

**MANUAL ON THE INTERNATIONAL
EXCHANGE OF INFORMATION**

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INTRODUCTION – GENERAL AND LEGAL ASPECTS OF INTERNATIONAL EXCHANGE OF INFORMATION

The goal of this manual is to provide tax officials dealing with exchange of information for tax purposes with an overview of the application of the exchange of information provisions and specific technical and practical guidance in order to improve the efficiency of such exchanges.

This Manual has a modular approach. The general module discusses general and legal aspects of exchange of information. The other modules discuss particular aspects of exchange of information. The specific modules deal with the following subjects:

Module 1 – Exchange of information on request

Module 2 – Spontaneous exchange of information

Module 3 – Automatic (or routine) exchange of information

Module 4 – Industry-wide exchange of information

Module 5 – Simultaneous tax examinations

Module 6 – Tax examinations abroad

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Some of these modules may not be relevant for certain countries. For example, Article 26 of the OECD Model Convention on Income and Capital (hereinafter: OECD Model Convention) provides for a framework within which contracting parties¹ can exchange information on request, as well as spontaneously and automatically. The 2002 Model Agreement on Exchange of Information on Tax Matters (hereinafter: Model TIEA) is focused on information exchange on request and does not cover spontaneous or automatic exchange of information.² However, in 2015 OECD published the Model Protocol to the Model TIEA (hereinafter: Model Protocol) for the jurisdictions to use when they wish to expand the framework of their existing TIEAs to spontaneous and automatic exchange of information.³

The modular structure is designed to address such differences by permitting each country to select and use only those modules relevant to its information exchange policies. Considering that the Croatian Tax Administration (hereinafter: CTA) is mostly involved in the exchange of information on request, spontaneous and automatic exchange of information, the following pages of the Manual discuss only those modules.

The modules focus on information exchange pursuant to instruments based on Article 26 of the Model Convention or on the provisions of the Model TIEA. Other instruments for the exchange of information or

¹For the sake of convenience, this Manual uses the term “contracting parties” throughout.

²Article 5, paragraph 1 of the Model TIEA.

³Article 1 of the Model Protocol.

models are mentioned where appropriate.⁴ References to the relevant sections of the Convention on Mutual Administrative Assistance in Tax Matters, as amended by the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters (hereinafter: Convention) have been incorporated in the footnotes.

The Manual focuses on the exchange of information based on the revised text of the Article 26 and the Commentary on Article 6 of the OECD Model Convention published by OECD in July 2014.⁵ Article 26 of the OECD Model Convention was significantly amended in 2005. However, in general, many of the changes are not intended to alter the substance of the provision but instead to remove doubts in relation to its proper interpretation. Where the new text differs from the previous version of Article 26 (versions of Article 26 prior to 2005) or where relevant additional content has been added to either the Article or its commentary, explanations have been included in accompanying footnotes.

⁴Where specific manuals for the implementation of information exchange provisions other than those contained in the OECD Model Convention or the Model TIEA exist or will be issued in the future, these shall prevail over the present Manual.

⁵In November 2017, OECD published the new revised version of the OECD Model Convention where no amendments have been made to either Article 26 or Commentary to Article 26 of the OECD Model Convention from 2014, therefore the Manual refers to Article 26 of the 2014 OECD Model Convention (as the most recent version) and Article 26 of the 2005 OECD Model Convention (as the version where Article 26 was most significantly amended).

INTERNATIONAL EXCHANGE OF INFORMATION

1. The changing environment

We have witnessed in the past decades an unparalleled liberalisation and globalisation of national economies. An increasing number of countries have removed or limited controls on foreign investment and relaxed or eliminated foreign exchange controls. While tax administrations are limited to their respective jurisdictions, taxpayers operate globally. This imbalance and the differences in national tax systems led OECD to address harmful tax practices by focusing on improved transparency and co-operation between tax authorities. This approach has also been shared by a growing number of non-member countries. Countries have increasingly turned to improved and broadened co-operation in tax matters. In a broader context, the efficient functioning of tax co-operation helps to ensure that taxpayers who have access to cross-border transactions do not have access to greater tax evasion and avoidance possibilities than taxpayers operating only in their domestic market. Co-operation in tax matters also reflects the basic principle that participation in the global economy carries both benefits and responsibilities. The continued viability of an open world economy depends on international co-operation, including co-operation in tax matters.

Exchange of information is a key element of international co-operation in tax matters. Through exchange of information countries maintain sovereignty over their own tax issues and ensure the correct allocation of taxing rights between tax treaty partners. Exchange of information can be based on a number of different exchange mechanisms. In the context of agreement on avoiding double taxation, exchange of information is often based on a provision modelled on Article 26 of the OECD Model Convention. Outside the context of agreements on avoiding double taxation, exchange of information is carried out more and more through agreements based on the Model TIEA.

2. Purposes of exchange of information

Information is exchanged for one of two purposes:

- first, information is exchanged in order to verify the facts in relation to which the rules of an agreement on avoiding double taxation are to be applied,
- second, information is exchanged with a view to assisting one of the contracting parties in administering or enforcing its domestic tax law.

The former case only arises in connection with exchange of information on the basis of a bilateral agreement on avoiding double taxation whereas the latter may arise in the context of either a bilateral agreement on avoiding double taxation or a bilateral or multilateral mutual assistance or exchange of information agreement.

3. Legal bases of exchange of information

There are several international legal instruments on the basis of which exchanges of information for tax purposes may take place:

- Bilateral agreements on avoiding double taxation which are generally based on the OECD Model Convention or the United Nations Model Convention on Income and Capital (hereinafter: UN Model),

- International instruments designed specifically for administrative assistance purposes in tax matters such as tax information exchange agreements generally based on the Model Agreement on Exchange of Information on Tax Matters – TIEA, the Convention on Mutual Administrative Assistance in Tax Matters as amended by the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters, the Nordic Convention on Mutual Administrative Assistance in Tax Matters, the Model Agreement on the Exchange of Tax Information developed by the Inter-American Centre of Tax Administrations (CIAT),
- Within the European Union, Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (recast), Council Regulation (EU) No 389/2012 of 2 May 2012 on administrative cooperation in the field of excise duties and repealing Regulation (EC) No 2073/2004,
- International agreements on assistance in tax matters, for example, European Convention on Mutual Assistance in Criminal Matters (as extended to tax matters by the Additional Protocol of 17 March 1978) in cases of prosecution for a tax offence.

Procedures for providing assistance to foreign jurisdictions may also be governed by domestic law. For instance, some countries permit the provision of information to foreign jurisdiction subject to certain conditions and safeguards (e.g. reciprocity and confidentiality of information), even in the absence of an international agreement and solely based on their domestic law provisions.

When more than one legal instrument may serve as the basis for exchange of information, the problem of overlapping is generally addressed within the instruments themselves.⁶ Where the applicable instruments contemplate the co-existence of more than one information exchange provision and if there are no domestic rules to the contrary, the competent authorities are generally free to choose the most appropriate instrument on a case-by-case basis. In these situations, it may be desirable for the competent authorities to agree on a common approach for determining which mechanism to be used in the specific circumstances.

4. Assistance in criminal tax cases

Article 26 of the OECD Model Convention and Article 1 of the Model TIEA permits exchange of information in criminal matters in the absence of international agreements. There may also be – depending on the nature of the legal system of the contracting parties as well as the facts and circumstances of any particular case – alternative legal instruments⁷ through which an exchange of information is possible when an inquiry or investigation has criminal aspects and in certain situations countries may have a preference for using such instruments.⁸ Unlike the Convention, neither Article 26 of the OECD Model Convention nor the Model TIEA⁹ contains a rule that would limit its scope of application depending on the stage of a criminal investigation.¹⁰ Competent authorities may, therefore, request information under Article 26 or the Model

⁶See Article 27 of the Convention, Article 12 of the Model TIEA and paragraph 5.5. of the Commentary on Article 26 of the OECD Model Convention.

⁷For example, mutual legal assistance treaties or domestic law provisions that may permit exchange of information in criminal matters even in the absence of international agreements.

⁸ For example, where the seizure of original records for evidentiary purposes is requested and the requested country can only undertake such measures if the request is based on a mutual legal assistance treaty.

⁹ Article 26 of the OECD Model Convention and Article 12 of the Model TIEA only recognise that different exchange of information instruments may coexist.

¹⁰ The Convention covers information exchange in preparation of criminal proceedings but does not apply once criminal proceedings have begun before a judicial body (Article 23 of the Convention).

TIEA even if criminal tax proceedings have been instituted against a taxpayer, provided that the information is requested for the purposes covered by Article 26 or the Model TIEA.

As the term “competent authority” means the Ministry of Finance or its authorised representative, a judicial authority of one country cannot directly transmit requests for information to another country on the basis of Article 26 or the OECD Model Convention.

Field personnel requesting information from another country should inform their competent authority of the presence of any criminal aspects to the investigation in the first instance. The basis under 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 form for criminal tax proceedings, the requested competent authority’s ability to comply with the request will depend on the national law of the requested Contracting State.¹¹

5. Assistance in tax collection

Article 26 of the OECD Model Convention and Article 1 of the Model TIEA do not provide for assistance in tax collection in the sense of empowering the competent authorities to use their powers of collection on behalf of the other contracting party. However, the scope of both the OECD Model Convention and the Model TIEA include information exchange for “collection of taxes” and thus information assisting in the collection of domestic taxes can be exchanged between contracting parties.

Article 27 (Assistance in Tax Collection) of the OECD Model Convention deals with assistance in the collection of taxes. Furthermore, both the Nordic Convention on Mutual Administrative Assistance in Tax Matters and the Convention¹² include provisions on tax collection. Finally, the EU adopted the Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures.

6. Forms of exchange of information

Article 26 provides for broad options of information exchange and does not limit the forms or manner of information exchange. The main forms of information exchange are: on request, automatic and spontaneous. The Model TIEA only applies to the exchange of information on request, although the contracting parties may agree to expand their co-operation by including the possibility of automatic and spontaneous exchange.¹³

- *Exchange of information on request.* Exchange of information on request refers to a situation where the competent authority of one country asks for particular information from the competent authority of another contracting party.
- *Automatic exchange of information.* Information which is exchanged automatically is typically information comprising many individual cases of the same type, usually consisting of details on

¹¹ For instance, domestic law will determine the types and forms (e.g. deposition of witnesses) of the relevant information gathering measures.

¹² Section II of the Convention.

¹³ The Convention contains specific articles dealing with information exchange upon request (Article 5), automatic information exchange (Article 6), spontaneous information exchange (Article 7) as well as simultaneous tax examinations (Article 8) and tax examinations abroad (Article 9).

income/profit arising from sources in the source country, e.g. interest, dividends, copyright fees, pensions etc. This information is obtained on a routine basis (generally through reporting of the payments by the payer) by the sending country and is thus available for transmission to its treaty partners. The competent authorities interested in automatic exchange will agree in advance as to what type of information they wish to exchange in this manner. In order to improve the efficiency and effectiveness of automatic exchanges of information, the OECD has designed a standard paper format and a standard electronic format (also known as the OECD Standard Magnetic Format or "SMF"). The OECD also has designed a "new generation" transmission format for automatic exchange (known as the Standard Transmission Format or "STF") which replaced the SMF. The OECD has developed a Model Memorandum of Understanding for automatic exchange of information available for use by any country.

- *Spontaneous exchange of information.* Information is exchanged spontaneously when one of the contracting parties, having obtained information in the course of administering its own tax laws which it believes will be of interest to one of its treaty partners for tax purposes passes on this information without the latter having asked for it. The effectiveness of this form of exchange of information largely depends on the ability of tax inspectors to identify, in the course of an investigation, information that may be relevant for a foreign tax administration. The competent authority of the contracting party that provides information spontaneously should request feedback from the recipient tax administration as it may result in a tax adjustment for the sending contracting party. For instance, a foreign tax administration informed on a spontaneous basis that commission fees were reported to have been paid to one of its residents, may find out that no commission fees were actually paid and it may report this fact to its counterpart who supplied the information. As a result, the deduction of the commission fees will be denied and the taxable income adjusted accordingly. Positive feedback also provides an incentive for tax inspectors to continue providing information spontaneously.¹⁴

There are also other forms of exchange of information besides the traditional ones described above:

- *Simultaneous tax examinations.* Simultaneous tax examinations (controls) is an arrangement between two or more countries to examine simultaneously and independently the tax affairs of (a) taxpayer(s) in which they have a common or related interest with a view to exchanging any relevant information which they so obtain, while each contracting party operates on its territory. The existing differences in statutes of limitations of countries are a major practical factor which must be taken into consideration in the selection of cases. Such examinations are particularly useful in the area of transfer pricing and in identifying tax evasion schemes in low tax jurisdictions. The OECD has designed a model agreement for the undertaking of simultaneous tax examinations.
- *Visit of authorised representatives of the competent authorities.* Travel to a foreign jurisdiction for the purposes of gathering information for a particular case may be useful in certain circumstances. However, this visit has to be authorised by the foreign jurisdiction (and be permitted by the laws of the sending country), otherwise it would represent a breach of sovereignty. Thus, the decisions on whether or not to authorise such visits, and whether the presence of foreign tax officials should require the consent of the taxpayer (as well as any other terms and conditions for such visits) fall within the sole discretion of individual countries. The tax officials must be authorised representatives of the competent authorities. This presence abroad may occur in different instances. The visit may be at the request of the country seeking

¹⁴ Convention specifically sets forth the circumstances in which the contracting parties should provide information spontaneously (Article 7, items a) through e)).

information if it is felt it will facilitate the 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 gathering information. In a number of countries, authorised representatives of the competent authorities of the other country may participate in a tax examination and this is often of great value in getting a clear picture of business and other relations a resident of a country may have with his foreign associates.

- *Industry-wide exchange of information.* An industry-wide exchange of information does not concern a specific taxpayer but an economic sector as a whole, for instance, the pharmaceutical industry or the oil industry. An industry-wide exchange involves representatives of contracting parties meeting to discuss the way in which a particular economic sector operates – the financing schemes, the way prices are determined, identified tax evasion trends, etc.

7. The authority to exchange information

In most countries relations with other countries fall within the competence of the Ministry of Foreign Affairs. Therefore, contacts with foreign countries have to be made through diplomatic channels. This, however, may not be very practical in the case of information exchange in tax matters. The OECD Model Convention and the Model TIEA therefore allow the contracting parties to designate one or more “competent authorities” to deal directly with each other.¹⁵ The competent authority is nominated by the contracting parties and is typically a senior official in the Ministry of Finance (either in the treasury or the tax administration within the Ministry) or an authorised delegate thereof.

The function performed by the competent authority is generally centralised within the Ministry of Finance. The existence of this central body ensures co-operation and the necessary consistency with respect to the exchange of information policy. However, there are situations in which certain responsibilities of the competent authorities may be delegated to a local level, for instance, in cases of hiring out labour across borders, where direct and fast contacts between local tax authorities on each side of the border may be the only way in which exchange of information may be effective. This does not imply, however, that the competent authority is no longer involved. Thus, in cases of delegation of functions, clear arrangements between the competent authorities will be necessary (e.g. agreement on the types of information that may be exchanged, the relevant subject matter area to which this exchange may apply, the process for keeping the competent authorities involved).

The OECD maintains a comprehensive list of competent authorities in member countries (and some non-member countries).

8. Scope of exchange of information

Article 26 of the OECD Model Convention and Article 1 of the Model TIEA provide for information exchange to “the widest possible extent.” Nevertheless, both OECD Model Convention and Model TIEA do not allow “fishing expeditions,” i.e. speculative requests for information that have no apparent connection to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of “foreseeable relevance.”¹⁶ The Model TIEA specifically sets forth the type of information that a

¹⁵Article 3, paragraph 1, item f) of the OECD Model Convention and Article 4, paragraph 1, item b) of the Model TIEA. This approach is also found in the Convention (Article 3, paragraph 1, item d)).

¹⁶ Previous versions (before 2005) of Article 26 of the OECD Model Convention used the standard of “necessary” instead of “foreseeable relevance”. The commentary explains that the change from “necessary” to “foreseeably relevant” was not intended to alter the effect of the provision but was made to better express this balance and to achieve consistency with the Model TIEA. See paragraphs 4.1, 5.1, 5.2 and 5.2 of the Commentary on Article 26 of the OECD Model Convention. The Convention also uses the standard of “foreseeable relevance” (Article 4, paragraph 1).

requesting party should provide to “demonstrate the foreseeable relevance of the [requested] information to the request.”¹⁷ Article 26 of the OECD Model Convention is less formalistic on this issue, but a requesting country should nevertheless take into account the items of information identified in the checklist discussed in the module on information upon request. If a country fails to provide important pieces of information identified on this checklist, a requested competent authority may be led to believe that the request is a fishing expedition.

Example 1: The competent authority of country A is carrying out tax audit in relation to Mr. X. Under the audit carried out, the competent authority established that Mr. X has one or several undeclared bank accounts in the bank B in the country B. However, in the experience of country A, it is very likely that the bank accounts were opened on behalf of the relatives of the beneficial owner in order to avoid their detection. Therefore, country A requests the information on all the accounts in the bank B of which Mr. X is the beneficial owner and on all the accounts opened on behalf of his wife E and children K and L.

Example 2: Company B is established in country B. Country A requires the names and surnames of all the shareholders of company B who are residents of country A and information on all the dividends paid to those shareholders. The requesting country A stresses that company B has a significant business activity in country A and is therefore very likely that it has shareholders who are residents to country A. The request for information states that it is a known fact that taxpayers often fail to declare their foreign income or pension.

Exchange of information covers all information with foreseeable relevance for the administration or implementation of domestic laws of contracting parties in the field of taxes. Furthermore, the OECD Model Convention focuses on the information exchange for carrying out the provisions of the convention. Some older agreements on avoiding double taxation limit the information exchange to the latter category (i.e. information exchange for the purposes of applying the convention), however such practice was abandoned.

Examples of the scope of Article 26 of the OECD Model Convention are shown in paragraphs 7 and 8 of the Commentary to Article 26 of the OECD Model Convention. For example, for the application of Article 12 of the OECD Model Convention (copyright fees), the country of residence may ask the source country the amount of copyright fees transmitted to one of its residents, the source country may ask the country of the recipient of the copyright fees whether he is a resident and whether he is the beneficial owner of the copyright fees in order to exempt them from withholding. Furthermore, for the application of Articles 7 (Business Profits), 9 (Associated Enterprises) and 23 (Methods for Elimination of Double Taxation), items A and B, information may also be needed for the proper allocation of profits between associated enterprises in different states or between a head office in one state and a permanent establishment in another State. Information necessary for the application of Article 9 also includes information on ownership and control in a foreign person for purposes of establishing whether or not enterprises are associated within the meaning of Article 9.

A request for information for the administration or enforcement of the domestic laws either under Article 26 of the OECD Model Convention or Article 1 of the Model TIEA could include any or all of the following items:¹⁸

- the tax residence of an individual or a company;
- the tax status of a legal entity;

¹⁷ See Article 5, paragraph 5 of the Model TIEA.

¹⁸ This list serves as an illustration and is not intended to be exhaustive. Moreover, it should be noted that requests for information are subject to the reciprocity requirements discussed in the Manual.

- the income/profit in the source country;
- income/profit and expenses shown on a tax return;
- business records (for instance to determine the amount of commissions paid to a company of another State);
- acts of association of an entity and documents about subsequent changes of shareholders/partners;
- name and address of the entity at the time of formation and all subsequent name and address changes;
- number of entities residing at the same address as the requested entity;
- names and addresses of the directors, managers, and other employees of a company for the relevant years, evidence (contracts and bank statements) of their remuneration, social security payments and information about their occupation with regard to any other entities;
- banking 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 involving a so-called triangular relationship where in transactions between two companies, each situated in a contracting party, a company of a third country C (with which neither country A nor B have an information exchange instrument), is interposed. In this case, countries A and B may exchange information regarding transactions with the company in country C for the correct taxation of their resident companies;
- prices in general, necessary to check the prices charged by taxpayers even if there are no business contacts between the taxpayers. For instance, country A may wish to check prices charged by its taxpayers by examining transfer pricing information of similar transactions in country B, even if there are no business contacts between the respective taxpayers in countries A and B. (see paragraph 8, item c) of the Commentary on Article 26 of the OECD Model Convention).

The scope of information exchange under the OECD Model Convention and the Model TIEA also permits the exchange of confidential non-taxpayer specific information such as statistics, information about a particular industry, tax evasion trends, administrative interpretations and practices.

9. Persons covered

Exchange of information is not limited to information relating to the affairs of residents of the contracting

parties.¹⁹ Often, the tax administration of one of the contracting parties will have an interest in receiving information on activities carried on in the other contracting party by a particular person resident in a third country because the tax liability of the latter as a non-resident taxpayer is at issue. However, there are situations where it is conceivable that a contracting party could have an interest in receiving information about a third country resident who is not subject to tax in either of the contracting parties, for instance when this information is relevant to the taxation of a third party who is a taxpayer or resident of the requesting party. Of course, contracting parties cannot provide information on third country residents that is neither held by their authorities nor is in the possession or control of persons within their territorial jurisdiction. Although the concept of jurisdictional limitation is implicit in Article 26, it is explicitly stated in Article 2 of the Model TIEA.

Example 1: Bank A, with established residency in country A has branch operations in both countries B and C. Bank A is engaged in the trading of 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 Bank A's branch in country B, the competent authority of country B requests information from country C relating to the branch operations of Bank A in that country.

Example 2: Component manufacturer A, with established residency in country A, sells components to a related distributor with established residency in country B and to unrelated distributors with established residency in country C. Country C's customs authorities record information on prices charged by A to country C distributors. In connection with an income tax audit of the transfer prices used by the distributor resident in country B, the competent authority of country B requests information from country C relating to the import prices charged by A to country C distributors.

Example 3: A trust consists of 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 exchange of information under the Model TIEA applies to the administration and enforcement of the taxes covered by Model TIEA.²⁰ The OECD Model Convention uses a different approach and Article 26 also applies to taxes not otherwise covered. Article 26 provides that information exchange applies to taxes "of every kind and description" and goes on to state that the exchange is not limited by Article 2 (Taxes Covered). Therefore, the types of tax for which information can be exchanged are not determined by Article 2 but Article 26.

Example 1: Country A and country B signed a convention that follows the OECD Model Convention, i.e. the convention generally covers only taxes on income and assets, but the exchange of information article contains no such restriction. The competent authority of country A requests certain transactional information about a resident person in country B for the purpose of verifying the sales tax liability of a person resident in country A. The competent authority in country B cannot refuse to comply with the request on the grounds that sales taxes are not covered by the convention.

Example 2: Same as Example 1, except that countries A and B have entered into an agreement on

¹⁹ See Article 26, paragraph 1 of the OECD Model Convention, Article 2 of the OECD Model Convention and Article 1, paragraph 3 of the Convention.

²⁰ The Convention lists the taxes to which it applies in Article 2, paragraph 1.

information exchange for tax purposes, based on the Model TIEA, that only covers taxes on income and assets. The competent authority in country B does not have to comply with the request because sales taxes are not covered by the agreement.

11. Years covered

Time periods during which tax situations may be examined vary from country to country while the beginning of the tax year does not always coincide with the calendar year. If there is a significant time difference between the time the information is supplied and the year to which the information relates, a statute of limitations issue may arise. The question of whether use of the information is limited in time has to be determined by reference to the statute of limitations rules of the country where the information is to be used. 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. For questions relating to exchange of information and the entry into force and effective dates, see Article 15 of the Model TIEA and paragraph 10.3 of the Commentary on Article 26 of OECD Model Convention.

12. Obligation to exchange information

It is important to stress that the exchange of information is mandatory. This is due to the use of the word “shall” in the first sentence of both Article 26 of the OECD Model Convention and Article 1 of the Model TIEA.²¹ In relation to the Model TIEA, the obligation to exchange information is provided by the Article insofar as the taxation under the domestic laws concerned is not contrary to the Convention.

The obligation to exchange information is not limited to information contained in the tax files held by a tax administration. If requested information is not available in the tax files, the requested party must use its information gathering measures to obtain the information from the taxpayer(s) or third parties.²² This may include special investigations or special examination of the business accounts kept by the taxpayer or other persons. It is not relevant whether or not the requested party has an interest in the information for its own tax purposes. Information must be provided even where the requested party does not need the information for the administration or enforcement of its own tax laws.

In some cases, contracting parties may need information in a particular form to satisfy their evidentiary or other legal requirements. If specifically requested, the competent authority, to the extent allowable under its domestic law, should try to obtain information in the particular form requested. Such particular forms typically include depositions of witnesses and authenticated copies of original records.²³

13. Limitations to exchange of information

The legal obligation to exchange information does not apply in a limited number of situations. These exceptions are contained in paragraphs 3 through 5 of Article 26 of the OECD Model Convention and in Article 7 of the Model TIEA.²⁴ In the rare cases where the exceptions apply, the contracting parties are not obligated to provide information. The decision to provide or not to provide the information is then left to the discretion of the requested contracting party. It follows that a competent authority may decide to provide the information even where there is no obligation to do so. If a competent authority does provide the information,

²¹The same formulation is also used in the Convention (Article 1, paragraph 1 and Article 4, paragraph 1).

²² See paragraph 16 of the Commentary on Article 26 of the OECD Model Convention, Article 5, paragraph 2 of the Model TIEA and Article 5 paragraph 2 of the Convention.

²³ See paragraph 10.2 of the Commentary on Article 26 Model Convention; Article 5, paragraph 3 of the Model TIEA and accompanying Commentary.

²⁴In the Convention, the exceptions are contained in Article 21, paragraph 2.

it still acts within the framework of the agreement. For example, where a request relates to information that may involve a business secret, a competent authority may still provide such information if it feels that the laws and practices of the requesting country together and the confidentiality obligations imposed under Article 26, paragraph 2 of the OECD Model Convention (or Article 8 of the Model TIEA) ensure that the information cannot be used for the unauthorised purposes against which the secrecy rules or business secret are intended to protect. If the requested party decides to provide the information it should indicate that a business or other secret is involved in order to allow the requesting party to take any additional or special measures as may be appropriate to ensure the strictest confidentiality.

The remaining part of this section discusses the reasons that can be used for declining information. It also discusses some of the reasons that cannot be used for declining information.

13.1 Tax secrecy

Tax secrecy refers to the provisions under domestic law that ensure that information relating to a taxpayer and his affairs remains confidential and is protected from unauthorised disclosure. Therefore, it is essential for the co-operation in matters of information exchange that such confidential information continues to enjoy a similar level of protection when it is exchanged with other countries. For this reason any information supplied by a contracting party must be treated as confidential.²⁵ Because confidentiality is preserved by the exchange of information instrument and the applicable domestic law in the receiving country, the supply of information cannot be declined on the basis that it would contravene domestic tax secrecy rules.

13.2 Reciprocity

Reciprocity in relation to exchange of information means that a contracting party, when collecting information for the other contracting party, is obliged only to obtain and provide such information that the requesting party could itself obtain under its own laws in similar circumstances. The OECD Model Convention further provides that a requested party is not obliged to supply information that the requesting party itself could not obtain in the normal course of administration.

The concept of reciprocity is based on the idea that a contracting party should not be able to take advantage of the information system of the other contracting party if it is wider than its own system.²⁶ The requested party may refuse to provide information where the requesting party is prevented by law from obtaining or providing information or where the requesting party's administrative practices enable reciprocity (e.g., failure to provide sufficient administrative resources). However, it is recognised that too rigorous application of the principle of reciprocity could slow down effective exchange of information and that reciprocity should be interpreted in a broad and pragmatic manner. The respective commentaries of the OECD Model Convention and the Model TIEA elaborate further on the principle of reciprocity and its intended application.²⁷

Determining in each instance whether the requested party would be able to obtain the requested information under similar circumstances may prove to be difficult for the competent authority in practice. In order to address this issue, the Model TIEA requires the requesting party to provide a statement confirming that the reciprocity conditions are met.²⁸ Where such a statement is submitted the requested party may decline the

²⁵Article 26, paragraph 2 of the OECD Model Agreement, Article 2 of the Model TIEA and Article 22 of the Convention.

²⁶ See Article 26, paragraph 3, items a) and b) of the OECD Model Convention and Article 7, paragraph 1 (first sentence) of the Model TIEA, or Article 21, paragraph 2, items a) and c) of the Convention.

²⁷ See paragraphs 15 through 15.2 of the Commentary on Article 26 of the OECD Model Convention, paragraphs 72 through 74 of the Commentary on the Model TIEA, paragraphs 189 and 190 of the commentary on the Convention. The previous version (before 2005) of the Commentary on Article 26 of the OECD Model Convention contained a less detailed discussion of the principle of reciprocity. However, current paragraphs 15.1, 15.2 and 18.1 and the additions to paragraph 15, Commentary to Article 26 are not intended to alter the effect of the provision but should be understood as clarifications.

²⁸ See Article 5, paragraph 5, item f) of the Model TIEA.

request only “if it has grounds for believing that the statements are clearly inaccurate.”²⁹ This mechanism was introduced to facilitate the determination of whether reciprocity was satisfied. The OECD Model Convention does not require the provision of such a statement. However, in cases where a country under its domestic law can only assist if the reciprocity condition is fulfilled, it may wish to ask its treaty partner to include a similar statement regarding reciprocity in each request for information. The inclusion of such a statement would then avoid the additional administrative burden that would otherwise result from the competent authority of the requested party having to ask additional questions before the request could be processed.

13.3 Public policy/Ordre Public

One for the reasons for declining to provide information relates to the concept of public policy/*ordre public*.³⁰ Commentary to Article 26 of the OECD Model Convention (paragraph 19.5)³¹ and the Commentary to Article 7 of the Model TIEA (paragraph 91) elaborate on the meaning of the term. “Public policy” generally refers to the vital interests of a country, for instance where information requested relates to a state secret. A case of “public policy” may also arise, for example, if a tax investigation in another country was motivated by racial discrimination or political persecution. Thus, this limitation rarely arises in practice.

13.4 Trade, business and other secrets

Article 26 of the OECD Model Convention and Article 7 of the Model TIEA make clear that there is no obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process.³² The respective commentaries explain that these secrets should not be interpreted in too broad meaning. Financial information, including books and records, does not by its nature constitute a trade, business or other secret. In the rare cases where the issue of a trade, business or other secret arises, the decision of whether or not to provide such information is left to the discretion of the requested State. Where in a particular case a contracting party decides to decline to provide certain information on such grounds it should excise the details of the trade, business or other secret from the relevant documentation and provide the remaining information to the other contracting party.³³ The competent authority is obliged to determine whether or not to pass on sensitive information while the local authorities that gather the information should point out what might be sensitive. Ordinary tax secrecy protects trade and business secrecy in all countries. However, neither the taxpayer nor a third party has a right to refuse to give such information to its tax administration.

Example: Further to the request from country B, the competent authority of country A engages in a comprehensive investigation of pharmaceutical company C with residency in country A. Consequently, the competent authority of country A is exposed to highly valuable commercial information concerning the manufacture of the product itself. Such information would be subject to the limitations described above and the competent authority of Country A could refuse to supply the information to country B, or at least excise that part of the information from the response to country B.

²⁹ See Article 76 of the Commentary on the Model TIEA.

³⁰ See Article 26, paragraph 3, item c) of the OECD Model Convention, Article 7, paragraph 4 of the Model TIEA and Article 21, paragraph 2, item d) of the Convention.

³¹ The previous version (before 2005) of the Commentary on Article 26 elaborated only briefly on the meaning of the term “public policy/*ordre public*.” However, the more extensive discussion in the current version is intended to clarify rather than alter the meaning of the term.

³²In relation to the Convention, see Article 21 paragraph 2, item d).

³³ For further details on business, trade and other secrets see paragraphs 78 through 83 of the Commentary on Model TIEA and paragraphs 19 through 19.2 of the Commentary on Article 26 of the OECD Model Convention. In the previous versions (before 2005) of the Commentary on Article 26, the meanings of “business, trade, commercial or professional secret or trade process” were not additionally examined. The additions in the current version serve the purpose of better presenting and elaborating the terms, and not to alter their meaning.

13.5 *Legal professional privilege*

A contracting party may decline to provide information in cases where the information constitutes a confidential communication between a client and an attorney, solicitor or other empowered legal representative. However, the rules on what constitutes a confidential communication should not be interpreted or applied in such a broad way so as to hamper effective exchange of information. It is particularly important that the status of privilege should not be attached to documents or records delivered to an attorney or other authorised legal representative in an attempt only to protect such documents or records from disclosure.³⁴ In addition, a requested party is expected to verify, and challenge if necessary, on behalf of the requesting party, the validity of a claim for legal professional privilege if such validity was in dispute.

13.6 *Bank secrecy*

In most countries, banks and similar financial institutions are required to protect the confidentiality of the financial affairs of their clients. This obligation (“bank secrecy”) may not only protect bank information against disclosure to third parties but may also affect the access to such information by governmental authorities, including tax authorities.

The OECD Model Convention and the Model TIEA stipulate that bank secrecy cannot be the basis for declining to provide information.³⁵ Thus, the competent authorities of the contracting parties need to have the authority to access, either directly or indirectly, through a judicial or administrative process, information held by banks or other financial institutions and to provide such information to the other contracting party. The respective commentaries elaborate further on this point.³⁶

13.7 *Information held by nominees, agents, fiduciaries and ownership information*

A request for information cannot be declined solely because the information is held by nominees or persons acting as agents or fiduciaries or because the information relates to an ownership interest.³⁷ For example, an information request could not be declined merely because domestic law or practices may treat ownership information as a trade or business secret. The commentaries elaborate further on this point.³⁸

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

Example 2: An investigation in relation to Company A by the tax authorities in Country Y revealed payment

³⁴ For further information on legal professional privilege see paragraphs 19.3 and 19.4 of Article 26 of the OECD Model Convention and Article 7, paragraph 3 of the Model TIEA and the accompanying commentary (paragraphs 84 through 90). The previous versions (before 2005) of the Commentary on Article 26 did not discuss the attorney – client privilege or similar privileges. However, the new additions serve to better illustrate and explain these concepts without affecting the substantive rules regarding the limitations on the obligation to exchange information.

³⁵ See Article 5, paragraph 4 of the Model TIEA and Article 26, paragraph 5 of the OECD Model Convention. Paragraph 5 did not exist in the Article 26 versions prior to 2005. The Commentary on Article 26 explains that the addition of paragraph 5 should not be interpreted as suggesting that the previous version of Article 26 did not authorise the exchange of bank information but that the vast majority of OECD member countries already exchanged bank information under the previous version of Article 26. See paragraph 19.10 of the Commentary on Article 26.

³⁶ See paragraphs 19.10 through 19.15 of the Commentary on Article 26 of the OECD Model Convention and paragraphs 46 through 48 of the Commentary on Article 5 of Model TIEA.

³⁷ See Article 5, paragraph 4 of the Model TIEA and Article 26, paragraph 5 of the OECD Model Convention. Paragraph 5 exists solely in the versions of Article 26 after 2005. See footnote 33 for more information.

³⁸ See paragraph 46 et seq. of the Commentary on the Model TIEA and paragraphs 19.12 through 19.15 of the Commentary on Article 26 of the OECD Model Convention.

of royalties to Company B which is resident in Country Z. Believing that the payments may be for the ultimate benefit of person C, a resident of Country Y, the competent authority of Country Y requests the competent authority of Country Z for 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 B and that revealing his identity could lead to the commencement of a civil action against that individual. Despite the protestations of the company, the competent authority could not decline the request for details of the ownership of Company B.

13.8 Domestic tax interest

The concept of “domestic tax interest” describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. A refusal to provide information cannot be based on a domestic tax interest requirement and a contracting party must use its information gathering measures even though it was asked solely to obtain and provide information to the other contracting party.³⁹

13.9 Request in conformity with the terms of the instrument pursuant to which it is made

The Model TIEA provides explicitly that a contracting party may decline to provide information where the request is not made in conformity with the Agreement.⁴⁰ For example, Article 5, paragraph 5 of the Model TIEA requires that the requesting Party in connection with a request must provide certain information to the competent authority of the requested Party. A failure to supply such information allows the requested Party to decline the request because the request is not made “in conformity with the Agreement.” The OECD Model Convention is less formalistic in this regard and leaves more space to the competent authorities but the basic principle applies equally. For instance, where a requesting party does not demonstrate the relevance of the requested information to an ongoing examination or enquiry, the requested party may decline the request because it does not meet the “foreseeably relevant” standard and is thus outside the scope of Article 26. Of course, before declining a request on this basis, the requested party should seek clarification from the other competent authority on this point.

13.10 Non-discrimination

A competent authority may refuse to supply information in cases involving discrimination of a national of the requested Party. This rule is contained in Article 7, paragraph 6 of the Model TIEA. In the context of the OECD Model Convention the rule arises from the first sentence of Article 26, paragraph 1 (“... insofar as the taxation thereunder is not contrary to the Convention.”) read in conjunction with Article 24, paragraph 1. This issue should only arise in exceptional circumstances and, thus, should be of little practical relevance.⁴¹

13.11 No obligation to carry out measures at variance with domestic laws and practices

The OECD Model Convention provides that a contracting party is not obligated to carry out administrative measures which are contrary to its law and administrative practice.⁴² The underlying principle is that a

³⁹ Article 26, paragraph 4 of the OECD Model Convention, Article 5, paragraph 2 of the Model TIEA. Paragraph 4 was added to Article 26 in 2005 to elaborate explicitly with the obligation to exchange information in situations where the requested information is not needed by the requested State for domestic tax purposes. In the older versions (prior to 2005) this obligation was not expressly stated in the Article, but was reflected only in the Commentary. Paragraph 19.6 of the Commentary on Article 26 states that this obligation was clearly evidenced by the practices followed by Member countries which showed that, when collecting information requested by a treaty partner, contracting states often use the special examining or investigative powers provided by their laws for purposes of collecting their domestic taxes even though they do not themselves need the information for these purposes.

⁴⁰ See Article 7, paragraph 1 of the Model TIEA.

⁴¹ In relation to the Convention, see Article 21, paragraph 2, item f).

⁴² Article 26, paragraph 3, item a) of the OECD Model Convention. In relation to the Convention, see Article 21, paragraph 2, item c).

contracting party should be required to do no more and no less than it would if its own taxation was at stake. Therefore, where the information in possession of the competent authority is not sufficient to reply to a request, a contracting party must take all relevant information gathering measures, including special investigations or special examinations of the business accounts, provided it would take similar measures for its own tax purposes.

The Model TIEA contains a similar rule⁴³ and provides that where the information in the possession of the competent authority is not sufficient to reply to a request, the requested party should take all relevant information gathering measures to provide the information requested. An information gathering measure is “relevant” if it is capable of obtaining the information requested. The decision to determine in a particular case which information gathering measures are relevant lies with the requested party.⁴⁴

13.12 No obligation to provide information not obtainable under domestic law in the normal course of administration

Article 26, paragraph 3, item b) of the OECD Model Convention provides that a contracting party is free to decline to provide information if the information cannot be obtained under its domestic law or cannot be obtained in the normal course of administration. The Model TIEA does not contain a provision similar to Article 26.⁴⁵ However, both provide that irrespective of domestic law or domestic administrative practice a contracting Party cannot use bank secrecy or a domestic tax interest requirement as a basis for declining to provide information.⁴⁶ A request for information cannot be declined solely because the information is held by nominees or persons acting as agents or fiduciaries or because the information relates to an ownership interest.⁴⁷ Thus, the results of applying the OECD Model Convention and Model TIEA are almost identical.

14. Information Gathering Measures

The information requested may already be at the disposal of the tax administration of the requested party or it may require special information gathering measures. The most appropriate information gathering measure(s) in an individual case will depend on all relevant facts and circumstances. Information gathering measures could include the following types of measures, provided, of course, that those measures are in line with the laws and administrative practice of the requested party:

- Hearing of a person that may have knowledge of information or may be in possession, custody or control of information.
- Where voluntary co-operation cannot be obtained, require a person to appear at a specified time and place for the taking of testimony.

⁴³ Article 5, paragraph 2 of the Model TIEA.

⁴⁴ OECD Model Convention and Model TIEA use different approaches to reach a similar result. The OECD Model Convention is built on the assumption that both contracting parties have a tax system and that therefore they should use the same types of information gathering measures irrespective of whether a matter relates to their taxation or to the taxation of a treaty partner. The Model Agreement, however, was developed in a context where one contracting party may not have any system of direct taxation. Thus, such a country may then not have any tax related domestic information gathering measures and the “reciprocity approach” used in the OECD Model Convention could not be applied. Model TIEA therefore simply refers to all relevant information gathering measures.

⁴⁵ As already mentioned in the preceding footnote, the OECD Model Convention uses a “reciprocity approach” which assumes that both countries have direct tax systems. This assumption is not valid in connection with the Model TIEA which was developed to permit use also for situations where one of its contracting parties does not have a direct tax system. In this case the “reciprocity approach” cannot be applied because a country without a direct tax system would have no “normal course of (tax) administration” and in such cases no information may be obtainable for domestic tax purposes where a country imposes no tax.

⁴⁶ See Article 26, paragraphs 4 and 5 of the OECD Model Convention and Article 5, paragraphs 2 and 4 of the Model TIEA.

⁴⁷ See Article 26, paragraph 5 of the OECD Model Convention and Article 5, paragraph 4 item b) of the Model TIEA.

- Where the person does not appear at the specified time and place take appropriate measures to compel such person's appearance.
- Request the submission of books, papers, records or other tangible property.
- Question the person submitting books, papers, records or other tangible property regarding the purposes for which and the manner in which the item is or was maintained.
- Place the person submitting books, papers or other tangible property under oath.
- Gain access to and search premises for the purpose of locating and securing books and records or other tangible property for examination.
- Submitting true and correct copies of books, papers, records or other tangible property.
- Permit the competent authority of the requesting state to provide written questions to which the individual giving testimony or producing books, papers, records or other tangible property is requested to respond.

15. Procedural Rights and Safeguards

Domestic law provides for a variety of procedural rights and safeguards for persons affected by information gathering measures or more generally by information exchange. Such rights and safeguards include notification rules, a right to challenge the exchange of information following notification or rights to challenge information gathering measures taken by the requested party.

Several OECD member countries are obliged to notify the taxpayer subject to the enquiry and/or the person that provided the information for the inquiry in certain circumstances. For this person this may result in the right to be informed about the exchange, a right to be consulted or even a right to challenge the exchange. Some countries do not apply the notification requirements in cases of tax fraud or they postpone notification until after the exchange. In some cases the obligation to notify does not apply if a federal court determines that notification would seriously jeopardise the investigation. Competent authorities should therefore indicate if there is suspicion of fraud in their requests if they wish to prevent the notification. In countries that require notification, taxpayers generally have the right to appeal the exchange of information.

Having in mind the possible implications of such rights and safeguards for information exchange, contracting parties should inform each other of their legislation or administrative practice in relation to notification (and any other procedural rights and safeguards that may be of relevance) when a tax information exchange agreement or an income tax convention is concluded and thereafter whenever the relevant rules are modified.

16. Confidentiality of information received

Any information received should be treated as confidential.⁴⁸ The Model TIEA prescribes that the information received may be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment, collection and enforcement of the taxes covered by the Agreement (including the prosecution or the determination of appeals) and the information may be used only for such purposes. Information may not be disclosed to any third person or country without an explicit written

⁴⁸ See Article 26, paragraph 2 of the OECD of the Model Convention and Article 8 of the Model TIEA, i.e. Article 22 of the Convention.

authorisation of the competent authority of the requested party.

With respect to the disclosure rules, the OECD Model Convention differs from the Model TIEA in several respects. First, the OECD Model Convention also permits disclosure to oversight authorities.⁴⁹ Oversight authorities carry out supervision of the tax administration and enforcement authorities as part of the general administration of the government of the contracting parties.⁵⁰ Second, the OECD Model Convention does not permit disclosure to any third natural or legal persons, authority or jurisdiction whereas the Model TIEA permits such disclosure provided an explicit written consent is given by the competent authority of the requested party. Finally, while both the Model TIEA and the OECD Model Convention require that information is kept confidential and then lists the persons to whom the information can be disclosed, the OECD Model Convention contains the additional requirement that information should be treated “as secret in the same manner as information obtained under domestic law.”⁵¹ However, because both the Model TIEA and the OECD Model Convention specify to whom the information can be disclosed (thus ensuring a minimum standard of confidentiality), there should be little practical difference between the two formulations.

In some countries, special procedural rules may apply to sensitive information. For example, in connection with the provision of bank information, Hungary requires that the requesting competent authority signs a statement confirming the confidential handling of the information provided by Hungary.

The confidentiality rules apply to all types of information, including both information provided in a request and information transmitted in response to a request. If the secrecy provisions under the domestic laws of a Contracting State are narrower than under the Model TIEA or the OECD Model Convention, then the provisions of the Model TIEA or the OECD Model Convention will have no consequences. However, if the domestic rules are broader, then the confidentiality provisions of the Model TIEA and the OECD Model Convention will put a restriction on the use of information received from abroad. The local tax authorities are under the obligation to inform their competent authorities of any issue which may arise concerning the disclosure of the information received.

Information received may also be communicated to the taxpayer, his representative or to a witness. However, while such disclosure is permitted, it is not required. In fact, the disclosure to the taxpayer or his representative may raise an issue in certain cases, for instance where the information is given in confidence and the source of the information may have a legitimate interest in not disclosing it to the taxpayer. Similarly, the competent authorities may wish to keep confidential their correspondence with respect to any information exchanged. The competent authority supplying information should therefore indicate whether any part of the provided information should not be disclosed (including any related correspondence) to the taxpayer, his representative or to a witness. If necessary, the competent authorities should then discuss such issues with a view to finding a mutually acceptable solution.

Since information may be disclosed to the taxpayer or his representative, it may also be disclosed to any governmental or judicial authorities charged with deciding whether information should be released to the taxpayer.⁵² This case may arise in countries where a taxpayer who has been denied access to his files by the tax authorities has the right to apply for a review of that decision by an appeals body or body charged with legal protection. Logically, this body has to see the information in order to render its decision.

⁴⁹ Under the old version of Article 26 of the OECD Model Convention (before 2005) information could not be disclosed to oversight authorities.

⁵⁰ See paragraphs 12 and 12.1 of the Commentary on Article 26. of the OECD Model Convention.

⁵¹ It should be noted that the Model TIEA was developed for use also in situations where one of the parties has no direct tax system. If a country has no tax system it is unlikely it has domestic rules on tax secrecy and the reference would then be meaningless. Furthermore, the confidentiality rules of Article 22 of the Convention require that “information obtained by a Party shall be treated as secret in the same manner as information obtained under the domestic laws of that Party, or under the conditions of secrecy applying in the supplying Party if such conditions are more restrictive”.

⁵² See paragraph 12 of the Commentary on Article 26 of the OECD Model Convention.

Many countries have information disclosure laws such as freedom of information or other legislation that allows access to governmental documents and records. The confidentiality provisions in exchange of information instruments are intended to take precedence over any domestic rules that permit disclosure to persons not referred to in the confidentiality provision.⁵³ 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. If this issue arises as a result of a court decision or a subsequent change in legislation the competent authorities should inform other competent authorities at the earliest opportunity. It should be noted that confidentiality provisions of agreement on avoiding double taxation create obligations under international law. Any person faced with a request to release information supplied under an agreement on avoiding double taxation or a tax information exchange agreement should consult with his or her competent authority, who may also inform the competent authority who supplied the information.

17. Use of information for other purposes

The information exchanged may not be used for purposes other than those for which it has been exchanged. In other words, the information exchanged pursuant to the OECD Model Convention or the Model TIEA cannot be used for non-tax purposes. For instance, tax information obtained pursuant to the OECD Model Convention or the Model TIEA must not be used for the prosecution of non-tax crimes. If the information appears to be of value to the receiving party for another purpose, it must use the means specifically designed for that purpose, for example a judicial assistance treaty. If there is a doubt about whether information supplied by a foreign competent authority can be used for a purpose other than the tax purpose covered by the instrument under which it was provided, local authorities should always consult the competent authority.

However, in some countries, there is the obligation to share tax information between tax authorities with other law enforcement authorities and judicial authorities on matters such as money laundering, corruption or terrorism financing. Therefore, these countries may wish to include specific wording in their bilateral treaties to permit the sharing of information received pursuant to a tax information exchange agreement with such other authorities. The Commentary to the Model Convention provides language that can be used for this purpose.⁵⁴

18. Cost of information exchange

The question of cost is addressed in Article 9 of the Model TIEA. The accompanying commentary (see paragraphs 98 and 99) elaborates on methods and approaches contracting parties may use in allocating costs related to information exchange. In practice, several tax information exchange agreements have a distinction between ordinary and extraordinary costs. Such agreements prescribe the responsibility for assuming ordinary costs to the requested party but require the requesting party to bear any extraordinary costs.⁵⁵ The wording “extraordinary costs” means, for instance, costs incurred when a particular form of procedure has been used at the request of the applicant party, for costs incurred by third parties from which the requested party has obtained the information (for example bank information), or supplementary costs of experts, interpreters, or translators if needed, for example for elaborating the case or translating accompanying documents or damages which the requested party has been obliged to pay to the taxpayer as a result of measures taken on the request of the applicant party. Other tax information exchange agreements for tax purposes draw a distinction between direct and indirect costs and require the requesting

⁵³Paragraph 12 of the Commentary on Article 26 of the OECD Model Convention expressly addresses this point.

⁵⁴See paragraph 12.3. of the Commentary on Article 26 of the OECD Model Convention. Similar wording is used in Article 22, paragraph 4 of the Convention.

⁵⁵ This approach is also found in Article 26 of the Convention.

party to bear all direct costs.

The OECD Model Convention does not contain a provision on costs and any issue arising in connection with costs should therefore be discussed by the competent authorities. In practice, where costs were extraordinarily high countries were prepared to find practical solutions. There are examples where the requesting party has offered to bear the cost of translation and certification of copies or has put human resources and equipment at the disposal of the treaty partner to reduce the burden of the requested party. In such cases it might also be worth considering whether – provided this is permitted under domestic law – the presence of foreign tax officials as part of a “tax examination abroad” could be used to reduce the cost on the requested party. In any event it is important that this issue is addressed at an early stage to allow for a timely and cost efficient solution.

19. Use of Taxpayer Identification Numbers (TINs⁵⁶)

Most member countries attribute Tax Identification Numbers (TINs) to their resident taxpayers and some countries also assign TINs to non-residents under certain circumstances. In 1997 the OECD adopted a Recommendation on the use of TINs in the international context (C(1997)39/FINAL). TINs are used to identify taxpayers and are a key to automated matching programs. The knowledge of TINs can be useful for processing information received automatically from a treaty partner. The provision of TINs is also important when either making or answering a request or providing information spontaneously since it will facilitate the quick identification of the taxpayer. Consequently when the provision of TINs is legally allowed, field tax officials should provide them to their competent authority when making a request or transmitting information (when available, both source country and residence country TINs).

MODULE 1: EXCHANGE OF INFORMATION ON REQUEST

Exchange of information on request refers to a situation where the competent authority of one contracting party asks for particular information from the competent authority of another contracting party. The information requested typically 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

1.1. Preliminary considerations

Before sending a request, a contracting party should use all means available in its own territory in order to

⁵⁶According to international practice, “TIN” is used as an acronym for the identification number of a taxpayer and will be used throughout the Manual, but can be identified with Croatian OIB (Personal Identification No.).

obtain the information except where those would give rise to disproportionate difficulties. The activities 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

1.2. 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.

1.3. Content of the request

It is important to draft the request in a complete and comprehensive manner. 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, certain countries have established checklists of information necessary to carry out certain procedures for obtaining information.

Although 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. Responding to a request should not be delayed by trying to obtain every item on the checklist, abbreviations should not be used and other relevant information may be added.

The checklist contains:

1. The legal basis upon which the request is based.
2. A statement confirming that the 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 the requesting country, that the tax administration could obtain the information if it was within this 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 may not be familiar with your laws,
9. The information requested and why it is needed. Also specify the information that may be relevant (e.g. invoices, contracts).
10. In the context of an agreement on avoiding double taxation, 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 of beginning and ending), 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. State 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. State 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.

The statements mentioned in 2 and 3 are mandatory in connection with information exchange based on the Model TIEA. 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.

1.4. Language

The request by the competent authority should be drafted in a simple and clear manner. It should be drafted 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. The other option is, 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.

1.5. 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.

1.6. 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 inspectors 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 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. 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.

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.

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.

2.1. Request received directly from foreign local tax official

The unauthorised exchange of information can jeopardise the success of an investigation or criminal proceedings. 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. The tax official should then immediately pass it on to his competent authority and the answer should go through the appropriate competent authorities. The competent authority 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.

Step 3: Gathering the information

Given that the exchange of information is mandatory, gathering information for another country should be given a high priority, 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. There are two types of requested information:

- information which is already at the disposal of the tax administration (tax return, income/profit 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.

In order to save time, a translation of the reply in the language of the requesting party could be prepared if there are persons with 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. It should be ensured, if requested (and to the extent allowable under domestic law), to pass on the information in a format which meets the requesting party's evidentiary or other legal requirement e.g. provide authenticated copies of original records.

Step 4: Replying to the 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 note on 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 country has according to its internal provisions to protect such secrets.

4.1. Checklist of what to include in the response

Although 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. Exchanges should not be delayed by endeavouring to obtain every item on the checklist and abbreviations or acronyms should not be used.

The checklist contains:

1. Legal basis upon which the information is provided.
2. 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. The inability to provide the information in the form requested does not affect the obligation to provide the information.
5. For money amounts indicate the currency and whether a tax has been withheld and (if so, indicate the rate and the 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. memo).
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.

4.2. 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 90 days of receipt of a request. If the competent authority of the requested party is unable to provide the information within 90 days it should inform the other competent authority and explain the reasons for not having provided the information within that time period (e.g. because 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.⁵⁷

Step 5: Providing feedback

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

- enables quality improvements to be made for future information exchanges;
- can improve the motivation of tax officials to provide information;
- can prove to be useful for competent authorities to obtain the necessary resources 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/profit 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 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.

⁵⁷ See also Article 5, paragraph 6, item b) of the Model TIEA.

EXAMPLE OF REQUEST FOR INFORMATION

FROM

Mr Competent Authority of Country X
Director General of Tax Administration
Tax Avenue 1234
Capital city
Country X
phone/e-mail

FOR

Mr Competent Authority of Country Y
Director General of Tax Administration
Freedom Street 567
34002 Freedom City
Country Y

Ref. no. CA/10 01 04 U
10 January 2017

Subject: Request for information under Article 26 of the Agreement on Avoiding Double Taxation between Country X and Country Y

Taxpayer under investigation:

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

Tax periods under investigation

1.10.2014 - 30.9.2015
1.10.2015 - 30.9.2016
1.10.2016 - 30.9.2017

Periods for which information is requested: same years

Dear Mr Competent Authority of Country Y,

This request is presented according to Article 26 of the Agreement on Avoiding Double Taxation between our two countries. Our request concerns the abovementioned PC Company. The local tax office of Blueville is presently examining its profit 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 audit, 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 Hrvoje Horvat TIN 57 06 2345, born 15 June 1957, 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 Hrvoje Horvat.

If you need more information please contact Mr Green at phone: 1234567 or e-mail: green@porezna.uprava. We kindly ask you to acknowledge the receipt of this request and indicate when the information is likely to be provided.

This request is made according to Article 26 of our tax agreement and the information provided will be used only as provided for in the said Article.

Yours sincerely,
Mr Competent Authority of Country X

EXAMPLE OF RESPONSE TO A REQUEST

FROM

Mr Competent Authority of Country Y
Director General of Tax Administration
Freedom Street 567
34002 Freedom City
Country Y
phone/e-mail
Contact person: Mr Freedom

FOR

Mr Competent Authority of Country X
Director General of Tax Administration
Tax Avenue 1234
Capital city
Country X

7 June 2017

Subject: Your request for information under Article 26 of the Agreement on Avoiding Double Taxation between Country X and Country Y

Reference: Your letter ref. no. CA/10 01 04 U of 10 January 2017

Taxpayer under investigation:

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

Tax periods under investigation

1.10.2014 - 30.9.2015
1.10.2015 - 30.9.2016
1.10.2016 - 30.9.2017

Dear Mr Competent Authority of Country X,

On 10 January 2004, you made a request for information under Article 26 of the Agreement on Avoiding Double Taxation between our two countries concerning bank accounts identified as being used directly or indirectly by PC Company or by Mr. Hrvoje Horvat, the executive manager of PC Company.

Please find enclosed the bank records of the account number no. 001 678 543. Our central file of bank accounts allowed us to identify another account opened on 5 August 1992 by Mr. Hrvoje Horvat, n° 001 725 613, at the City Bank, the branch located at 56 City Street in Freedom City.

This information is provided under abovementioned Article 26 and its use is governed accordingly.

Please provide information on the usefulness of the information supplied.

Yours sincerely,
Mr Competent Authority of Country Y

Enclosures:

Bank Account at State Bank n° 001 678 543, copies of 36 bank statements
Bank Account at State 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. Taxpayer 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;
- Documents on the association of company C.

Example 2: Outbound Loan

Taxpayer T, resident of A, 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 for the relevant periods;
- 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

Company A, a resident of A, claims a deduction for services invoiced by company C, resident in foreign country B. However, the tax official who audited company A learns that the services were performed by taxpayer T, resident of A. 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 inspector suspects that C only acts as a re-invoicing agent because T’s lifestyle far exceeds his declared income. The inspector 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 T;
- 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

Company T, a resident of A, purchases electronic components for use in its manufacturing operations from company C, resident in B. A tax inspector who is 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. Additionally, the tax inspector suspects that in reality company C acts as an agent and that its declared 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 of 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 can prove that company C deposited the difference between the purchase and the sales price (minus a small fee) into an account of A, the sole shareholder of T, opened at bank resident in B. A had not disclosed these payments in his income tax return.

Example 5: Exchange of information on high net wealth individual – natural person

Taxpayer who is a resident in A moved to country B with very little of own assets, however, in the 1990s, the media characterized him as a wealthy man.

The competent authority of country B launched an audit of the taxpayer in 2000 finding assets with the taxpayer in the amount of several million dollars supposedly originating from annual income of USD 10.0000. The taxpayer stated that his mother, resident of country A, financed him.

In order to determine the stated facts, the competent authority of country B made a request for exchange of information to country A in accordance with their Agreement on Avoiding Double Taxation. The competent authority of country A responded that the taxpayer's mother was in no position to finance the taxpayer. As a result, the taxpayer's estimated tax obligation amounts to more than million dollars.

Further on, his private jet was monitored and located in country C. Country B, in accordance with the Agreement on Avoiding Double Taxation between B and C, made a request for exchange of information to C and it was established that the assets was insured and sold in order to pay for the tax debt.

Country B used every option arising from the Agreement on Avoiding Double Taxation with A in order place a

ban on handling most of assets which the taxpayer and affiliated entities had in offshore jurisdictions.

Since the Agreement on Avoiding Double Taxation between A and B provides for assistance in collecting taxes, B made a request for assistance to A in collecting taxes.

Example 6: Exchange of information on request in relation to suspicious undeclared income – identifying assets

Tax Administration of country A conducts an audit of one of its tax residents, Mrs A, a self-employed accountant, based on received information from Mrs Z, former business partner of Mrs A, who stated that A was in possession of significant assets bought while she had been on holiday in country B. Years under investigation are 2012 and 2013. The mentioned assets are located in country B, and include a house and a boat. Mrs Z informed the tax inspectors that the asset was financed from undeclared income/profit in country A. Inspectors questioned Mrs Z until they were convinced that they had obtained all the possible information. They also exhausted all available domestic sources of information. They established the location of the house (city), location where the boat had been purchased (city) and the approximate dates of their purchases. The inspectors are aware that the house is empty during the year and that Mrs A stays there only when on holiday. The inspectors were informed that Mrs A opened a bank account in bank J in 2012, city K, country B and that she was possibly given a loan to partially finance the purchase of the house and the boat. The competent authority of country A requests the following information from the competent authority of country B:

- Information on real-estate and boat registration from Mrs A – request includes all the details available to the inspectors including information on the city where the house is located and boat purchased and approximate dates of their purchases;
- Information on bank account that Mrs A opened in country B – the request is supported by all the details familiar to the inspectors, including the date of opening the account and bank address; and
- Information on the loan that was possibly granted from bank J in order to partially finance the purchase of the house and boat – request will explain why these information is needed.

Example 7: Exchange of information on request in case of transfer prices audit

Countries A and B signed the instrument for exchange of information which came into effect and is applicable as of 2007. In 2012, the tax administration carried out an audit of company Y in country A that is also a resident of A. Company Y is the branch office of company Z from country B. Tax years under investigation are 2009 and 2010. Z produces electronic products and sells them to company Y which distributes them to A. Inspectors suspected that the sales conditions from Z to Y are not in line with the domestic transfer pricing and that the profit was reduced for tax purposes as a result.

Inspectors concluded that Y's employees are very uncooperative, as they had no desire to cooperate or provide full answers during tax audit and were not able to provide proper business documents, including contracts describing the relationship between the two companies.

Having exhausted all domestic sources to get the necessary information, the competent authority of A requested information from the competent authority in B, including:

- The copy of the contract between Z and Y showing the substance, the scope and the structure of their business relationship;
- Information on sales of Z to third persons,
- Information on functions and activities performed by company Z and a copy of financial statements of company Z,
- Documents evidencing the pricing method between the companies;

- Relevant information on tax returns of company Z in 2009 and 2010 evidencing the total gross profit made through sales to company Y;
- Copy of the transfer pricing report from Z.

MODULE 2: 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. Spontaneous exchange of information, because of its nature, relies on the active participation and co-operation of local tax officials (e.g. tax inspectors 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 relations 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
- 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

The checklist below provides guidance on what to include when providing information spontaneously. Other relevant information may be added, exchanges should not be delayed by endeavouring 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.

1. 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).
2. 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.
3. 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;
4. 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).
5. Mention how the information was obtained and identify the source of the information provided, e.g. tax return, third party information etc.
6. Mention whether the taxpayer or a third person has been notified about the exchange.
7. Mention whether there are any objections to notifying the taxpayer of the receipt of the information.
8. Mention whether there are any objections to disclosing all or certain parts of the information provided (e.g. memo).
9. Mention whether feedback is requested on the usefulness of the information.
10. 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).
11. 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: "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 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. 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 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 inspector calculates that €50,000 has been periodically deposited into X's bank account throughout the 2015 tax year. The inspector 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 inspector 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 report, copies of relevant bank statements and the name of 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 2015 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 2015 tax year.

EXAMPLES OF SPONTANEOUS EXCHANGE OF INFORMATION

Example 1: Tax inspector in country A finds out that the payments for “consulting services” from company A to an affiliated company in country X are excessive. The affiliated company has no employees and is not able to provide such services. In this case, the competent authority of country A can notify the competent authority of country B, where the sister company is situated and which is carrying out similar functions as A and can be exposed to the same risk of overpayment.

Example 2: Competent authority of country B finds out that the sales of significant number of stocks of numerous companies by the taxpayer of company A implies capital gains. The information has been shared with the country A on the basis of article containing the provisions on the exchange of information in the Agreement on Avoiding Double Taxation concluded between countries A and B, in order to ensure that the taxpayer has declared the capital gains properly.

The competent authority of country A determines that the taxpayer did not file tax returns in the past nine years and was instructed to do so. On the basis of that, it was established that the taxpayer, in addition to not declaring capital gains, did not declare his business profits or interests and dividends in the past nine years. The total amount of the new tax assessment amounted to more than a million euro.

MODULE 3: AUTOMATIC (OR ROUTINE) EXCHANGE OF INFORMATION

1. Introduction – What is Automatic Exchange of Information?

Automatic exchange of information (also called routine exchange by some countries) involves the systematic and periodic transmission of large amounts of taxpayer information by the source country to the residence country concerning various categories of income (e.g. dividends, interest, copyright fees, salaries, pensions, etc). This information is obtained on a routine basis in the source country (usually 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, etc. Tax authority can check the country of residence in its tax records to verify that resident taxpayers have reported their foreign source income/profit. 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. More and more countries participate in automatic exchange of information by using different forms, and it should be noted that previously, encrypted CR-ROMs were used, whereas today, security channels (for example *EU Common Communication Network (CCN)* or *OECD Common Transmission System (CTS)*).

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/profit reported by the taxpayer. This is the most cost-efficient type of processing information. For example the Australian Tax Office's 2004 – 2005 Compliance Program states that 1171 foreign source income data matching audits were completed during the 2003 - 2004 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:

- Provisions on the exchange of information of the bilateral agreement on avoiding double taxation between two countries exchanging information;
- Article 6 of the Convention (automatic exchange can be established through an administrative agreement between the competent authorities of the Parties willing to provide each other information automatically);
- Article 5, item A of the Model Protocol to the Model TIEA;
- Article 8 of the Council Directive 2011/16/EU of 15 February 2011 on Administrative Cooperation in the Field of Taxation and repealing Directive 77/799/EEC, and accompanying amendments of the Directive (Council Directive 2014/107/EU for exchange of financial account information, Council Directive (EU) 2015/2376 for the exchange of advance cross-border rulings and advance

pricing arrangements and Council Directive (EU) 2016/88 for the exchange of country-by-country reports);

- Article 13 of the Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (recast);
- Article 4, paragraph 3 of the CIAT Model Agreement on the Exchange of Tax Information; etc.

4. Agreements or Memoranda of Understanding on Automatic Exchange

The exchange of information article of agreement on avoiding double taxation generally constitutes the legal basis for automatic exchange of information. Many countries do not have to enter into a special working agreement or memorandum of understanding (MOU) setting forth the terms and conditions of the proposed automatic exchange. However, some have an obligation to do so and in practice a number of countries enter into an agreement or MOU. 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 MOUs have to be published officially in some countries and may therefore have a deterrent effect on potential tax evaders.

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. More recently the practice has shown that more and more Competent Authority Agreements are concluded (for example Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information - CRS, Multilateral Agreement on Exchange of Country-by-Country Reports - CbC Reporting etc.).

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;
- interests;
- copyright fees;
- capital gains;
- salaries, wages and other similar remuneration in respect of an employment;
- directors' fees and other similar payments;
- artists and sportsmen's income, 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.

The OECD Model MOU recommends using the OECD Standard Magnetic Format for automatic exchange (or any further updated format recommended by the OECD Council), however, secure channels (CTS) are more used in the exchange of information nowadays. Within the exchange, TIN numbers are provided if available as it facilitates the processing and connecting the obtained information. Also, TINs may serve 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. 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/profit 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/profit reported by its own taxpayers.

5. Implementation

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

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, in the light of the new technological developments, the OECD designed the Standard Magnetic Format (SMF) for the transmission of taxpayer information on magnetic tapes. 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 (C(97)30/FINAL). The record layout of the Standard includes the following entry fields:

- recipient beneficial owner, his agent or intermediary, to the actual payer of the income/profit, 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;
- income/profit (tax year, date, type of payment, currency, gross and net amount, tax withheld, refund etc).

Special entry fields were provided for TINs of the residence country TIN and source country TIN. SMF was used in OECD member countries participating in automatic exchange, and increasingly in non-member countries.

The OECD also has designed a “new generation” transmission format for automatic exchange. The new format called the Standard Transmission Format (STF) is based on extensible mark-up language (XML⁵⁸), 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, etc). As the SMF and STF are both used in practice, 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. The latest version of the STF; STF 2.1 and bridging programme 1.0 are to be used as of 1 January 2012. This version 1.0 is the latest bridging programme because SMF shall cease to be used.

⁵⁸XML: 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.

It is worth mentioning that during 2009 crisis, the G20 unanimously supported the idea that the bank secrecy has come to an end, and they committed to jointly take measures to prevent tax evasion by ensuring better transparency, and the OECD was tasked with devising the international standard for *Exchange of Information on Request* - EOIR.

Through Global Forum on Transparency and Exchange of Information for Tax Purposes, 130 member countries enabled fast implementation of this information exchange standard, of which OECD made Peer Review Reports. In February 2014, 44 countries (Republic of Croatia among them) committed to automatic exchange of financial account information, and in June 2014, the OECD published the international Agreement on Financial Account Information (CRS) with commentary, as well as XML scheme, which were accepted by G20 in September 2014. Following the acceptance of CRS by G20, individual member countries committed to implement the CRS through domestic legislation. Currently, 94 countries committed to implement CRS in 2017 and 2018 committed to implement the CRS.

As a result of accepting the CRS by G20 in December 2014, the EU adopted the amended Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation and took over the CRS.

CRS is developed in cooperation with the OECD (the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes) with the European Commission for the precise reason to ensure unique handling, simplification and better efficiency and to reduce the costs for all those participating in the exchange as much as possible. CRS contains due diligence procedures which the reporting financial institutions have to apply in order to establish the financial accounts for which they are obliged to deliver information to tax administrations as well as the information exchange between the countries. CRS contains the Competent Authority Model Agreement on Automatic Exchange of Financial Account Information which is the legal basis for the exchange of information with third countries, OECD commentaries to the model agreement and common reporting standard as well as the format for automatic exchange and the standards for confidentiality and personal data protection.

In order to endure the implementation of the CRS by all the signatory countries (wealthy and poor), the OECD has, in co-operation with G20 and the Global Forum, ensured the tools and the guidelines for proper implementation of the CRS by all the signatories. Thus, the Common Transmission System has been accepted (CTS). The main characteristic of CTS is data security, and the latest encryption standards are used for each transaction in CTS. CTS ensures access for the developing countries which have committed to apply CRS.

5.2 Security: Encryption and alternative methods

Information exchanged either on CD ROMs or via CCN or CTS should be transmitted in a secure manner and be encrypted. As regards security, it should be noted that besides IT security, every country must have clearly prescribed internal rules and procedures of handling information which is exchanged and that OECD regularly performs Peer Review Reports.

6. Importance of feedback from the 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. Feedback may also be useful to tax administrations for justifying resources for exchange of information. Feedback includes comments on the accessibility, accuracy, and completeness of the data received as well as comments on the percentage of records that have been matched, the usefulness of the data etc.

EXAMPLE OF AUTOMATIC EXCHANGE OF INFORMATION

The competent authority of country Y will, normally, receive a protected CD-ROM from the competent authority of country X with information relating to interest and dividends the residents of Y received from X in the course of the last year.

The competent authority of country Y will decrypt the CD-ROM and use the information received from the competent authority of country X in a manner that they will pair the received information with the tax returns relating to the concerned tax year in order to determine whether the foreign income was declared or not.

EXCHANGE OF INFORMATION IN THE REPUBLIC OF CROATIA

Exchange of information between the Republic of Croatia and other countries takes place under bilateral and multilateral agreements and EU directives. Information is exchanged under relevant international conventions, on request, spontaneously and automatically, depending on a particular convention.

The overview of certain legal instruments and international conventions and EU directives:

AGREEMENTS ON AVOIDING DOUBLE TAXATION

The independent and sovereign Republic of Croatia, as of 1 January 2018, applies a total of 62 agreements on avoiding double taxation. According to the method of their implementation into the Croatian legal system, we can distinguish between a smaller portion of agreements that have been in force since the time of the Socialist Federal Republic of Yugoslavia (Finland, Norway and Sweden) and a larger portion of those whose terms were negotiated in time of the creation of the independent Croatian state, and the agreements in relation to the newly-established countries in accordance with the succession rules contained in the Vienna Convention on the Law of Treaties (Montenegro).

Most of agreements on avoiding double taxation in force in Croatia will be amended to a certain degree by entering into force of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI), however, the said Multilateral Convention will not lead to an amendment of Article 26.

The exchange of information in double taxation agreements is prescribed in Article "Exchange of Information" which is based on Article 26 of the OECD Model Tax Convention. The said Article 26 of the OECD Model Convention has evolved and changed, therefore, the particular agreements between the Republic of Croatia and other countries contain the version of the Article which was in force in time of their conclusion. The previous versions prescribe the exchange of information only in relation to the taxes under the scope of the agreements, while the recent versions prescribe the exchange of information in relation to other taxes as well. Also, the recent versions expand on the scope of state authorities to which the competent authority may deliver the received information and the reasons for the exchange. Recent agreements prescribe that the information may not be withheld just because there is no domestic interest for the said information and because they are held by the bank or similar financial institution.

In accordance with the double taxation agreements, the Republic of Croatia exchanges information on request or spontaneously. There is also legal basis for the automatic exchange of information in the agreements, but it would be necessary to conclude additional agreements between competent authorities, which the Republic of Croatia so far hasn't concluded.

As evident from the Table 1, the Republic of Croatia concluded double taxation agreements with 13 countries (Armenia, Azerbaijan, Check Republic, Georgia, India, Iceland, Kosovo, Luxembourg, Portugal, San Marino, Spain, Turkmenistan and UK) and applies the new version of Article 26 with those countries (after 2005), and with others, applies the old version of Article 26.

CONVENTION

The Convention on Mutual Administrative Assistance in Tax Matters as amended by the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters was the result of cooperation between the Council of Europe and OECD and has been opened for signature as of 25 January 1988. In 2010, it was

amended by the 2010 Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters which has been opened for signature as of 27 May 2010.

The Convention is useful:

- When there is no applicable international agreement in the Republic of Croatia to serve as a basis for the exchange of tax information, and it opens the possibility to exchange tax information with, for example, Argentina, Japan, Mexico, USA;
- In all other cases – according to the scope of tax information that can be requested, it is very useful as regards those countries that the Republic of Croatia has an agreement on avoiding double taxation in force because they cover income and profit taxes, while the Convention covers income, profit, assets, contributions, inheritance and gifts taxes, real-estate taxes, value added taxes, excise duties, taxes for the use and ownership of motor vehicles;
- As a legal basis for the conclusion of other international treaties and competent authority treaties.

In addition to the exchange of tax information, possibilities of simultaneous tax examinations (controls) are provided for, as well as tax audit abroad and cooperation in tax collection. The Convention governs, *inter alia*, the exchange of information on request, spontaneous exchange of information and represents the basis for the automatic exchange of information which the countries must agree upon in advance.

The Republic of Croatia is a signatory party of the Convention and made reservations as regards certain types of taxes.

FATCA

Agreement between the Government of the Republic of Croatia and the Government of the United States of America to Improve International Tax Compliance and to Implement FACTA is a bilateral international agreement whose legal basis is in the Convention (excluding the Protocol). It governs the automatic exchange of information regarding accounts held by resident of one country and maintained by financial institutions of the other one. The purpose of the Agreement is to identify and prevent tax evasion and to improve international tax compliance through mutual assistance in tax matters based on effective infrastructure for the automatic exchange of information.

The first automatic exchange of information with the US was in 2017 and in it concerned the account balances from 2014 forward.

EU DIRECTIVES

Council Directive 2011/16/EU on administrative cooperation in the field of taxation is the basis for the exchange of information between the EU Member States as regards direct taxation. The Directive covers the exchange of information on request, spontaneous exchange of information as well as other forms of administrative cooperation. The said Directive has been amended by many directives of later dates which amended the provisions on automatic exchange of information. Therefore, as regards the initial automatic exchange of information on five types of income (director's fees, income from employment, income from immovable property, pensions and life insurance products), exchange of information on financial accounts has been established, on advance cross-border rulings and advance pricing arrangements and country-by-country reports as regards associated entities.

EU REGULATIONS

Exchange of information and cooperation in the field of VAT is governed by Council Regulation 904/2010.

COMPETENT AUTHORITY AGREEMENTS

Automatic exchange of information on financial accounts with non-EU countries takes place under Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (CRS), and exchange of country-by-country reports under the Multilateral Agreement on the Exchange of Country-by-Country Reports (CbC Reporting). The said Agreements have no nature of an international agreement, and they have the international legal basis in the Convention.

LOCAL LEGISLATION

EU directives were implemented into the Croatian legal system within the Act on Administrative Cooperation in Tax Matters (Official Gazette, 115/16, 130/17). The said Act contains the provisions detailing the provisions regarding FACTA and Multilateral agreements.

Agreements on avoiding double taxation and the Convention are implemented in the Croatian legal system in accordance with the Act on Concluding and Executing International Agreements (Official Gazette, 28/96) in the form of the act on the ratification of the relevant agreement or the Convention.

The EU Regulation is applicable directly without the additional implementation into the Croatian legal system.

Table 1: Agreements on avoiding double taxation between the Republic of Croatia and other countries (as of 1 January 2018) according to the Article 26 of the OECD Model Convention

	Country	Previous Article 26 (Prior to 2005)	New Article 26 (After 2005)	Year of Agreement application	Number of Official Gazette - International agreements
1.	Albania	x		01/01/1998	13/95
2.	Armenia		x	01/01/2011	13/09
3.	Austria	x		01/01/2002	3/01
4.	Azerbaijan		x	01/01/2014	2/13
5.	Belgium	x		01/01/2005	6/03
6.	Belarus	x		01/01/2005	3/04
7.	Bosnia and Herzegovina	x		01/01/2006	2/05
8.	Bulgaria	x		01/01/1999	3/98
9.	Montenegro	x		03/06/2006	3/03
10.	Czech Republic Czech Republic –: Protocol		x	01/01/2002 01/01/2013	8/99, 6/12
11.	Chile	x		01/01/2005	10/04
12.	Denmark	x		01/01/2010	12/08
13.	Estonia	x		01/01/2005	8/03
14.	Finland	x		08/10/1991	53/91
15.	France	x		01/01/2006	7/04
16.	Greece	x		01/01/1999	18/97
17.	Georgia		x	01/01/2014	12/13
18.	India		x	01/01/2016	2/15

19.	Indonesia	x		01/01/2013	13/09
20.	Iran	x		01/01/2009	10/04
21.	Ireland	x		01/01/2004	16/03
22.	Iceland		x	01/01/2012	3/11
23.	Italy	x		01/01/2010	10/00
24.	Israel	x		01/01/2008	11/06
25.	Jordan	x		01/01/2007	11/05
26.	JAR	x		01/01/1998	17/97
27.	Canada	x		01/01/2000	12/99
28.	Qatar	x		01/01/2010	1/09
29.	China	x		01/01/2002	3/01
30.	Korea	x		01/01/2007	7/06, 1/07
31.	Kosovo		x	01/01/2018	13/17
32.	Kuwait	x		01/01/2004	15/02
33.	Latvia	x		01/01/2002	3/01
34.	Lithuania	x		01/01/2002	3/01
35.	Luxembourg		x	01/01/2017	6/14
36.	Hungary	x		01/01/1999	11/97
37.	Malta	x		01/01/2000	7/99
38.	Macedonia	x		01/01/1997	13/95
39.	Morocco	x		01/01/2013	1/09, 4/09
40.	Malaysia	x		01/01/2005	6/03
41.	Mauritius	x		01/01/2004	10/03
42.	Moldova	x		01/01/2007	3/06
43.	The Netherlands	x		01/01/2002	3/01
44.	Germany	x		01/01/2007	9/06
45.	Norway	x		08/10/1991	53/91
46.	Oman	x		01/01/2012	9/10
47.	Poland	x		01/01/1997	13/95
48.	Portugal		x	01/01/2016	4/15
49.	Romania	x		01/01/1997	11/96
50.	Russia	x		01/01/1998	11/96
51.	San Marino, San Marino – Protocol		x	01/01/2006, 01/01/2015	10/05, 3/14
52.	Syria	x		01/01/2010	12/08
53.	Slovakia	x		01/01/1997	11/96
54.	Slovenia	x		01/01/2006	8/05
55.	Serbia	x		01/01/2005	3/03
56.	Spain		x	01/01/2007	3/06
57.	Sweden	x		08/10/1991	53/91
58.	Switzerland	x		01/01/2000	8/99
59.	Turkmenistan		x	01/01/2016	3/15
60.	Turkey	x		01/01/2001	5/99
61.	Ukraine	x		01/01/2002	11/97
62.	The United Kingdom		x	01/01/2016	5/15

