revised in 1997 to further improve countries’ capacity to match information received automatically with information reported by its taxpayers. Use of the revised format was recommended by the OECD Council in 1997 (see C(97)30/FINAL). The record layout of the Standard includes fields allocated to the:

- recipient beneficial owner, his agent or intermediary, to the actual payer of the income, the payer’s agent or intermediary. For each series of fields the same pattern is followed to provide information on the TIN (both residence country TIN and source country TIN), name, alias or other name, date of birth (where applicable) and address; and
- income (tax year, date, type of payment, currency, gross and net amount, tax withheld, refund etc).

Fields are allocated to residence country TINs and source country TINs. The SMF is used by OECD member countries involved in automatic exchange and increasingly by non member countries. A multilingual electronic user manual is also available to provide guidance for the implementation of the Standard. It is available on CD ROM which can be obtained from the OECD Secretariat. In 2002 the European Union Council agreed on a standard format (FISC 39) for the implementation of the Savings Directive which is to be based on the OECD SMF. In 2008 EU countries will start using an STF-like format (FISC 73).

The OECD has also designed a “new generation” transmission format for automatic exchange to eventually replace the SMF. The new format is called the Standard Transmission Format (STF) and is based on extensible mark-up language (XML<sup>2</sup>), a document mark-up language widely used in today’s information technology for its many advantages (e.g. separation of the content of a message from any display structure, readability both by humans and machines, modularity and flexibility, ability to check the conformance of documents with the “contract” about its structure,

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<sup>2</sup> XML: a technical language for describing documents containing structured information. The term “extensible” refers to a system that can be enlarged by addition rather than by complete replacement.

etc). A multilingual electronic STF user manual is available to provide guidance for the implementation of the STF. It is available from the OECD Secretariat or on the OECD secure site for competent authorities. As the SMF and STF will coexist for the foreseeable future, bridging programmes have been developed to achieve conversion between the two formats, thus enabling treaty partners to engage in bilateral automatic exchange notwithstanding that they might each use a different standard format.

## **5.2 Security: Encryption and alternative methods**

It is desirable that information contained in magnetic media exchanged automatically be transmitted in a secure manner and be encrypted whenever feasible. Such information is now transmitted on diskettes or, in particular, CD ROMs, both of which can be easily encrypted by the sending country using encryption software. A pilot has tested encryption software and a few countries now provide information on encrypted CD ROMs. The tested encryption software GNU PG<sup>3</sup> or equivalent commercial software has been found adequate to ensure the security of automatic exchange. If not encrypted, the diskettes tapes or CD ROMs should be exchanged via a secure mail system, such as a diplomatic pouch.

## **6. Importance of feedback from receiving country**

Feedback to the sending country is essential to improve the efficiency of automatic exchange of information. Feedback from the receiving country on information exchanged automatically (not purely from an IT perspective) is crucial to make better use of what is exchanged: knowing what the source is of data exchanged, the common errors identified, etc. Feedback may also be useful to tax administrations for justifying resources for exchange of information. More generally, a systematic survey of the use of the OECD standard magnetic format is carried out on a regular basis by the OECD. Feedback includes comments on the accessibility, accuracy, and completeness of the data received as well as comments on the usefulness of the data, such as summary results of taxpayer reviews and audits.

## **7. Future developments: Risk analysis tools**

Countries are now starting to use foreign source information received automatically not only for matching purposes but also in a more strategic manner for risk assessment purposes, and in particular to select cases for more in depth tax examinations.

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<sup>3</sup> GNU Privacy Guard is a suite of programmes developed by the Free Software Foundation that provides security solutions for protecting and encrypting data (see [www.gnupgp.org](http://www.gnupgp.org)). It uses the Pretty Good Privacy (PGP) standard and is compatible with commercial PGP products. PGP is a widely used encryption programme designed to provide high-security encoding algorithms.

**CIAT MANUAL ON THE IMPLEMENTATION OF EXCHANGE OF INFORMATION  
PROVISIONS FOR TAX PURPOSES**

**MODULE ON EXCHANGE OF SPECIFIC ACTIVITIES (INDUSTRIES) INFORMATION**

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# **CIAT MANUAL ON THE IMPLEMENTATION OF EXCHANGE OF INFORMATION PROVISIONS FOR TAX PURPOSES**

## **MODULE ON INDUSTRY-WIDE EXCHANGES OF INFORMATION**

### **1. Introduction**

As international transactions have increased, so too has the need for tax treaty partners to seek assistance from each other by sharing knowledge and expertise on particular industries and special issues of mutual interest. Acting alone is difficult for tax administrations facing global challenges. Industry-wide exchanges of information can provide an answer.

An industry-wide exchange of information is the exchange of tax information specifically concerning a whole economic sector and not taxpayers in particular. The purpose of such an exchange is to secure comprehensive data on worldwide industry practices and operating patterns, enabling tax inspectors to conduct more knowledgeable and effective examinations of industry taxpayers.

### **2. Authority**

The authority for undertaking industry-wide exchanges of information is derived from bilateral tax conventions based on the OECD Model Convention, CIAT's Model for Exchange of Information or other applicable information exchange instruments. This Module provides the essential technical and practical guidance for all officials engaged in any industry-wide exchanges of information.

### **3. Establishing Industry-wide Exchange**

An industry-wide exchange of information is initiated by way of a formal exchange of letters between the competent authorities of the participating treaty partners. Such exchanges may be bilateral or multilateral, provided all countries taking part have adequate information exchange mechanisms with one another.

The initial formal exchange of letters between competent authorities should:

- a) Detail the subject matter of the exchange;
- b) Set the parameters of the exchange;

- c) Designate the personnel of the respective tax administrations who are authorised to meet and exchange information;
- d) Confirm that documentation will be exchanged under cover of competent authority letters and that it will also be stamped as to its restricted use and disclosure; and
- e) Agree meeting dates and venues.

Generally the competent authorities will designate a representative in their respective tax administrations to coordinate the industry-wide exchange. However, the competent authorities will still sign off all formal communications between the respective treaty partners in relation to the industry-wide exchange.

#### **4. Subject Matter**

Industries where specialist groups have been set-up within tax administrations are well suited for industry-wide exchanges.

The following industries are known to have been covered in various industry-wide exchanges of information between OECD member countries:

- Banking;
- Commodities
- Electronic components;
- Fishing;
- Information technology;
- Insurance;
- Oil and gas;
- Pharmaceuticals;
- Telecommunications; and
- Utilities.

The concept of an industry-wide exchange of information may be extended to major strategic issues such as:

- Capital structures;
- Financial arrangements (especially structured finance transactions);
- Intellectual property;
- Mergers and acquisitions;
- Privatisations; and
- Valuation and depreciation/amortisation of assets.

## **5. Meetings of Officials and Tax Inspectors**

In the course of these exchanges, treaty partner officials and tax inspectors meet periodically to:

- a) Discuss current industry developments of mutual interest as well as new and emerging issues;
- b) Jointly explore recurring issues which are of common concern;
- c) Pool resources to engage in specific industry studies;
- d) Discuss comparative methodologies in establishing arm's length prices and margins in industries;  
and
- e) Conduct seminars on major international issues.

Experience has shown that these meetings have been most productive when key materials have been exchanged between competent authorities well in advance, allowing officials and tax inspectors to be fully familiar with the subject matter prior to the first meeting.

If further meetings of respective officials and tax inspectors are considered either unnecessary or cost ineffective, major industry developments and issues or summarised industry intelligence may still be exchanged specifically between competent authorities thereby maintaining continuity of the industry-wide exchange into the future.

## **6. Examples of Industry-Wide Exchanges**

The pharmaceutical industry is a major transnational industry where cross-border related party transactions are very common. Industry-wide exchanges concerning pharmaceuticals typically focus on transfer pricing matters involving the sale of products, the provision of services, transfers of intellectual property and financing arrangements.

The following key issues have been covered in industry-wide exchanges on the pharmaceutical industry:

- a) Segmentation of the industry (manufacturers/distributors, turnover/ profitability, product mix and growth areas);
- b) Market leaders and indicative profitability;
- c) Government regulation (policies/rules, reference pricing and subsidies, impact of intervention on transfer pricing);
- d) Analysis of functions, assets and risks (identification of value added in the supply chain, functions requiring specialist skills, trade and marketing intangibles);
- e) Transfer pricing methodologies followed;



- f) Comparable sets (geographic markets, accounting for variations in product mix/turnover and different function/asset/risk profiles);
- g) Transfer pricing ranges (comparisons with other industries and generic manufacturers/distributors/service providers);
- h) Treatment of research and development (tax incentives, cost sharing arrangements, contract R&D);
- i) Transfers of intellectual property;
- j) Emerging issues/trends/developments;
- k) Training products;
- l) Enforcement products (risk assessment processes, standard questionnaires, disclosure schedules, documentation reviews, limited or full audits, simultaneous audits, ongoing industry monitoring);
- m) Service products (recent guidelines/rulings/publications and advance pricing agreements); and
- n) Legislation (recent/proposed changes in law).

The fishing sector is another industry which readily lends itself to effective exchanges on an industry-wide basis. Fishing knows no borders – it is easy to unload and sell fish in all harbours around major fishing zones – thus raising particular compliance risks. The exchange may proceed best on a multilateral basis and the following key issues were covered in industry-wide exchanges of information on the fishing sector:

- a) Sources of industry/market information;
- b) Official registers and statistics;
- c) Information from fishing authorities;
- d) Records kept by tax authorities (disclosures/financial statements/ tax returns);
- e) Internal tax legislation in the countries involved;
- f) Common avoidance/evasion techniques; and
- g) Government controls.

## **7. Specific Taxpayer Information**

An industry-wide exchange of information typically does not involve discussions of the specific financial affairs of particular taxpayers. However, subsequent requests may be made by a participating treaty partner for

specific taxpayer information in accordance with the applicable information exchange instrument.<sup>1</sup> These specific requests supplement an industry-wide exchange and may lead on to a simultaneous tax examination of a taxpayer operating within the covered industry and active in both treaty partner jurisdictions.<sup>2</sup>

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<sup>1</sup> The Module on “Exchange of Information on Request” provides guidance on how to prepare and respond to a request for information.

<sup>2</sup> The Module on “Conducting Simultaneous Tax Examinations” provides guidance on how to carry out effective simultaneous tax examinations.

**CIAT MANUAL ON THE IMPLEMENTATION OF EXCHANGE OF INFORMATION  
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**MODULE ON CONDUCTING SIMULTANEOUS TAX EXAMINATIONS**

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# CIAT MANUAL ON THE IMPLEMENTATION OF EXCHANGE OF INFORMATION FOR TAX PURPOSES

## MODULE ON CONDUCTING SIMULTANEOUS TAX EXAMINATIONS

### 1. INTRODUCTION

This module is designed to provide competent authority officials, tax examiners and other relevant tax administration staff practical direction regarding the effective conduct of simultaneous tax examinations. It is intended to provide guidance to tax administrations that do not presently have any guidelines regarding the conduct of simultaneous tax examinations and to complement, rather than substitute, any other procedures that tax administrations may have in place. Officials are encouraged to refer to this module when carrying out simultaneous tax examinations.

Competent authorities are also encouraged to refer to this module when conducting exchange of information training for relevant tax administration staff, including tax examiners and auditors assigned to simultaneous tax examinations.

The *OECD Model Agreement for the Undertaking of Simultaneous Tax Examinations* and *Guidelines for Inter-Nordic Simultaneous Audits* were taken into account when developing this module.

Countries may wish to consider negotiating bilateral or multilateral Memoranda of Understanding, working arrangements or any other similar instruments with other countries, to facilitate the efficient conduct of simultaneous tax examinations. This module, together with the *OECD Model Agreement for the Undertaking of Simultaneous Tax Examinations*, for example, could be used as a basis for developing a suitable instrument in this regard.

## 2. BACKGROUND - WHAT IS A SIMULTANEOUS TAX EXAMINATION?

A simultaneous tax examination is an arrangement by two or more countries to examine simultaneously and independently, each on its territory, the tax affairs of taxpayers (or a taxpayer) in which they have a common or related interest with a view to exchanging any relevant information which they so obtain.

As a compliance and control tool used by tax administrations, simultaneous tax examinations are effective in cases where international tax avoidance and evasion is suspected. The examination can relate to both direct and indirect taxes. They assist in revealing exploitation or abuse of existing laws and procedures in individual countries. Simultaneous tax examinations also ensure high levels of efficiency regarding the exchange of information between tax jurisdictions and enable a comprehensive review of all relevant business activities. Simultaneous tax examinations may reduce the compliance burden for taxpayers by co-ordinating enquiries from different States' tax authorities and avoiding duplication. They can also play a role in averting double taxation and thus prevent the need to subsequently resort to a mutual agreement procedure under a provision similar to Article 25 of the OECD Model Tax Convention.

Several countries that have been carrying out simultaneous tax examinations for a number of years report that they are a useful and productive control tool<sup>1</sup>. There is a growing interest in particular in multilateral simultaneous tax examinations given the increasing multilateral dimension of tax evasion schemes and the need for international co-operation between tax administrations.

Other forms of international tax co-operation could be considered whilst carrying out a simultaneous tax examination. For example, it could be advisable to have a tax official from one of the participating countries present during a simultaneous tax examination. The module on tax examinations abroad should be referred to in these situations.

One of the specific purposes and main benefits of a simultaneous examination consists in improving the information exchange among the participant countries, although simultaneous examination itself is not considered as an exchange of information. More likely, the “exchanges of information” should be made through the Competent Authorities. The “Exchanges” that are produced in a simultaneous examination consist on a series of Specific and Spontaneous Exchanges from a Competent Authority to another.

### **Example:**

The simultaneous examinations are not joint audits, since each country is making an independent examination on its own taxpayer, each one in its own territory investigating the tax affairs of its taxpayer in which both countries have a common interest and applying its own respective tax laws. A simultaneous examination is a fact gathering tool for examiners, which allows them to obtain documents that exists abroad, on a more convenient way. Personal bilateral meetings among the tax examiners from each country take place. The fact of meeting to discuss matters of mutual concern allows tax examiners to get a more complete development of the matters. That also allows both tax authorities to get a better understanding and perspective of the taxpayer's general activities. The simultaneous examinations reduce the opportunity that taxpayers promote or dedicate themselves to tax planning, which affects politics and the intention of tax laws of each country.

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<sup>1</sup> For example, the tax authorities in the Nordic countries have been working with multilateral simultaneous tax examinations for several years and have achieved positive results concerning both direct taxes and VAT.

### 3. LEGAL BASIS

Simultaneous tax examinations will be accompanied by a request for information and are conducted under either:

- i) The exchange of information article of a bilateral tax convention such as one modeled on Article 26 of the OECD Model Tax Convention with respect to taxes on income and capital; or
- ii) Article 8 of the joint Council of Europe and OECD Convention on Mutual Administrative Assistance in Tax Matters; or
- iii) Article 12 of the Nordic Convention on Mutual Assistance in Tax Matters<sup>2</sup>; or
- iv) Article 8b of EU Council Directive 77/799/EEC on Mutual Assistance as amended by Council Directive 2004/56/EC<sup>93/2003</sup>; or
- v) Article \_\_ of the CIAT Model Agreement on Exchange of Information.

Any exchange of information which follows from such examinations will be made through the competent authorities as defined in the instruments listed above. The information will then provide the response to the information request that accompanied the request for a simultaneous tax examination. Any additional information which may be foreseeably relevant to another country can be exchanged spontaneously.

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<sup>2</sup> The parties to the Convention are Denmark, Finland, Greenland, Iceland, the Faroe Islands, Norway and Sweden.

#### **4. OBJECTIVES – WHEN TO CONSIDER A SIMULTANEOUS TAX EXAMINATION**

Simultaneous tax examinations can be used to determine a taxpayer's correct liability and to facilitate an exchange of information in cases where, inter alia:

- apparent tax avoidance techniques or patterns involving substance versus form transactions, controlled financing schemes, price manipulations, cost allocations or tax shelters are suspected;
- unreported income, and tax evasion involving money laundering, kickbacks, bribes, illegal payments, etc. is suspected;
- tax avoidance or evasion schemes involving low tax jurisdictions are suspected;
- consumption tax risks (triangular delivery operations, reverse charges etc) are identified;
- costs are shared or charged and profits are allocated between taxpayers in different taxing jurisdictions or more generally transfer pricing issues are involved;
- multinational business practices, complex transactions, examination issues and non-compliance trends are identified that may be particular to an industry or group of industries; and
- profit allocation methods in special fields such as global trading and new financial instruments are used.

#### **Examples**

- An automobile company whose parent company is located in country A, manufactures parts in country B and assembles them in country C (which is a low taxation jurisdiction that does not allow for exchange of information), from where it sells automobiles to the rest of the world. The auditors of Country B suspect that the group is consolidating losses originating from the activities carried out in country C and that the company established in country B is assuming transportation costs which, according to commercial usage and practices, should be on account of the company located in Country C. Due to the significant number of transactions carried out by the group, it was deemed that it would be cheaper and more effective to carry out a simultaneous examination in country A, where the parent company is located.
- In the case of the declaration of insolvency of a bank, whose parent company is located in country A and its main subsidiary in country B. the auditors of this latter country are attempting to determine the amount of credit to be verified. Bearing in mind that there could be debts to the treasury that have not been declared by the bank, it was deemed convenient to find out about several of the transactions carried out by the Parent Company. Taking into account the fact that there is a cooperation agreement with Country A, that the Parent Company and its subsidiary work with a high level of integration, the significant number of transactions to be examined and that the tax administration of Country A is undergoing a similar process as that of Country B, a simultaneous examination is requested, to determine the credits to be verified in each jurisdiction.



- A common case of simultaneous examination could involve goods manufactured by a company in one country, with intermediary sales to one or more affiliated entities overseas and final sales to a related company in another country. If each of the two countries involved has income tax treaties with each other, a simultaneous examination between both could provide a more complete picture of the chain of transactions, to determine whether or not these transactions involve an under-declaration of taxes for one or both countries. By carrying out a simultaneous examination they may discuss the facts and circumstances of the transactions and determine which documents will be exchanged under the terms of the article on exchange of information of their respective income tax treaties.

## 5. ALLOCATION OF RESPONSIBILITIES

Simultaneous tax examinations will be conducted separately within the framework of national law and practiced by tax administration officials of each country using the available exchange of information provisions.

Tax administrations should consider appointing staff to the following positions to ensure simultaneous tax examinations are carried out effectively and consistently.

### **Simultaneous Tax Examinations Coordinator**

The simultaneous tax examinations coordinator has overall management and co-ordination of the tax administration's simultaneous tax examination compliance program. For practical purposes and where possible, the simultaneous tax examinations coordinator should be properly authorised or delegated to exchange information as a competent authority. In this regard the simultaneous tax examinations coordinator is responsible for:

- identifying suitable cases for simultaneous tax examination, liaising with their counterparts in other countries and agreeing with them on which cases will be examined under the simultaneous tax examination procedure;
- establishing effective networks with the relevant tax administration personnel that will be conducting simultaneous tax examinations and convening meetings if and when necessary with key personnel (e.g. meetings to identify suitable cases for simultaneous tax examination with key audit staff);
- nominating a designated representative who will have the functional responsibility for directing and coordinating the case selected for simultaneous tax examination, through consultation with other tax administration compliance personnel;
- only if considered practicable, organising for the appropriate authorised or delegated competent authority status for designated representatives;
- establishing procedures for exchanging information with other countries in all simultaneous tax examination cases;
- exchanging information with other countries in all simultaneous tax examination cases, if authorised or delegated to exercise the powers of the competent authority (including attending meetings where information is likely to be exchanged), or, ensuring properly authorised and delegated competent authority staff will be involved at the earliest possible opportunity to exchange the information;
- reporting on activities carried out regarding simultaneous tax examinations to tax administration compliance managers and tax treaty partners; and
- co-ordinating the delivery of awareness training for relevant tax administration staff on these and other relevant tax administration-specific guidelines, and co-ordinating the conduct of reviews of completed

simultaneous tax examinations to ensure they are carried out in accordance with relevant procedures governing the conduct of simultaneous tax examinations<sup>3</sup>.

### **Designated Representatives**

Designated representatives have responsibility for all practical aspects of the simultaneous tax examination case being conducted, including:

- overall management and team leader of the case assigned for simultaneous tax examination;
- liaising with the simultaneous tax examinations coordinator;
- assembling the audit team;
- establishing prima facie whether or not there is a basis for conducting part of the audit by computerised audit and appointing a computer services coordinator if necessary;
- determining examination periods;
- liaising with the designated representative(s) of the other country (or countries) throughout the course of the simultaneous tax examination, including the case planning phase;
- developing case plans, and, where possible, synchronising schedules with designated representatives of the other country (or countries);
- participating in the conduct of the simultaneous tax examination;
- ensuring everyone participating in the simultaneous tax examination receives timely information about developments in the case;
- ensuring simultaneous tax examinations are conducted in conformance with this module and other related guidelines, procedures and best practices imposed by their tax administration; and
- if administratively and legally possible and warranted, attending and conducting examinations in the other country (or countries)<sup>4</sup>.

### **Simultaneous Tax Examination Auditors (“Auditors”)**

Simultaneous tax examination auditors are responsible for conducting the simultaneous audit in accordance with the case plan developed by their team leader (i.e. their designated representative), including identifying,

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<sup>3</sup> These tasks may be carried out by other officials, depending on the structure and allocation of responsibilities within the tax administration.

<sup>4</sup> Refer to Module on tax examinations abroad.

compiling and analysing relevant information, interviewing taxpayers and their representatives, taking minutes of meetings and assisting with the preparation of the final report.

**Computer Services Coordinator (Optional)**

The computer services coordinator is responsible for planning and coordinating the computer aspects of the simultaneous tax examination. Appendix C of the *Guidelines for Inter-Nordic Simultaneous Audits* provides a full description of the functions of computer services coordinators and the Working Model for Computerised Auditing.

## 6. SELECTING, CONDUCTING AND CONCLUDING A SIMULTANEOUS TAX EXAMINATION

### 10-STEP PROCESS

**STEP 1 – INITIAL CASE SELECTION**

Tax administrations individually consider suitable cases for simultaneous tax examination

**STEP 2 – AGREEMENT ON SUITABLE CASES**

Agreement reached between tax administrations on which cases are deemed suitable for simultaneous tax examination

**STEP 3 – CONDUCT PRELIMINARY EXAMINATIONS****STEP 4 – TAXPAYERS CONTACTED**

Taxpayers contacted and informed about simultaneous tax examination

**STEP 5 – INITIAL PLANNING MEETING**

Initial meeting between designated representatives to discuss coordination strategies, etc

**STEP 6 – MEETINGS AND INTERVIEWS WITH TAXPAYERS****STEP 7 – FURTHER EXAMINATIONS**

Post taxpayer interview phase of simultaneous tax examination

**STEP 8 – FINALISATION OF CASE****STEP 9 – FINAL REPORT PREPARED****STEP 10 – PROCESS IMPROVEMENTS IMPLEMENTED**

Recommended process improvements implemented by simultaneous tax examinations coordinator

## ***STEP 1 – INITIAL CASE SELECTION***

Simultaneous tax examinations coordinators should, on an annual basis at least, independently identify taxpayers they intend to propose for a simultaneous tax examination. This task will often involve extensive liaison with relevant tax administration audit personnel. Simultaneous tax examinations coordinators may also arrange to meet with each other to discuss potentially suitable cases for simultaneous tax examination.

The number of cases proposed by the simultaneous tax examinations coordinators should take into account tax administration resource constraints and other factors that may reduce the tax administrations' ability to carry out the audits.

Each simultaneous tax examinations coordinator should inform its counterpart(s) of its respective choice of potential cases for simultaneous tax examination using the selection criteria provided below. Explanations regarding why the cases were selected should be given as should information leading to its proposals together with any other relevant information. Information regarding the statute of limitations applicable to the cases proposed for simultaneous tax examination should also be provided.

### ***Criteria for case selection***

Any case selected for simultaneous tax examination will generally involve a taxpayer or taxpayers having operations either through affiliates or through permanent establishments in the participating countries. The following factors should be taken into account in addition to the factors outlined in Part 4 of this module concerning when it may be suitable to conduct a simultaneous tax examination:

- indication of substantial non-compliance with tax law in the participating countries;
- indication of other forms of international aggressive tax planning which, if countered successfully, may generate additional tax yield in the participating countries;
- indication that the economic performance of a taxpayer or related taxpayers, over a period of time, is significantly worse than it might be expected, for instance:
- the economic performance does not reflect appropriate profits when measured against sales, total assets, etc;
- cases where the taxpayer consistently shows losses, especially long-term losses; and
- cases where the taxpayer, regardless of profitability, paid little or no tax over the relevant period.

## ***STEP 2 – AGREEMENT ON SUITABLE CASES***

After consideration of the above information, each simultaneous tax examinations coordinator should then, in conjunction with the appropriate personnel in their tax administration, make a decision on whether or not its country wishes to participate in a simultaneous tax examination. In making this decision, the tax administration should consider the information received from the tax administration seeking the simultaneous tax examination, together with information from its own sources. In this regard, the simultaneous tax examinations coordinator may seek to obtain any information that it requires in order to reach a decision, either under its domestic laws or under the provisions of the appropriate exchange of information Article of the instruments referred to earlier.

Simultaneous tax examinations coordinators should confirm in writing to their counterpart(s) their agreement or refusal to undertake a specific simultaneous tax examination (mentioning the taxpayers, taxes, tax years involved and brief reasons for acceptance or refusal).

Simultaneous tax examinations coordinators should nominate designated representatives who will have the functional responsibility for directing and coordinating the examination.

Simultaneous tax examinations coordinators may then present to each other requests for exchange of information or provide each other with information spontaneously under and in conformity with the relevant exchange of information provision.

A prerequisite condition of selection is that the same tax years be open for examination in the two or more countries interested in conducting the simultaneous tax examination.

The simultaneous tax examinations coordinator of each country may, by declaration addressed to its counterpart(s) in the other country (or countries), indicate that, in accordance with its domestic legislation, it will inform its residents or nationals before transmitting information concerned in conformity with the exchange of information article.

All cases selected for simultaneous tax examination should be examined by the designated representative(s) with a view to establishing whether there is a basis for carrying out parts of the audit by computerised audit. In cases where it is considered suitable to conduct part of the audit by computerised audit, the designated representative should nominate a computer services coordinator.

### **STEP 3 – CONDUCT PRELIMINARY EXAMINATIONS**

#### *Preliminary Examination Tasks*

The following tasks should be carried out by the auditors preferably prior to holding the initial planning meeting between the designated representatives:

1. Review of financial statements and income tax returns, e.g.
  - a) analysis of financial statements and income tax returns;
  - b) calculation of relevant key figures, ratios, etc;
  - c) identification and localisation of substantial tax problems; and
  - d) identification and recording of any other issues that may be relevant.
  
2. Analysis of group organisation, e.g.
  - a) group structure;
  - b) ownership;
  - c) group transactions;
  - d) inter company accounts;
  - e) review of information available internally to the tax administrations:
    - i. history;
    - ii. previous correspondence;
    - iii. previous cases, decisions or judgments; and
    - iv. other special circumstances of importance to the audit; and
  - f) relevant information obtained from other tax administrations.



#### ***STEP 4 – CONTACT THE TAXPAYERS***

It is recommended that the first approaches to the taxpayers to be audited under the simultaneous tax examination procedure occur simultaneously in the participating countries, or as close to each other as possible.

The formal rules of the individual countries governing taxpayer(s) notification of audit must naturally be observed. Some countries, for example, require that taxpayers who have been selected for audit be given sufficient notice of the examination. Tax administrations about to commence a simultaneous tax examination should therefore be aware of the formal rules regarding notification rights of the other country (or countries) at an early stage of the process.

Contact with the taxpayer should be made during or after the conduct of the preliminary examinations (Step 3) and before the initial planning meeting (Step5).

## ***STEP 5 – INITIAL PLANNING MEETING***

Before the individual countries commence the actual audit of the selected case, an initial planning meeting should be held to:

- define areas of common interest to examine;
- jointly develop strategies that seek to ensure the simultaneous tax examination is effectively coordinated<sup>5</sup>;
- understand how each country proposes to conduct its examination (e.g. this should include informing each other of the proposed time and scope, preliminary examinations, meetings with the taxpayer and reporting procedures);
- understand what each country will examine;
- agree on target dates;
- discuss related technical issues;
- agree on best practice regarding how information will be exchanged between the countries<sup>6</sup>;
- ascertain whether any of the auditors from one country can participate in the investigations of the other country (or countries), and make agreements to that effect if considered desirable; and
- ascertain whether any part of the examination should be performed as a computerised audit.

The designated representative from the country proposing the simultaneous tax examination should organise the initial planning meeting.

Where such a meeting may not be possible due to, for example, cost, logistical or other restraints, designated representatives should agree on other methods of communication (e.g. teleconference, telephone, exchange of documents) that will achieve the same result.

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<sup>5</sup> In certain circumstances and where practicable, this may include the nomination of a country that will be responsible for the project management of the tax examinations (under the Nordic Guidelines, for example, the leading co-ordinator or “Project Leader” is typically from the country suggesting the audit).

<sup>6</sup> Simultaneous tax examinations coordinators and/or competent authority staff members should be consulted regarding all exchange of information matters throughout the entire simultaneous tax examination procedure.

## ***STEP 6 – MEETINGS AND INTERVIEWS WITH TAXPAYERS***

During the preliminary meeting between the taxpayer and the auditors, the designated representative should inform the taxpayer about the simultaneous tax examination, including advice about how information will be exchanged among the relevant tax administrations and the legal basis (or bases) for doing so.

The auditors should seek to obtain the following information from the taxpayer:

- overview – taxpayer’s business activities, history, development, etc;
- present ownership and group structure;
- description of reporting and accounting systems including computer systems;
- account plans and accounting instructions;
- reports by external auditors;
- details about business and economic transactions with group companies in other countries;
- details about the group policy on internal transfer pricing;
- details about other internal group transactions;
- details about any internal group agreements or group regulations (e.g. concerning accounting matters);
- records of the board of directors; and
- any other details unique and specific to the taxpayer(s) being audited.

## **STEP 7 – FURTHER EXAMINATIONS**

It should be emphasized that an efficient and effective simultaneous tax examination requires the close cooperation of tax administration officials located in different countries. Designated representatives should attempt, as far as practicable, to synchronise their work schedules and communicate on an agreed, regular basis.

During the course of the simultaneous tax examination, designated representatives should ensure that participating auditors be continuously and fully informed as to how far the individual countries have progressed with their work. This can be achieved through, for example, periodical information sheets, newsletters, etc. Meetings should be held if and when required with the participating auditors in order to exchange experience gained from the simultaneous tax examination and for planning further initiatives.

Exchange of information must take place in accordance with the exchange of information article of the instrument between the countries participating in the simultaneous tax examination. It is therefore essential that simultaneous tax examinations coordinators (or any other delegated or authorised competent authority officials) attend all meetings where information may be exchanged to ensure any exchange will be done legally and in conformity with the tax administrations' procedures regarding exchange of information.

Where potential double taxation issues arise in the course of simultaneous tax examinations:

- the taxpayers will be able to present a request for the opening of the mutual agreement procedure at an earlier stage than they would have if there was no simultaneous tax examination; and
- the representatives of the competent authorities will be able to compile more complete factual evidence for those tax adjustments for which the mutual agreement procedure may be requested.

## **STEP 8 – FINALISATION OF CASE**

If either country concludes that it is no longer beneficial to continue the simultaneous tax examination, it should withdraw by notifying the other country (or countries) in writing as soon as possible after making that decision.

A simultaneous tax examination should only be concluded after coordination and consultation (preferably through a meeting) between the designated representatives of each participating country. During this consultation the designated representatives should attempt to agree on a common position regarding the taxpayer(s) with respect to the areas subjected to simultaneous tax examination for which there is a concurrence between legislation in the various countries. This consultation phase should occur prior to final negotiations with the taxpayer(s).

The resolution of issues pertaining to double taxation raised by the examination are reserved to the mutual agreement procedure.

## **STEP 9 – FINAL REPORT**

At the conclusion of the simultaneous tax examination, the designated representative should produce a comprehensive report containing a summary of the results achieved and an evaluation of the procedures implemented to achieve these results.

For the purposes of transparency and program improvement possibilities, this report should be exchanged with the other countries participating in the simultaneous tax examination.

The designated representatives should also provide a copy of the report to their simultaneous tax examinations coordinator.

The final report should cover the following areas:

### *General*

- a summary of the simultaneous tax examination undertaken and the results achieved (nature and quantum);
- a statement outlining whether a certain share of the result can be directly attributed to the simultaneous tax examination procedure (including why such a share can be directly attributable to the simultaneous tax examination procedure); and
- a statement as to whether or not the taxpayer(s) has accepted the conclusions reached by the auditors and/or what action the taxpayer(s) may take in the future.

### *Observations*

Simultaneous tax examinations may often reveal systematic exploitation or abuse of existing laws in the individual countries. It is therefore recommended that the report should mention:

- transactions or other matters which systematically exploit differences in the legislation and tax administration of the other countries; and
- any undesirable or unintended exploitation of the tax conventions governing the participating countries.

It is also important to report on how the taxpayers perceived the conduct of the simultaneous tax examination. To this end, the report should make reference to:

- any problems or difficulties in dealing with the taxpayer(s) during the course of the simultaneous tax examination; and
- comments and other reactions from the taxpayer(s) as a consequence of being subjected to a simultaneous tax examination.

To assist tax administrations in developing areas of cooperation and improving procedures for conducting simultaneous tax examinations, it is important for designated representatives to express their personal views on:

- the overall level of cooperation experienced between the participating countries;
- the quality and timeliness of information exchanged between participating countries;
- areas where the simultaneous tax examination procedure did not function satisfactorily;
- proposals for improvement; and
- any other comments that will assist in the delivery of more effective simultaneous tax examinations in the future.

## **STEP 10 – PROCESS IMPROVEMENTS IMPLEMENTED**

As part of the continuous improvement cycle, simultaneous tax examinations coordinators should seek to implement changes to simultaneous tax examination compliance procedures and programs based on feedback contained in the final reports.

Any material changes to the tax administration's simultaneous tax examination procedures and/or program should be brought to the attention of other relevant countries via the simultaneous tax examinations coordinators.

It follows that any training materials/courses on simultaneous tax examination procedures and/or programs are updated to reflect these changes.



**CIAT MANUAL ON THE IMPLEMENTATION OF EXCHANGE OF INFORMATION FOR TAX  
PURPOSES**

**MODULE ON CONDUCTING TAX EXAMINATIONS ABROAD**

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# CIAT MANUAL ON THE IMPLEMENTATION OF EXCHANGE OF INFORMATION FOR TAX PURPOSES

## MODULE ON CONDUCTING TAX EXAMINATIONS ABROAD

### 1. INTRODUCTION

This module is designed to provide competent authority officials, tax examiners and other relevant tax administration staff practical direction regarding tax examinations abroad. It is intended to provide guidance to tax administrations which presently do not have any guidelines regarding tax examinations abroad and to complement, rather than substitute, any other procedures that tax administrations may have in place.

Competent authorities are also encouraged to refer to this module when conducting exchange of information training for relevant tax administration staff, such as tax examiners and auditors. Similarly, tax administration officials charged with the responsibility of managing tax examinations abroad are also encouraged to refer to this module when conducting training for auditors assigned to such activities.

1. The module is based on the Commentary on Article 26 of the OECD Model Tax Convention Concerning the Exchange of Information<sup>1</sup>, Joint Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters<sup>2</sup> and the 2002 Model Agreement on Exchange of Information in Tax Matters<sup>3</sup> and Article 6 of the CIAT Model on the Agreement on Exchange of Information.

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<sup>1</sup> See paragraph 9.

<sup>2</sup> See Article 9.

<sup>3</sup> See Article 6.

## 2. WHAT IS A TAX EXAMINATION ABROAD?

Exchange of information has traditionally been carried out in writing. This written procedure can often be time-consuming and may for that reason not be as effective as other compliance methods when rapid action on the part of the tax administration is required, for example, in cases involving international hiring out of labour or itinerant activities.

Further, in order to enable a tax administration to obtain a clear and detailed understanding of business and other relations between a resident of a country who is the subject of a tax examination and his foreign associates, it is often useful to follow at close proximity an examination initiated in the foreign country. There are also situations where tax auditors are unable to inspect books and records in their own country<sup>4</sup> because the laws of that country enable taxpayers to keep certain records in another country. Tax examinations abroad could be considered useful in all of these circumstances.

The tax examination abroad procedure operates by enabling tax administrations, when requested and to the extent allowable by its domestic law, to permit authorised tax officials of another country to participate in the conduct of tax examinations carried out by the requested country.

The participation of authorised foreign tax officials in a tax examination being carried out by the requested country may be passive or active. Some countries may only permit passive participation of foreign tax officials in a tax examination. In such instances, participation by foreign tax officials would be limited to observing relevant parts of the tax examination and only liaising directly with the tax officials of the requested country. Foreign tax officials would not be permitted to directly interview taxpayers or other individuals under this form of tax examination abroad.

Other countries may permit active participation of authorised foreign tax officials. Under such circumstances, some countries may, for example, allow foreign tax officials to conduct interviews and examine records pertaining to the taxpayers under examination. Tax examinations of this nature are useful in situations where the laws enable the taxpayer to keep records in another country and the taxpayer has agreed to have the tax official come to the foreign country rather than provide the books and records in the taxpayer's country. The focus of this module is on tax examinations abroad conducted in these circumstances.

A tax administration may also authorise officials of the tax administration of another country to enter the territory of the requested country to interview individuals and examine records with the written consent of the persons concerned. In such cases the requested country may determine that a representative of the requested country is present at some or all interviews and examinations. Foreign tax officials would have no authority to compel disclosure of any information in these circumstances. This approach may be useful to some jurisdictions as it allows the requested country to retain full control of the process yet be freed from the cost and resource implications that it may otherwise face.

Like simultaneous tax examinations, tax examinations abroad are proven to be an effective compliance tool due to the efficiency with which information can be exchanged between tax administrations and how they enable a comprehensive review of all relevant business activities.

Tax examinations abroad may also reduce the compliance burden for taxpayers by enabling tax administrations to work together, rather than independently, on issues regarding the same taxpayer or taxpayer group. Such cooperation ensures duplication is minimised or avoided altogether, costs are reduced and time is saved, all of which flow as advantages to the taxpayer.

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<sup>4</sup> For instance, a country may only allow its taxpayers to keep books and records in another jurisdiction if its tax officials are entitled to visit the other jurisdiction and examine these books and records.

### 3. LEGAL BASIS

Tax examinations abroad, accompanied by a request for information, are conducted under either:

- i) The exchange of information article of a bilateral tax convention such as one modeled on Article 26 of the OECD Model Tax Convention with respect to taxes on income and capital; or
- ii) Article 9 of the Joint Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters; or
- iii) Provision in a tax information exchange agreement such as one modeled on Article 6 of the *OECD Model Agreement on Exchange of Information in Tax Matters*; or
- iv) Article 6 of EU Council Directive 77/799/EEC on Mutual Assistance as amended by Council Directive 2004/56/EC93/2003; or
- v) Article 11-2 of EU Council Regulation on administrative cooperation in the field of VAT 1798/2003.
- vi) Art. 6 “Examinations Abroad” of the CIAT Model Agreement on Exchange of Information.

Any exchange of information which follows from such examinations either on request or spontaneously will be made through the competent authorities as defined in the instruments listed above.

#### **4. KEY PARTICIPANTS AND DEFINITIONS**

##### ***Applicant country:***

The applicant country is the country which is seeking to have one or more of their tax administration officials participate in a tax examination being conducted by the tax administration of another country.

##### ***Requested country:***

The requested country is the country that has been requested to allow one or more tax administration officials from the applicant country to participate in a tax examination abroad.

##### ***Foreign tax administration officials:***

Foreign tax administration officials are the officials from the applicant country who are participating in the tax examination abroad. Foreign tax administration officials need to be properly authorised or delegated by the competent authority<sup>5</sup> of the applicant country. Tax administrations may consider utilising their tax attachés in this capacity where such positions exist.

##### ***Responsible official:***

The responsible official is the tax administration official of the requested country who is responsible for the tax examination involving the participation of foreign tax administration officials.

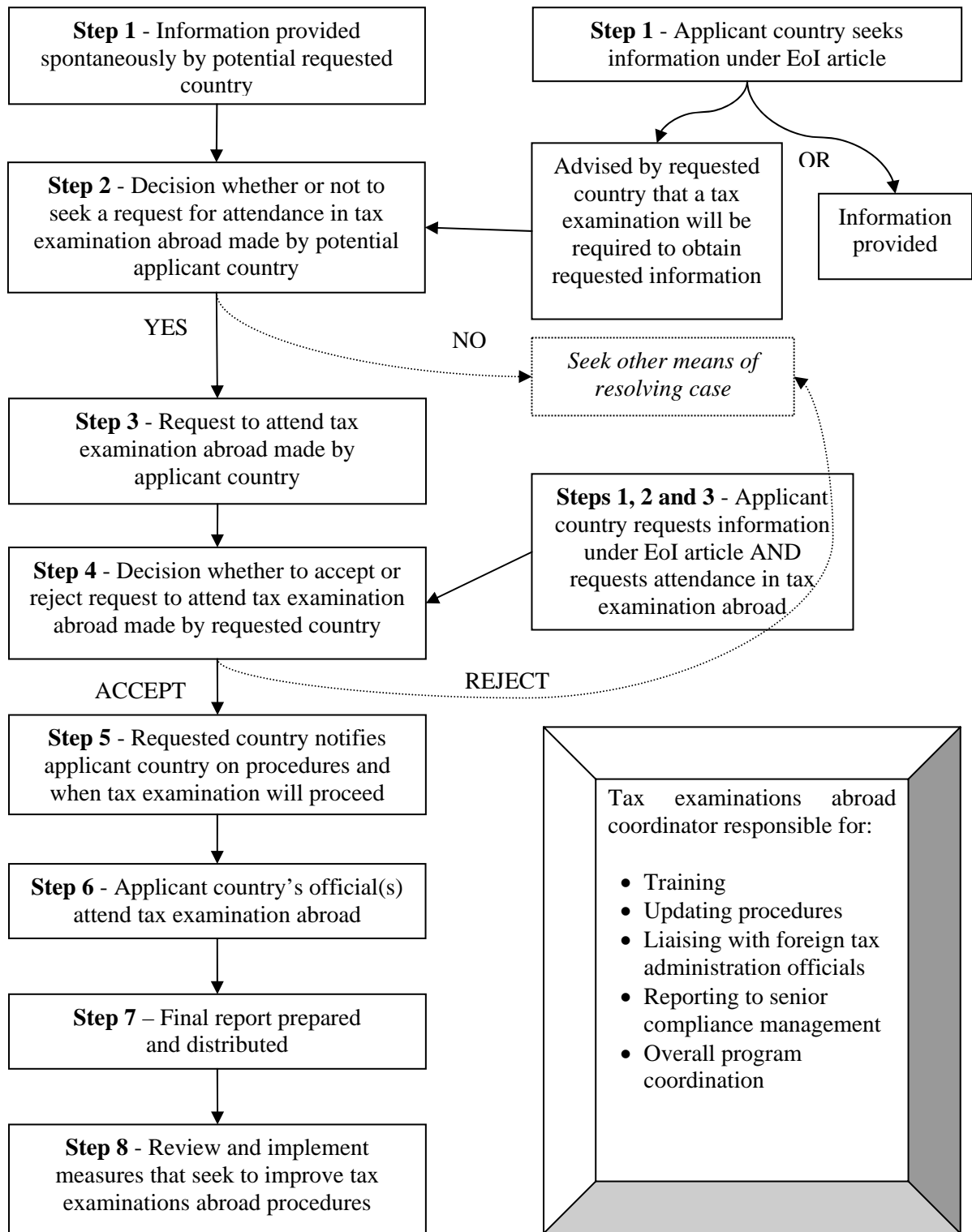
##### ***Tax Examinations Abroad Coordinator:***

The tax examinations abroad coordinator is the tax administration official who has responsibility for coordinating all activities concerning tax examinations abroad. For practical purposes, the tax examinations abroad coordinator might be, for example, a senior member of the tax administration's competent authority team or exchange of information unit. The primary responsibilities of the tax examinations abroad coordinator include conducting training for relevant tax administration staff, liaising with foreign tax administration officials throughout the entire tax examination abroad process, updating tax examinations abroad procedures, reporting all material activities concerning tax examinations abroad to senior tax administration compliance and audit managers, and overall coordination of the tax administration's tax examinations abroad strategy.

The diagram overleaf shows the individual steps for seeking and conducting a tax examination abroad. These steps are then explained in detail in paragraphs 18-38.

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<sup>5</sup> As defined in the relevant Convention or Agreement.



## **5. PROCEDURES FOR SEEKING AND CONDUCTING A TAX EXAMINATION ABROAD**

### **STEP 1 - REQUEST FOR INFORMATION UNDER THE EXCHANGE OF INFORMATION PROCEDURE**

Prior to seeking a request for one or more of its tax administration officials to attend a tax examination abroad, an applicant country should typically seek information under the exchange of information article. It may be considered appropriate to make a request for information and request attendance in a tax examination abroad at the same time in certain circumstances (e.g. where time is limited). Such a request should be made via the applicant country's competent authority and in accordance with established procedures and standards. In this regard, the module on Exchange of Information on Request provides a checklist of what to include in a request.

There may also be circumstances where information provided spontaneously by a potential requested country may lead to a request being made to attend a tax examination abroad at the same time the request for information is made.



## **STEP 2 - DECISION WHETHER OR NOT TO SEEK A REQUEST FOR ATTENDANCE IN A TAX EXAMINATION ABROAD**

The requested country may advise that a tax examination will be required to obtain requested information and that such an examination is being considered. At this stage the applicant country should consider seeking a request for one or more of their authorized tax administration officials to attend the proposed tax examination abroad.

The decision whether or not to seek attendance at a tax examination abroad should be made only after consulting with the tax examinations abroad coordinator and carefully considering the following issues:

- Is the applicant country confident that the tax examination in the foreign country will largely contribute to the timely and successful resolution of a domestic tax case?
- Could the domestic tax case be efficiently and appropriately resolved using other methods?
- How important and significant is the case? A country should not make a request in minor cases. It should be noted, however, that the amount of tax involved should not be the only factor to consider when determining whether or not the case is minor. Other factors may include, for example, the extent of the compliance risk (e.g. there may be several similar cases of this nature), the assessment of whether the taxpayer is involved in aggressive tax planning, the potential to assist in the resolution of other domestic cases, etc.
- Does the tax administration of the applicant country have sufficient resources to fund the official(s) nominated to participate in the tax administration abroad?
- Is the tax administration of the applicant country aware of the policy of the requested country regarding tax examinations abroad?
- What are the statutory minimum record-keeping requirements for taxpayers in the requested country?
- The applicant country should consider cases of difficulty in language communication.

The following points should also be taken into account before making a request for a tax examination abroad:

- The decision to allow or reject a foreign tax official to be present rests exclusively with the competent authority of the country where the examination has been requested.
- In some countries the presence of foreign tax officials (or a foreign tax official) may be regarded as an infringement of that country's sovereignty or contrary to its policy or procedure.
- In some countries the foreign tax official's presence may be admitted only if the relevant taxpayer does not object to it.
- In some countries, only passive participation of foreign tax officials may be permitted in a tax examination (see paragraph 7).
- Some countries may consider the presence on their territory of a foreign tax official to be acceptable on the condition that the tax examination is carried out strictly in conformity with their law and practice.
- The foreign tax official(s) of the applicant country may be present only for the appropriate part of the tax examination. The tax administration of the requested country should ensure that this requirement is fulfilled by virtue of the exclusive authority they exercise in respect of the conduct of the tax examination.

### **STEP 3 - REQUEST TO ATTEND A TAX EXAMINATION ABROAD**

Once the decision has been made to seek attendance at a tax examination abroad, the applicant country's competent authority should prepare and send a written request to the requested country's competent authority as soon as possible.

It is in the interests of the applicant country to provide, as thoroughly as possible, the following information:

- reasons and motives for the request<sup>6</sup>;
- special reasons why the physical presence of their tax official(s) is crucial;
- the names of the authorized officers and the instrument of authorization;
- if applicable, details of the specific issues requested to be examined;
- if applicable, details of the preferred timing of the tax examination; and
- any other details that may be applicable in the nominated case.

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<sup>6</sup> It is important to note that much of this information may have been provided in the original request for information pursuant to the relevant exchange of information article.

#### **STEP 4 - DECISION WHETHER TO ACCEPT OR REJECT REQUEST TO ATTEND A TAX EXAMINATION**

As stated above, the decision to allow or reject a foreign tax official to be present rests exclusively with the competent authority of the country where the examination has been requested. This decision should only be made after consulting with the tax examinations abroad coordinator and carefully considering the following issues:

- Is the presence of foreign tax administrations officials (or a foreign tax administration official) at the specified tax examination contrary to domestic policy or procedure?
- Would the applicant country be able to reciprocate if it were the requested country?
- Is the presence of foreign tax administration officials (or a foreign tax administration official) at a specified tax examination regarded as an infringement of sovereignty?
- Is there sufficient information contained in the request to make an informed decision?
- What additional information is required to make an informed decision?
- Is the presence of foreign tax administration officials (or a foreign tax administration official) in the specified tax examination necessary?

## **STEP 5 - REQUESTED COUNTRY NOTIFIES APPLICANT COUNTRY ON PROCEDURES AND WHEN TAX EXAMINATION WILL PROCEED**

If the request is accepted by the requested country, the competent authority of that country should, as soon as possible, notify the competent authority of the applicant country about the:

- time and place of the examination;
- relevant logistical arrangements;
- authority or official designated to carry out the examination (e.g. name, title, contact details); and
- procedures and conditions required by the requested country for the conduct of the examination.

## **STEP 6 - APPLICANT COUNTRY'S TAX OFFICIAL(S) ATTEND TAX EXAMINATION ABROAD**

Foreign tax administration officials are required to participate in the tax examination abroad in accordance with, and to the extent permitted by, the procedures and conditions stipulated by the responsible official of the requested country. There should not be any question of exercise of authority in its strict sense by the foreign tax administration official(s).

The responsible official in the requested country may determine the extent of foreign tax administration official(s) participation during the tax examination. For example, foreign tax administration officials may be permitted to participate actively (e.g. suggest questions during interviews with taxpayers) or be restricted to a passive role (e.g. merely be present during the tax examination). In all situations, however, foreign tax administration officials are bound by the secrecy provisions of the relevant exchange of information article.

## **STEP 7 - FINAL REPORT PREPARED AND DISTRIBUTED**

At the conclusion of the tax examination abroad, the foreign tax administration official(s) should produce a comprehensive final report containing a summary of the results achieved and an evaluation of the procedures implemented to achieved these results.

For the purposes of transparency, program improvement possibilities and providing timely feedback, this report should be exchanged with the other country participating in the tax examination via the competent authorities.

The foreign tax administration official's manager should also provide a copy of the report to the tax examinations abroad coordinator and audit/compliance leaders within their tax administration with the view to alerting them to potential compliance enhancement opportunities.

The final report should take the following form:

### ***General***

This section should present an overview and scope of the taxpayer (or taxpayer group) that was examined domestically and under the tax examinations abroad procedure and contain:

- a brief description of the taxpayer(s);
- the number of entities in the various countries;
- the number of taxpayers audited and by whom;
- the number of foreign tax administration officials taking part in the tax examination abroad;
- a summary of the results achieved (nature and quantum); and
- a statement outlining whether a certain share of the result can be directly attributed to the tax examination abroad procedure (including why such a share can be directly attributable to the tax examination abroad procedure).

### ***Observations***

It is important to report on how the taxpayers perceived the conduct of the tax examination abroad. To this end, the report should make reference to:

- any problems or difficulties in dealing with the taxpayer(s) during the course of the tax examination; and
- comments and other reactions from the taxpayer(s) as a consequence of being subjected to a tax examination abroad.

To assist tax administrations in developing areas of cooperation and improving procedures for conducting tax examinations abroad, it is important for foreign tax administration officials to express their personal views on:

- the overall level of cooperation experienced between the participating countries;
- the quality and timeliness of information exchanged between participating countries;
- areas where the tax examinations abroad procedure did not function satisfactorily; and
- recommendations for improvement.

## **STEP 8 - REVIEW AND IMPLEMENT MEASURES THAT SEEK TO IMPROVE TAX EXAMINATIONS ABROAD**

As part of the continuous improvement cycle, tax administration compliance leaders should, based on the recommendations contained in final reports and after consultation with the tax examinations abroad coordinator and other compliance personnel, seek to implement changes to tax examinations abroad compliance procedures and programs.

Any material changes to the tax administration's tax examinations abroad procedures should be brought to the attention of the competent authorities of their tax treaty partners as soon as possible.

It follows that any training materials/courses on tax examinations abroad procedures are updated to reflect these changes.

## EXAMPLE

Subjects involved:

Companies located in Country 1:

A: Controls B

B: Controls G

G:

Companies located in Country 2:

C: A has 99 % of the block of shares of C

D: C has 50 % of the block of shares of D and the remaining 50% belongs to A

Company located in Country 3:

E: Controls A

Company located in Country 4:

F: Controls E

Case:

The tax administration of Country 1 spontaneously sends to Country 2 information on transactions carried out by the holding formed by companies A and B. Additionally, the Tax Administration of Country 1 informs that it cannot understand the purpose of the operation and that likewise, it did not cause any tax harm to its territory.

According to the information, Company B made a loan of US\$150 million to Company D and in turn, company B established in Country 1, a new company called G, which received as capital contribution, the right to collect the loan made to company D. Subsequently, the new company G reduced its capital to US\$ 10 million and allocated the remaining US\$ 140 million to a reserve account.

On receiving this information the Tax Administration of Country 1 finds out that company D is sending considerable amounts of dividends to company A. Bearing in mind that the dividends are exempt in Country 2 and that the company generated them with a credit, the examiners of Country 1 consider that there is an under-capitalization maneuver.

Additionally examiners in Country 2 verified that there are agreements to avoid double taxation between Country 2 and Countries 1 and 3, for which reason this economic group could be abusing the existence of treaties as regards the treatment of interest.

On the other hand, and bearing in mind that in the period when the financial transaction in question took place there was a significant devaluation of the legal tender of Country 2, and significant losses were generated in Country C, which thus reduced the global earnings of the group.

Given these circumstances and considering the following aspects, it was deemed convenient to undertake a TAX EXAMINATION ABROAD, whereby officials authorized by the competent authority of Country 2 may carry out examination tasks in the territory of Country 1:



- The request for written information to Country 1 would require too much time and high costs for the taxpayer as well as for the tax administrations involved.
- It is necessary to carry out prompt actions for counteracting the harmful effect that could be caused by these operations as a result of “International Tax Planning”.
- It is essential to have a clear and detailed understanding of the business and the relationships among the individuals to be examined.

Prior to sending the request for Examination Abroad to Country 1, Country 2 must evaluate the aspects indicated in Step 2 of this Module called “Decision Whether or Not To Seek a Request for Attendance in a Tax Examination Abroad “.

After evaluating the aforementioned aspects, the competent authority of Country 2 must send a written request to the competent authority of Country 1 requesting the holding of an Examination Abroad and stating all the reasons that support the request, which are described in Step 3 of this Module.

Subsequently, Country 1 will analyze the aforementioned request and notify Country 2 about its decision. If the decision is positive, information will be provided as to the site and date of the examination, pertinent logistic arrangements, procedures and conditions established in Country 1 for carrying out an examination, etc.

Likewise Country 2 must designate a “Coordinator” who will establish liaison with the officials of the Tax Administration of Country 1, will train the staff assigned to the examination abroad, update the examination procedures and provide information on all the relevant activities.

On its part, Country 1 must designate an official who is responsible for the tax examination that may involve the participation of officials from Country 2.

After completing the aforementioned steps, the “Responsible” official will determine the level of participation of officials from Country 2.

Graph:

**COUNTRY 3 (Has agreement to Avoid double taxation with Country 2)**



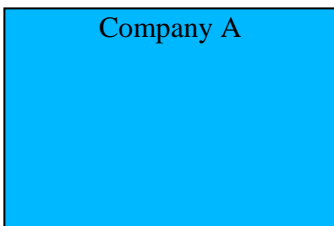
**COUNTRY 4**

**CONTROLS**

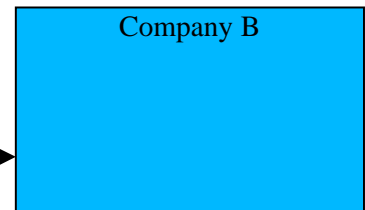


**COUNTRY 1 (Has agreement to Avoid double taxation with Country 2)**

**CONTROLS**



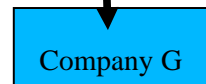
**CONTROLS**



**CONTROLS**

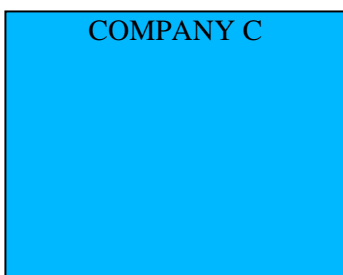
**HOLDS 50 % OF**

**CONTRIBUTES CREDIT  
150 MILLION TO**



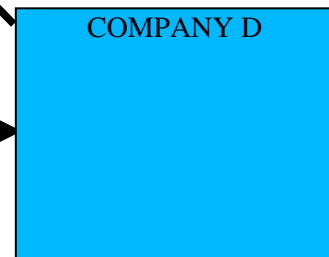
**COUNTRY 2**

**SENDS DIVIDENDS TO**



**HOLDS 50% OF**

**MAKES LOAN  
FOR 50 MILLION TO**



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**COUNTRY PROFILE**

**CIAT MANUAL ON THE IMPLEMENTATION OF EXCHANGE OF INFORMATION  
PROVISIONS FOR TAX PURPOSES**

**COUNTRY PROFILE (Argentina)**

1. Competent government agency (including website)	FEDERAL ADMINISTRATION OF PUBLIC REVENUES (AFIP) (www.afip.gov.ar)
2. Competent Authority	With respect to “Administrative Agreements of Exchange of Information” and the application of the clause on information exchange included in the “Agreements to Avoid International Double Taxation”  Dr. Alberto Abad Administrador Federal de la AFIP Hipólito Irigoyen 370 1º Piso Ciudad de Buenos Aires – Argentina Tel: 54 11 4 347-2701/2/2728 Fax: 54 11 4 347-2993
3. Sources of publicly available information including websites	<a href="http://www.afip.gov.ar">www.afip.gov.ar</a> (AFIP) <a href="http://www.infoleg.gov.ar">www.infoleg.gov.ar</a> (Laws searcher) <a href="http://www.mecon.gov.ar">www.mecon.gov.ar</a> (Ministry of Economy and Production)
4. Official language and any other accepted language(s)	Spanish
5. Network of tax conventions with information exchange provisions and other information exchange arrangements	See Annex 1
6. Area or areas wherein information exchange is handled within the Tax Administration (specify operational area and managerial area)	See Annex II
7. Taxes managed by the Tax Administration	Internal Taxes, Customs Duties and Social Security Resources
8. Preferred method of identification	Tax Identification Number (TIN) Name and Surname or Taxpayer’s trade name and passport number.
9. Fiscal year	The fiscal year begins on January 1 <sup>st</sup> and ends on December 31. (Art. 18 of Act 20.628)
10. Time limits for tax reassessments: 1) General Rule (by main types of taxes) 2) Special Rules (e.g. where taxpayer misrepresents information or in case of fraud)	The actions and powers of AFIP to determine and demand payment of taxes under its responsibility and to apply and render effective fines and closing of businesses provided therein, expire (Art. 56 of Act 11.683) 1) After 5 years have elapsed in the case of registered taxpayers, as well as in the case of unregistered taxpayers who are not legally obliged to register in AFIP or which, having said obligation and not having fulfilled it, spontaneously normalize their situation. 2) After 10 years have elapsed in the case of unregistered taxpayers. 3) After 5 years have elapsed, with respect to tax credits unduly credited, refunded or transferred, starting as of January 1 <sup>st</sup> of the year following the date when they were credited, refunded or transferred. 4) After 5 years have elapsed, with respect to the repetition of taxes and actions for demanding tax recovery or refund.

	Note: Terms are classified by taxpayer and not by tax.
11. Term for keeping the information	AFIP may request those responsible to provide certain vouchers and to keep their duplicates, as well as other documents and vouchers on their transactions for a period of 10 years, or exceptionally, for a greater term, when they deal with transactions or acts whose knowledge is essential for the accurate determination of the tax base (Art. 33 of Act 11.683)
12. <u>Notification</u> . Is there an obligation or a practice to notify the taxpayer or any other person of the provision of information to another country? If yes, please briefly explain the key rules and indicate whether notification rules are abrogated for information exchange with certain countries (e.g. intra-EU) or in certain cases (e.g. very urgent cases). In your explanation also state whether the exchange of information can be challenged and whether such challenge prevents your competent authority from supplying the information.	<p>The tax regulations of Argentina and the administrative agreements available at AFIP do not provide for measures for notifying the taxpayer regarding the use made of his information.</p> <p>AFIP, provided that it complies with the rules of confidentiality established in the Act on Tax Procedures (Art. 101 and 102 of Act 11.683) and proceeds to use said information as stated therein, is qualified to exchange information with other treasuries, which abide by the limitations imposed by Argentine regulations.</p>
13. Preference to acknowledge request for information and receive acknowledgement of receipt of information by e-mail. If yes, please provide the e-mail address.	<p>AFIP deems it convenient to obtain acknowledgement of receipt of information sent and to provide acknowledgement of receipt with respect to information received.</p> <p>To date, no official has been appointed to centralize the management of information exchange; therefore, the e-mail address to which receipt of information should be acknowledged will be shown in the requests for information.</p>
14. Certification of residency. Do you have a standard form for certification of residency? If not, please describe briefly how your authorities reply to a request for confirmation of residency.	<p>There is no standard form for the certification of residency.</p> <p>The Ministry of Economy and Production of the Republic of Argentina is the entity in charge of issuing the residence certificates. In the preparation of the aforementioned certificate this Entity uses the information provided by AFIP to fulfil the conditions established in the Income Tax Act</p> <p>In order for an individual to be considered a resident (Art. 119 of Act 20.628/97 and 161 1° s/n incorporated after D.R. 1344/98). This information may be found in the data bases of AFIP or obtained through the powers of verification and examination provided in the Act on Tax Procedures (Act 11.683).</p>
15. Does your country engage in any of the following exchange of information programs? (if so, which one?): 1) Information exchange upon request 2) Spontaneous exchange of information 3) Automatic exchange of information 4) Simultaneous tax examinations 5) Tax examinations abroad 6) Industry-wide exchanges of information	<p>To date, (03/02/2006) AFIP has participated in the following programs:</p> <ol style="list-style-type: none"> <li>1) Information exchange upon request</li> <li>2) Automatic exchange of information</li> </ol>

<p>16. Does your country have specific travel procedures for examining records held in a foreign country? If so, please describe these procedures.</p>	<p>AFIP has no specific procedures for examining records kept in other jurisdictions. The procedures to be followed in each case, will be those agreed with the counterpart in an Agreement, as a result of the clause dealing with “Tax Examinations Abroad”</p>
<p>17. Does your country have specific requirements on what information must be included in a request either generally or in a request for a particular type of information? If so, please describe these requirements focusing in particular on the elements that depart or are more specific than what is spelt out in the checklist contained in the module on exchange of information on request.</p>	<p>There are no rules providing for specific requirements that must be included in a request for exchange of information or its response. Regardless of what is informed, usage and practices provide for compliance with all the requisites established in Step 1 “Preparing and sending a request” and in Step 4 “Replying to a Request” of Module 1 of the Manual.</p>
<p>18. Brief account of the powers of verification and examination. Indicate the rule that regulates them.</p>	<p>AFIP has the power to:</p> <ul style="list-style-type: none"> <li>• Request information to a taxpayer or third party</li> <li>• Summon the taxpayers or third parties</li> <li>• Demand the presentation of vouchers</li> <li>• Examine records, notations, papers and documents</li> <li>• Request assistance from the police</li> <li>• Close an establishment preventively</li> </ul>
<p>19. Are there any particular procedural or other rules in your country relating to obtaining information held by banks or other financial institutions for purposes of tax information exchange? If so, please briefly describe any rules or practices that might be relevant to your information exchange partners.</p>	<p>Article 39 of Act 21.526 (Act on Financial Entities) provides that financial entities cannot disclose passive operations they may carry out.</p> <p>The only exceptions are the reports required by:</p> <ol style="list-style-type: none"> <li>a) Judges in judicial cases, with collections determined by the respective laws;</li> <li>b) The Central Bank of the Republic of Argentina in carrying out its functions;</li> <li>c) The <b>national, provincial or municipal tax collecting entities</b> based on the following conditions: <ol style="list-style-type: none"> <li>1. Must deal with a specific taxpayer;</li> <li>2. There should be a tax verification underway with respect to said taxpayer, and</li> <li>3. It must have been formally and previously requested.</li> </ol> </li> </ol> <p>With respect to the requests for information made by the <b>General Directorate of Taxation (DGI) of AFIP</b>, the first two items will not be applicable.</p> <ol style="list-style-type: none"> <li>d) The entities themselves in special situations, following express authorization from the Central Bank of the Republic of Argentina</li> </ol>
<p>20. Are there any particular rules or practices in your country (not already discussed above) of which other competent authorities should be aware? In particular are there any domestic rules or practices that depart from the general provisions of the Manual?</p>	

# CIAT MANUAL ON THE IMPLEMENTATION OF EXCHANGE OF INFORMATION PROVISIONS FOR TAX PURPOSES

## MODULE ON INFORMATION EXCHANGE

### INSTRUMENTS AND MODELS

1. OECD-CIAT MANUAL ON THE IMPLEMENTATION OF EXCHANGE OF INFORMATION PROVISIONS FOR TAX PURPOSES Article 26 of the OECD Model Tax Convention and Commentary (2004 current version)
2. Model Agreement on Exchange of Information on Tax Matters and OECD Commentary
3. Joint Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters
4. Nordic Convention on Mutual Administrative Assistance in Tax Matters  
<http://www.Nordisketax.net>
5. EU Materials on Information Exchange  
[http://europa.eu.int/comm/taxation\\_customs/common/legislation/legislation/taxation/index\\_en.htm](http://europa.eu.int/comm/taxation_customs/common/legislation/legislation/taxation/index_en.htm)  
[http://europa.eu.int/comm/taxation\\_customs/taxation/tax\\_cooperation/mutual\\_assistance/index\\_en.htm](http://europa.eu.int/comm/taxation_customs/taxation/tax_cooperation/mutual_assistance/index_en.htm)
  - 5.1. EU Council Directive 77/799/EEC on Mutual Assistance as last amended by Council Directive 2004/106/EC
  - 5.2. Council Regulation (EC) No. 1798/2003 of 7th October 2003 on administrative cooperation in the field of value added taxes
  - 5.3. Council Regulation (EC) No. 2073/2004 of 16th November 2004 on administrative cooperation in the field of excise duties
  - 5.4. Antifraud regulation on mutual administrative assistance (still in draft form)
6. CIAT Model Agreement on Exchange of Tax Information: [www.ciat.org](http://www.ciat.org)
7. Article 19 of the Model Tax Convention approved by Resolution 40 of the Andean Community  
[www.comunidadandina.org](http://www.comunidadandina.org)

**EXAMPLE:**

**Minimum Attributes of an Exchange of Information (EOI) Program**

1. The administration should have:

- The authority to gather information
- Written internal procedures on gathering information
- If field personnel fulfill requests for information, they must have the (tax) knowledge base to understand what is being gathered and why
- If EOI program personnel fulfill requests for information, they must have the (tax) knowledge base to understand what is being gathered and why
- Written internal procedures on how to request information from other countries and gather information for other countries (both for field and EOI Program personnel)
- Access to identified electronic sources of information both internal (tax records) and external (public databases)
- An internal and external communications systems (phone, mail, fax, email)
- Training procedures (on gathering information and EOI)
- Facilities – Office space and equipment
- Budget - Personnel, supplies, facilities, travel, enforcement expenses (gathering data and court costs)

2. A legal basis to exchange must exist. That basis should have:

- A treaty/TIEA network (even it is just one)
- Domestic laws that allow the tax administration to gather information on behalf of another tax administration and then exchange the information with another tax administration
- Court decisions that back the administration's ability to gather and exchange information
- Disclosure rules regarding the secrecy of the information and repercussions for unauthorized disclosures
- The legal ability to delegate the authority to exchange to others if the identified treaty/TIEA Competent Authority (CA) will not be the person/office actually doing the exchange. The ability to delegate this authority to exchange needs to be recognized by "requested" countries

3. An Exchange of information Program must exist. The EOI program should have:

- A competent authority (CA) as identified in the treaty/TIEA.



- Personnel under the CA as necessary and delegations to them as appropriate. The personnel must have:
  - o Knowledge of Treaties/TIEAs with an emphasis on EOI
  - o Knowledge of the tax administration and how it is structured
  - o Knowledge of administrative procedures
  - o A general knowledge of domestic tax laws, particularly those involving the gathering of information
  - o A general knowledge of tax law to be able to identify whether a request has a legitimate tax purpose
  - o Process analysis skills
  - o The ability to communicate with individuals that have different languages and cultures
  - o The ability to follow up
- Written procedures
- Tracking and filing systems for cases, program history, and policy
- The ability of its personnel to meet with counter parts to resolve differences
- A policy making structure (maybe internal, external or both) and written policies
- The ability to direct field personnel to gather information
- The ability to modify procedures and policies as necessary
- The ability to protect the information gathered and exchanged under the treaty
- A legal staff to advise it on issues and defend it in court if necessary

#### 4. Intangibles –

- Commitment to EOI – A tax administration has to be able to provide information when a request is received
- Dedicated staff who understands all the issues involving Exchange of Information and who can serve as points of contacts for treaty partners and other internal tax administration personnel.