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Working Party No. 8 on Tax Avoidance and Evasion

DRAFT OECD TAX AUDIT GUIDELINES FOR THE DETECTION OF BRIBES TO FOREIGN PUBLIC OFFICIALS

(Note by the United States and the Secretariat)

This document is submitted FOR DISCUSSION to the Working Party No8 under item XII of the Agenda of their meeting to be held on 11-12 October 2000.

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ACTION REQUIRED

Delegates are asked:

- to provide their comments on the proposed OECD Tax Audit Guidelines for the detection of bribes to foreign public officials prepared by the United States and the Secretariat;
- to respond to the questions raised throughout the document; and
- to provide additional examples of bribery cases identified as well as business sectors where bribery to foreign public officials is more likely to occur.

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DRAFT OECD TAX AUDIT GUIDELINES FOR THE DETECTION OF BRIBES TO FOREIGN PUBLIC OFFICIALS : A BRIBERY AWARENESS HANDBOOK

The aim of the present guidelines is to assist countries in making their tax examiners aware of the techniques used for bribery as well as providing them with tools to detect and identify bribes of foreign public officials but also others Countries may want to provide these guidelines to their tax officials, for example, in the context of their training programmes or may wish to use them to design their own guidelines for tax examiners for the detection of bribes to foreign public officials taking into account their specific circumstances.

1. Background on Bribery Initiative

1. The payment of bribes in international business transactions raises serious moral and political concerns and exacts a heavy economic cost, hindering the development of international trade and investment by increasing transaction costs and distorting competitive conditions. The tax treatment of bribes may add to this distortion.

2. OECD countries and several non- members, negotiated the 1997 Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The Convention came into force on 15 February 1999. All OECD Member countries and some non- member countries have signed it. The OECD Convention represents an important step in the concerted international effort to criminalise bribery and reduce the rampant corruption in world economies. It aims to stop the use of bribes to obtain for the purpose of obtaining international business deals and to strengthen domestic anti-corruption efforts aimed at raising standards of governance and increasing civil society participation.

3. In the tax area, the Committee on Fiscal Affairs (CFA), the main tax-policy body of the OECD, initiated in June 1994, a review of Member countries' tax legislation in order to identify any provisions that may indirectly encourage the bribery of foreign public officials. It agreed that where such provisions exist and where changes would effectively discourage the corruption of foreign officials, tax administrations should be encouraged to make them.

4. In April 1996, on the proposal of the CFA, the OECD Council adopted a Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials. This Recommendation calls on Member countries that allow the deductibility of such bribes to re-examine this policy with the intention of prohibiting such deductions. The Council recognised that the trend to treat bribes to foreign public officials as illegal might facilitate such action. The Recommendation instructs the CFA to monitor its implementation and to promote it in its contacts with non-member countries. It received reinforcement from the revised Recommendation of the Council on Combating Bribery in International Business Transactions, adopted on 23 May 1997, which urged the prompt implementation by Member countries of the 1996 Recommendation.

5. As legislation denying tax deductibility of bribes to foreign public officials fell into place in all the countries concerned by the 1996 Recommendation the CFA decided to pursue work on its

implementation with a specific project: to draw up OECD Audit Guidelines for the Detection of Bribes to Foreign Public Officials to assist in the identification of bribes in the course of tax examinations.

6. Audit guidelines or audit manuals enable tax administrations to educate tax examiners better on the best techniques to use and the facts to look for during examinations likely to lead to the identification of non-deductible bribery payments. They also raise the awareness of tax examiners in the identification of transactions connected with bribery. Since many Member countries are in the process of, or are considering, designing guidelines for tax examiners, it appeared timely to consider the issues that should be addressed in such guidelines.

2. Relevant Domestic Tax Provision

Member countries are invited to include here their relevant tax legislation concerning the non tax deductibility of bribes to foreign public officials

3. Definition of bribery

7. There are as many different definitions of corruption as there are diverse forms of corruption. Bribery is a specific form of corruption that can be defined as the voluntary giving of something of value to influence performance of official duty either by doing something improper or failing to do something they should do within the authority of their position.

Special rules if any on burden of proof in case of presumption of illegal payments

COUNTRIES COULD INSERT HERE THEIR SPECIFIC RULES ON THE BURDEN OF PROOF IF THEY DIFFER FROM THE GENERAL RULESON BURDEN OF PROOF IN CASE OF PRESUMPTION OF BRIBERY

4. Badges of Fraud or bribery

8. In order to dissimulate bribes, taxpayers will generally use the same techniques they use to dissimulate income. Tax examiners will therefore have to look for evidence of bribery in the same way as they look for evidence of fraud. Taxpayers who knowingly understate their tax liability often leave evidence in the form of identifying earmarks (or badges).

9. Badges of fraud can consist of one or more acts of intentional wrongdoing on the part of the taxpayer with the specific purpose of evading tax. Badges of fraud may be divided into two categories: affirmative indications or affirmative acts. No fraud can be found in any case unless affirmative acts are present. Affirmative indications serve as a sign or symptom, or signify that actions may have been done for the purpose of deceit, concealment or to make things seem other than what they are. Indications in and of themselves do not establish that a particular process was done; affirmative acts also need to be present.

10. Affirmative acts are those actions that establish that a particular process was deliberately done for the purpose of deceit, subterfuge, camouflage, concealment, some attempt to colour or obscure events, or make things seem other than what they are. Examples include omissions of specific items where similar items are included, concealment of bank accounts, failure to deposit receipts to business accounts, and covering up sources of receipts. The badges of fraud presented below are also relevant to identify bribes.

1. Badges of Fraud or Bribery: Expenses or Deductions

11. They may take the form of substantial overstatement of deductions or consist in claiming fictitious deductions.

Methods of Payment

12. Some methods employed to channel currency to public officials are presented below. They are by no means new methods nor do they represent more than a small fraction of methods employed, but are pointed out here to emphasise the need for imaginative investigative techniques to uncover instances of corruption of public officials.

13. Exchange of funds through a legitimate business: A firm controlled by a public official pays a large sum of money to an unrelated corporation in return for fictitious invoices for alleged consulting fees. That corporation in turn makes checks payable to one of its corporate officers who then cashes the checks with the aid of a bank official. The cash is returned to the first corporation's officers who include the public official.

14. Transfer of funds through a spurious business: A bank account is opened in a fictitious name as a conduit for converting checks to cash. Invoices printed in the fictitious business name are prepared as evidence of purchases. Checks issued to the fictitious business are deposited and then currency withdrawn.

15. Payment of campaign expense: One example of making indirect political contributions is where the campaign committee or candidate provides an unpaid bill for some campaign expense, such as for the hiring of sound trucks or for the printing of handbills, posters, etc.

16. Indirect payments to public officials--One method of indirect payments to public officials has been found to be by way of making payments to a law firm. In this instance, the lawyer acts merely as a conduit to which checks are issued for ostensible legal services rendered. The payments are deposited to the lawyer's trust accounts and disbursements made from those accounts to the public official. This method is also used through public relations, advertising, or accounting firms.

COUNTRIES ARE INVITED TO PROVIDE ADDITIONAL EXAMPLES

17. Traditional audit techniques can be used to discover bribe payments. This requires to careful scrutiny the various accounts to ascertain the validity of the individual expenses and consider what specific items might lend themselves to subterfuge. Are there really services being performed for certain payments; and, if so, are the services commensurate with the payments being made for them? What is important to remember is that disbursements are not always what they seem to be. Good investigation calls for more analysis to determine if the disbursement is a valid one and not just a mere conduit or means through which cash can be filtered through with the ultimate payee being a public official.

18. **Professional Services:** all source documents behind amounts charged to Professional Services should be examined carefully for adequacy of description and explanations of services performed as well as any unusual increases. It has been determined that many firms simply "loaded" fees relative to projects and specific cases over and above the amount the normal billing would have been for the actual work performed. This excess billing was used to recover prearranged political payments or payments to public officials by the firms on behalf of the taxpayer.

19. **Travel and Entertainment Expenses:** examination of expense accounts has disclosed that illegal payments may be deducted under the guise of travel and entertainment. Employee expense accounts and correspondence were used to develop an itinerary of selected employees. Correspondence, as well as Board of Directors' expense vouchers were carefully examined to determine political events, functions, and travel to make political contributions. All the above sources were used to identify a date, time, and place that the taxpayer was involved in illegal political activity. All travel expense connected with each particular event was picked out from source documents supplied by the taxpayer. The following categories were the prime source of the adjustments:

- Executive travel expense
- Charter air travel -- whether by the taxpayer's employees or paid directly for travel by a political candidate.
- Expenses of pilots of taxpayer's private aircraft.
- Expenses of various selected employees including direct credit card charges.

2. Badges of Fraud or Bribery: Payroll Padding

20. Payrolls may be padded for numerous reasons including bribery. The purpose is usually the same: to get funds out of a business in the form of a deduction without the recipient paying income tax on the income. This method is commonly used where the paying enterprise is in the type of business which does not sell for cash and money can only be taken out by check. This method could be used as a tax evasion scheme enabling the taxpayer to obtain funds needed for bribes, extortion, to pay for personal expenses or to repay gambling losses or debts to loan sharks.

21. Another way to pad the payroll is to have political party workers on the payroll even though the employee performs no services for the payor company. The same technique may be used for public officials.

22. To detect indications of payroll padding, focus special attention on payroll records:

- If there is a suspicion or knowledge that fictitious employees are being used, then the negotiation of the check should be pursued. If checks are cashed in the same bank or through other parties, the payee may be known at the bank or by the re-endorsers.
- If the company provides or assists in insurance coverage pension plans, etc., test employee terminations to determine whether the employee was also withdrawn from the payroll.
- A company may continue issuing checks to an employee who has left. Randomly select employees and compare endorsements at various times during the year.
- Key employees or officers may be loaned to political parties to perform various services while being paid their salary by their employer. Attempts should be made to determine where the employees' services were performed during the payroll periods in question. Examination of expense reimbursement reports would be of assistance in determining the geographical location of the employee at a particular time. This information may serve as a basis for a follow-up interview of the employee.

23. Some public officials have few legitimate sources of income. They subsidise their income through illegal activities. These individuals will find a business willing to put them on the payroll and issue them regular payroll checks, even though the employee performs no services.

24. The examining agent should extend the examination to the suspected public official and trace the disposition of their payroll checks to determine if any of the money was returned to the corporation. When the entity being examined is suspected of being used as a salary haven by a public official, the examining agent should look for certain indications to support the suspicion.

- Determine if checks are cashed by the employer.

- Establish whether the employee has the qualifications to perform the function for which he/she receives the salary.

- If records indicate the employee is still on the payroll at the time of examination, the compliance employee should attempt to establish whether they are actually present on the premises.

- If the employee holds a position as outside salesman, the compliance employee should determine who the customers are and establish whether the employee actually contacts these customers.

25. The examining agent may need to request information abroad when the fictitious employee is a foreign public official (see below the Section on exchange of information).

3. Badges of Fraud or Bribery --Books and Records

26. In order to detect bribes the examining agent will look for traditional manipulation of books and records such as:

- Keeping two sets of books or no books.

- False entries or alterations made on the books and records, backdated or post dated documents, false invoices, false applications, statements, other false documents, or applications.

- Failure to keep adequate records, concealment of records, or refusal to make certain records available. etc

4. Badges of Fraud or bribery --Conduct of Taxpayer

27. The behaviour of the taxpayer may also be useful to determine in particular the existence of bribes, such as:

- Attempts to hinder the examination. For example, failure to answer pertinent questions repeated cancellations of appointments, or refusal to provide records.

- Testimony of employees concerning irregular business practices by the taxpayer.

- Destruction of books and records especially if just after examination was started.

- Payment of improper expenses by or for officials or trustees.
- Backdating of applications and related documents, and
- Attempts to bribe the examiner.

5. Badges of Fraud or Bribery--Methods of Concealment

28. A number of methods of concealment may be used to dissimulate bribes such as transactions not in the usual course of business, Transactions surrounded by secrecy, false entries in books of transferor or transferee, use of secret bank accounts for income, deposits into bank accounts under nominee names and conduct of business transactions in false names.

5. Examination Plan and Compliance Checks

29. During the preplanning and the examination of all returns, supervisor of the examiners and examiners will be alert to situations that lend themselves to the creation of illegal or improper payments such as bribes. When deemed appropriate and necessary, the examination plans will include consideration of the following compliance checks:

- Examine internal audit reports and related work papers to determine if any reference is made to the creation of any secret of hidden corporate fund.
- Review taxpayer's copy of reports filed with other governmental regulatory agencies.
- Give appropriate consideration to foreign entities, operations, contractual or pricing arrangements, fund transfers, and use of tax haven locations.

6. Information from Other Government Agencies

30. During the preplanning and examination of corporate cases, supervisor of the examiners, and tax examiners should consider information requested from Government agencies.

31. To obtain information relating to slush funds, bribes, political contributions, and other tax-related information contact other governmental agencies such as the Supervisory Body of the Stock Exchange or governmental agencies insuring foreign risk.

COUNTRIES ARE INVITED TO PROVIDE ADDITIONAL EXAMPLES

7. Information available from tax treaty partners

32. During the examination of corporate cases, supervisor of the examiners and tax examiners should also consider information they may obtain from tax treaty partners. Various legal mechanisms may be used to provide for exchange of information: bilateral tax Conventions with an exchange of information article based on Article 26 of the OECD Model Tax Convention and multilateral instruments on mutual assistance in tax matters. With respect to bribery of foreign public officials, two forms of exchange of information are likely to be most relevant, exchange on request and spontaneous exchange:

- Exchange on request is when one treaty partner submits to another treaty partner specific questions relating to a particular case. A request for information may therefore be useful to assist in determining the nature of a suspicious payment. It may also be possible to request to undertake a tax examination abroad and even for the foreign tax examiner to be present if the domestic legislation of the requested state allows the presence of a foreign tax official during an audit.

- Information exchanged spontaneously may also assist in locating a suspicious payment. In such a case, particulars detected by a foreign tax official during an audit or investigation which are likely to be of interest for tax purposes to another jurisdiction are transmitted to that jurisdiction without any prior request. The information is channelled through the competent authorities of each country.

33. Exchange of information is handled by the competent authorities for the two jurisdictions having a legal basis to exchange tax information. Direct contacts with foreign tax officials are not allowed unless a delegation of powers is specifically provided by the competent authorities.

COUNTRIES COULD INSERT HERE THEIR DOMESTIC PROCEDURE TO CONTACT THE COMPETENT AUTHORITY AND INCLUDE A REFERENCE TO THEIR GUIDELINES ON EXCHANGE OF INFORMATION

8. Examination Techniques

34. The purpose of this section is to provide guidelines for procedures and techniques that should be used in conducting an effective examination and in particular to detect bribes.

Methods for accumulating evidence particularly relevant to identify bribes:

35. These methods include for instance:

Analytical Tests such as analysis of Balance Sheet items to identify large, unusual, or questionable accounts. Analytical tests use comparisons and relationships to isolate accounts and transactions that should be further examined or determine that further inquiry is not needed.

Documentation such as examining the taxpayer's books and records to determine the content, accuracy, and to substantiate items claimed on the tax return.

Inquiry such as interviewing the taxpayer or (when legally possible) of third parties. Information from independent third parties can confirm or verify the accuracy of information presented by the taxpayer.

Testing -- such as tracing transactions to determine if they are correctly recorded and summarised in the taxpayer's books and records.

The following examination techniques can be used to gather evidence of bribery: Interviews and Evaluation of the Taxpayer's Internal Controls.

9. Interviews: Purpose

36. To the extent they are permitted by law, interviews provide information about the taxpayer's financial history, business operations, and books and records. Interviews are used to obtain information needed to reach informed judgements about the scope/depth of an examination and the resolution of issues. Interviews are used to obtain leads, develop information, and establish evidence.

37. Oral testimony is a significant factor in resolving tax cases and particularly in identifying bribes as it can provide information not otherwise available from physical documentation and provide relevant information not reflected on the return.

Who to Interview

38. Interviews to detect fraud as well bribes should always be held with the persons having the most knowledge concerning the total financial picture and history of the person or entity being examined such as the chief executive officer, chief financial officer, officer in charge of international operations, officer in charge of governmental activities, directors who are not corporate officers, but who serve on audit committees or have similar responsibilities, and others, as appropriate.

Documenting Interviews

39. After the interview, examiners may prepare a memorandum of the interview indicating the date, time, place, and persons present as well as what transpired at the interview. The examiner should sign and date the memorandum. The memorandum should be included in the case file. This may be useful for the tax examination but also if the tax examiner has under the law to inform the prosecuting authorities in case of bribery.

Interview Techniques

40. Special attention should be paid to interview techniques. It is important that the tax examiner always maintain control of the interview and even more so when he has suspicion of bribes. Examiners should establish the pace and direction. Continually assess whether the taxpayer is leading to pertinent information or rambling.

Question Construction

41. To interview the taxpayer four types of questions can be used: open-ended, closed-ended, probing, and leading. It will be up to the tax examiner to decide which type of questions are the most adequate in order to detect illegal payments.

TYPE	DESCRIPTION
Open-Ended Questions	Questions are framed to require a narrative answer. They are designed to obtain a history, a sequence of events, or a description. Ask open-ended questions about the taxpayer's business. The advantage of this type of question is that it provides a general overview of some aspect of the taxpayer's history. The disadvantage is that this type of question can lead to rambling.
Close-Ended Questions	Questions are more appropriate for identifying definitive information such as dates, names, and amounts. These questions are specific and direct. Ask close-ended questions for background information such as payments to public officials. Close-ended questions are useful when the taxpayer has difficulty giving a precise answer. They are also useful to clarify a response to an open-ended question. The disadvantage to close-ended questions is that the response is limited to exactly what is asked and can make the taxpayer uncomfortable.
Probing Questions	Questions combine the elements of open and closed-ended questions. They are used to pursue an issue more deeply. For example, when questioning a taxpayer's consulting expense, ask, "What is the business purpose of this expense?" The advantage of this type of question is that the taxpayer's response is directed, but not restricted.
Leading Questions	Leading questions suggest that the interviewer has already drawn a conclusion or indicate what the interviewer wants to hear. Limit the use of leading questions. Use them when looking for confirmation, since the answer is stated in the form of a question. For example: So you did not keep invoices for you're consulting expenses?

10. Evaluating the Taxpayer's Internal Controls

42. Internal Controls are defined as the "taxpayer's policies and procedures to identify, measure and safeguard business operations and avoid material misstatements of financial information". An evaluation of a taxpayer's internal controls is necessary to determine the reliability of the books and records which is relevant in particular when there is suspicion of fraud or suspicious payments. It is essential to evaluate internal control to determine the appropriate audit techniques to be used during the examination.

Key Steps for Evaluating Internal Control

43. The evaluation of internal control can be described as an analysis completed by the examiner to understand and document the entire business operation. The key steps of the evaluation process are to understand the control environment, the accounting system, and the control procedures.

Control Environment

44. The first area examiners must understand is the control environment of the business. The control environment is made up of many factors that affect the policies and procedures of the business. Factors such as management philosophy, management operating style, organisational structure, personnel policies and external influences affecting the business which may also indicate potential bribery. To make an assessment of the control environment, examiners must understand, in detail, how the business operates.

Accounting System

45. The second key area of internal control that examiners must understand is the accounting system. Gaining knowledge of the accounting system provides information about many of the taxpayer's transactions.

46. Examiners must acquire knowledge of how the business operates on a day-to-day basis with respect to customers, suppliers, management, sales, work performed, pricing, location, employees, assets used, production and record keeping.

Control Procedures

47. Control procedures are the policies and procedures established by management to achieve the objectives of the business. The control procedures are the methods established to assure that the business operates as intended. Separation of duties is the primary control procedure that concerns the examiner. If properly executed, separation of duties will reduce the opportunity for any person to both perpetrate and conceal errors or irregularities made for instance in order to pay bribes in the normal course of their duties.

Special Examination Procedures

48. In selecting the in-depth probes to be included and identifying the procedures to be used, the supervisor of the examiner should keep in mind the purpose of the probe, depth to be achieved, and how the probe is to be controlled.

49. The specific objective of the in-depth probe should be well defined at the time it is included in the Special Examination features. For example, the objective of a particular in-depth probe could be the identification of payments to public officials. The probe should be directed toward the account, or accounts, most likely to include transactions with businesses which historically have a high probability of bribe payments.

50. Bribes can be found in any business sector. However, a common aspect found in businesses where bribes have been discovered is in industries where technical know-how is a key element. Another common aspect may the need to obtain a governmental permit in order to operate. Some of these industries are oil exploration, construction, and manufacturing. An example, of a bribe payment in one of these industries, is the following:

51. Officers of a corporation involved in the exploration and production of crude oil and natural gas authorised payments to its foreign subsidiary's business agent who passed on the payments to foreign government officials to induce favourable government decisions for its foreign subsidiary. These payments were disguised by documenting and recording the payments as purchases and repairs of equipment.

COUNTRIES ARE INVITED TO PROVIDE ADDITIONAL SANITISED EXAMPLES

Slush Funds

52. This section provides auditing techniques and compliance checks to help identify and examine corporate "slush funds" or any other schemes which may be used to circumvent the tax laws or pay bribes to public officials. These schemes to create secret slush funds and to intentionally misrepresent corporate taxable income are of great concern to a country's tax laws.

Definition

53. Corporate slush funds are accounts or groups of accounts generally created through intricate schemes outside of normal corporate internal controls for the purpose of making political contributions, bribes, kickbacks, personal expenditures by corporate officials and other illegal activities. Top level corporate officers are generally involved and the schemes are carried out by various transactions through the use of both domestic and foreign subsidiaries.

Examples

- The usual practice in schemes in the foreign area is for the domestic parent corporation to use a foreign subsidiary, a foreign consultant, or a foreign bank account to "launder" funds so that cash could be generated and repatriated back to the domestic parent to provide a slush fund for payments to domestic public officials. The funds would not be repatriated of course if the payment were made to a foreign public official.

- Slush fund generated by rebates from a foreign legal consultant. The foreign legal consultant, who also performed legitimate consulting services for the domestic corporation, over bills the company and then transfers the money back to the treasurer in cash.

- Officers and/or key employees are paid additional compensation based on their promise that they will contribute either a percent of the bonus or the net amount (net of income taxes) as a political payment or bribe payment.

- Corporate Over capitalisation: Real or personal property is acquired by the business entity for more than fair market value. The excess is rebated or kicked back and used by the promoter of the scheme to make the contribution to the political organisation or the payment to the public official.

- Contributions are paid to law firms which act as conduits by depositing the funds in trustee accounts from which they are disbursed to the political campaign committee designated by officers of the contributing corporation or to a public official.

Corporate Improper Payments Procedures

54. There are also direct questions that may be asked by a tax examiner in order to identify bribes. In every case the supervisor of the examiner will determine whether or not to ask selected corporate officials, key employees, and other individuals questions 1 through 5 in Exhibit 1. In situations where these questions were answered in a prior examination the guidelines in Exhibit 2 should be considered in determining whether the questions should be asked in subsequent years.

55. Additional questions may be asked when warranted by any response to any question or by the facts and circumstances in a particular case; however, consideration should be given to obtaining the assistance of Tax Counsel in developing such questions.

56. The individuals selected for questioning should be those present or former employees or directors who would be likely to have or have had sufficient authority, control or knowledge, of corporate activities to be aware of the possible misuse of corporate funds. This would include, for example, chief executive officer, chief financial officer, officer in charge of international operations, officer in charge of governmental activities, directors who are not corporate officers, but who serve on audit committees or have similar responsibilities, and others, as appropriate.

57. It should be clearly understood by the individual selected for questioning that the term "corporation" includes the taxpayer under examination, any subsidiary, parent, or affiliated corporation, and any joint venture, partnership, trust, or association in which such corporation has an interest. The individual being questioned should be advised as to the years to which the questions relate.

58. The years for which the questions should be asked are to be determined on a case by case basis.

59. The method of proposing the questions, timing of oral responses, and timing of the receipt of the written and attested answers will be determined by the supervisor of the examiner.

60. If any individual refuses to answer any of the examiner's questions or refuses to confirm a written statement by oath or affirmation, an injunction could be issued if legally possible to that individual and testimony obtained.

61. When any of these questions are answered in the affirmative, all details surrounding the transaction should be secured. Responses to all questions will be reviewed along with all other available information. If further clarification is required, follow-up interviews will be conducted.

Questionnaire for Use in Examinations (provided it is possible under domestic law)

62. The following questions can be first submitted in connection with an examination of the corporation's tax liabilities:

- You may state your position with the corporation and your particular area of responsibility. However, the questions are not limited to knowledge acquired in the course of your official responsibility, but should be answered on the basis of your knowledge, belief, and recollection from whatever source.

- You should state under the penalties of perjury [1] that you believe your answers to be true and correct as to every material matter. You may provide explanatory details with your answers.

1. penalties for perjury my not exist under such circumstances in all legal systems

If you are unsure whether a particular transaction comes within the scope of the question, you may discuss the matter with the examining agent. If, after the discussion, you believe that any answer requires qualification, you should state clearly the nature of the qualification.

NB: If the examining agent concludes that any qualification is ambiguous or unreasonable, or if the response to any question requires further information, the agent may submit additional questions to you for response.

63. All references to corporation herein shall include not only the particular corporation referred to, but any subsidiary, parent, or affiliated corporation, and any joint venture, partnership, trust, or association in which such corporation has an interest.

Exhibit 1 :Questionnaire for Use in Examinations

During the period from _____ to _____, did the corporation, any corporate officer or employee, or any other person acting on behalf of the corporation, make, directly or indirectly, any bribe, kickback, or other payment of a similar or comparable nature, whether lawful or not, to any person or entity, private or public, domestic or foreign, regardless of form, whether in money, property, or services, to obtain favourable treatment in securing business or to obtain special concessions, or to pay for favourable treatment for business secured or for special concessions already obtained?
During the period from ____ to _____ , were corporate funds, or corporate property of any kind, donated, loaned, or made available, directly or indirectly, for the benefit of, or for the purpose of opposing, any government or subdivision thereof, political party, political candidate, or political committee, whether domestic or foreign?
During the period from _____ to _____ , was any corporate officer, employee, contractor, or agent compensated, directly or indirectly, by the corporation, for time spent or expenses incurred in performing services, for the benefit of, or for the purpose of opposing, any government or subdivision thereof, political party, political candidate, or political committee, whether domestic or foreign?
During the period from ____ to _____, did the corporation make any loan, donation, or other disbursement, directly or indirectly, to any corporate officer or employee, or any other person, for contributions made or to be made, directly or indirectly, for the benefit of, or for the purpose of opposing, any government or subdivision thereof, political party, political candidate, or political committee, whether domestic or foreign?
During the period from ____ to _____ , did the corporation, or any other person or entity acting on its behalf, maintain a bank account, or any other account of any kind, whether domestic or foreign, which account was not reflected in the corporate books and records, or which account was not listed, titled, or identified in the name of the corporation?

Exhibit 2 Guidelines for the Use of the Corporate Slush Fund Questionnaire in Subsequent Year Examinations

In prior examinations, the questions have been most productive in cases involving multinational corporations having significant foreign activities. The following factors should be considered in determining whether questions should be asked in subsequent years:

Whether in the past the corporation made improper payments or was involved in any slush fund activity;
Current information indicating existence of or a strong probability of improper payments or slush fund activity;
Whether competitors or others in the same industry are known to have made improper payments or had slush fund activity;
The extent of controls maintained by the corporation to prevent improper payments or establishment of slush funds;
The extent of verification by the corporation's internal auditors and/or external auditors concerning the use of improper payments or establishment of slush funds;
Effective corporate policy concerning improper payments or establishment of slush funds;
Whether corporation produces products which are sold in a very competitive market, especially products which are under stringent government controls;
Whether the corporation has significant transactions with governments at all levels, whether foreign or domestic, or has activities with foreign quasi-government organisations;
Whether the corporation has a foreign entity operating in an autonomous manner with little or no direct control by the domestic parent;
Whether the corporation has made a substantial acquisition or there has been a substantial change in ownership, management or the type of business conducted by the corporation;
Whether the examination reveals any attempts to conceal apparent improper activities or uncovers situations involving unusual approvals that bypass normal channels; and
Any other factor where, in the opinion of the supervisor of the examiner, the use of the questions might be appropriate.
In considering whether the questions are to be asked, no single factor or combination of factors is determinative. The judgement whether to ask the questions shall be based on the supervisor of the examiner's sound discretion considering the guidelines as a whole. The reasons for asking or not asking the questions should be fully explained in the examiner's work papers.