



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

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**OECD MANUAL ON THE IMPLEMENTATION OF EXCHANGE OF INFORMATION FOR TAX  
PURPOSES - CONDUCTING TAX EXAMINATIONS ABROAD**

**Module 6 - Conducting Tax Examinations Abroad**

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*This revision includes a suggestion made by Argentina in paragraph 12, at the end of point iii).*

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

**MODULE ON CONDUCTING TAX EXAMINATIONS ABROAD**

**1. INTRODUCTION**

1. 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.

2. 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.

3. 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>. These documents are contained in the module on Information Exchange Instruments and Models.

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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?

4. 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.

5. 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 because the laws of that country enable taxpayers to keep certain records in another country<sup>4</sup>. Tax examinations abroad could be considered useful in all of these circumstances.

6. 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.

7. 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.

8. 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.

9. 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.

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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.

10. 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.

11. 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.

### 3. LEGAL BASIS

12. 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 modelled 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 modelled on Article 6 of the OECD Model Agreement on Exchange of Information in Tax Matters; or Article 6 of the CIAT Model Agreement on the Exchange of Tax Information; 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.
13. 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:***

14. 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:***

15. 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:***

16. 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:***

17. 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.

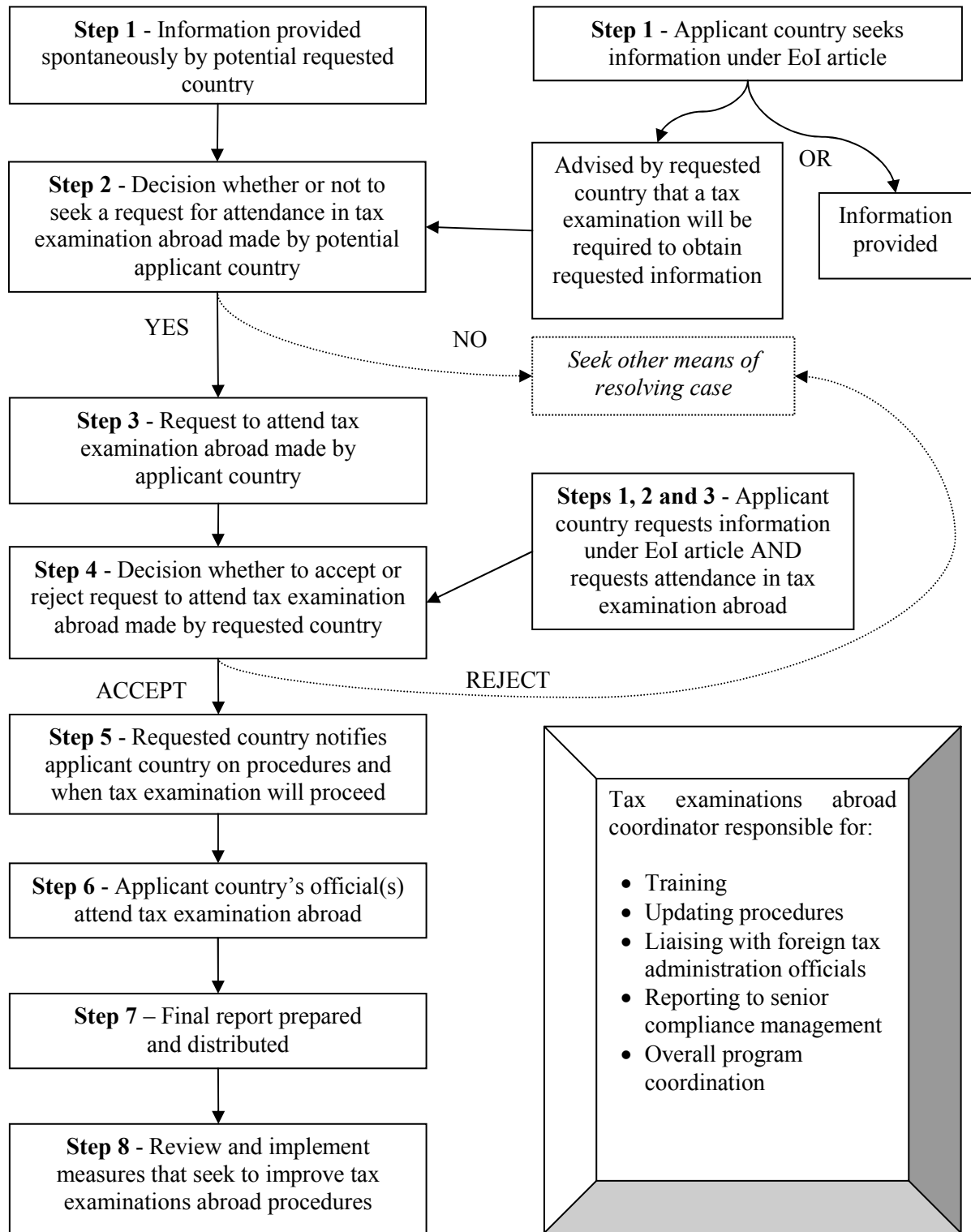
***Tax Examinations Abroad Coordinator:***

18. 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.

19. The diagram overleaf shows the individual steps for seeking and conducting a tax examination abroad. These steps are then explained in detail in paragraphs 20-40.

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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**

20. 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.

21. 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**

22. 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 authorised tax administration officials to attend the proposed tax examination abroad.

23. 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?

24. 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**

25. 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.

26. 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 authorised officers and the instrument of authorisation;
- 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**

27. 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**

28. 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**

29. 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).

30. 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**

31. 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.

32. 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.

33. 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.

34. The final report should take the following form:

### *General*

35. 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*

36. 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.

37. 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**

38. 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.

39. 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.

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