



**CENTRE FOR TAX POLICY AND ADMINISTRATION
COMMITTEE ON FISCAL AFFAIRS**

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**OECD MANUAL ON THE IMPLEMENTATION OF EXCHANGE OF INFORMATION PROVISIONS
FOR TAX PURPOSES - EXCHANGE OF INFORMATION ON REQUEST**

Module 1 - Exchange of Information on Request

This document was approved by delegates to Working Party No.8.

The Manual is now submitted to the CFA for APPROVAL under the written procedure. Please submit your comments no later than January 9, 2006 to Ms. Suzanne Pedron (suzanne.pedron@oecd.org). If you can approve the Manual as it is you do not need to respond and the absence of comments will be taken to mean approval.

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OECD MANUAL ON THE IMPLEMENTATION OF EXCHANGE OF INFORMATION PROVISIONS FOR TAX PURPOSES

MODULE ON EXCHANGE OF INFORMATION ON REQUEST

1. 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

2. 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).

Form of the request

3. 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

4. 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.

5. 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, 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).
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.

6. The statements mentioned in # 2 and 3 are mandatory in connection with information exchange based on the Model Agreement. In the case of information exchange based on Article 26 they are optional and whether they should be included in the request will depend on the particular circumstances. Regarding reciprocity, see also the discussion in the section on General and Legal Aspects of Exchange of Information.

Language

7. 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.

8. 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

9. 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

10. 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

11. 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.

12. 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). Note also that such grounds may also emerge later in the process (e.g. an attempt to obtain the information may be resisted based on the assertion that the information is protected by the attorney client privilege) and will then have to be considered at that stage.

13. If the competent authority concludes that the request is invalid or incomplete it should notify the applicant party of any deficiencies in the request as soon as possible. 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.

14. 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. 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

15. 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

16. 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.

17. 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.

18. 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

19. 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

20. 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 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

21. 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 90 days of receipt of a request. If the competent authority of the requested party is unable to provide the information within the 90 day period it should inform the other competent authority and explain the reasons for not having provided the information within the 90 day period (e.g. a necessary judicial procedure has not been completed). The underlying idea is that the requesting competent authority can expect to either receive the information within the 90 day period or at least to obtain a status report at the end of that period.¹

STEP 5: PROVIDING FEEDBACK

22. 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.

23. 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 were 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.

¹ See also Article 5, paragraph 6, sub-paragraph b) Model Agreement

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

10 January, 2004

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 26 of the tax Convention between Country X and Country Y

This request is presented according to Article 26 of the tax convention 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 26 of our tax treaty 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 ... Director of Taxes
567 Free Street
Freedom City 34002 Country Y
Phone: Country X
Fax:
Person to contact: Mr. Freed

TO

Mr. Competent Authority of Country X
1234 Tax Boulevard
Capital City 21001

6 June 2004

Dear Mr. Competent Authority,

Re: your request for information under Article 26 of the Tax Convention 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 10 January 2004, you presented a request for information under Article 26 of the Tax Convention 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.