Manual on Exchange of Information

सत्यमेव जयते

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
CENTRAL BOARD OF DIRECT TAXES
FOREIGN TAX & TAX RESEARCH DIVISION

MAY, 2015

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भारत सरकार
GOVERNMENT OF INDIA
वित्त मंत्रालय / राजस्व विभाग
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FOREWORD

The CBDT had, in 2013, brought out a Manual to provide guidance to field officers on the scope and manner of exchange of tax-related information under the various tax treaties and agreements that India has entered into. Since then, there has been an increasing global consensus on the necessity of cooperation amongst countries to tackle the problem of offshore tax evasion and avoidance. Currently through our treaty network we have exchange of information relationship with more than 130 countries/jurisdictions, including well-known offshore financial centers. This extensive treaty reach, coupled with the existing international environment, presents a unique opportunity to our officers to seek and obtain information/evidence located outside India that may be necessary for tackling the problem of offshore tax evasion and avoidance as also unearthing of undisclosed money stashed abroad.

This Manual on Exchange of Information is a comprehensively revised and carefully put together document that provides detailed guidelines for framing requests for information under the provisions of tax treaties, as also guidelines for providing clarifications and feedback that would facilitate the receipt of information/evidence. Other forms of administrative assistance possible under the tax treaties, as well as assistance that can be sought under other legal instruments have been described in detail. Recent international developments in transparency including the global adoption of the new standards on automatic exchange of information have also been summarized in the Manual to give an overview of the future potential of our ability to receive and utilize information regarding Indians having financial accounts in offshore financial centers. The confidentiality that must permeate all forms of assistance obtained and provided under the treaties has been clearly brought out.

I hope that the information provided in this Manual will be useful to the officers of the Income Tax Department not only today but also in the foreseeable future.

(Anita Kapur)
Chairperson, CBDT

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LIST OF ABBREVIATIONS

AEOI	Automatic Exchange of Information
BEPS	Base Erosion and Profit Shifting
CAA	Competent Authority Agreement
CbC	Country by Country Reporting
CBDT	Central Board of Direct Taxes
CCIT/DGIT	Principal Chief Commissioner of Income Tax/Principal Director General of Income Tax/Chief Commissioner of Income Tax/Director General of Income Tax
CISO	Chief Information Security Officer
CIT/DIT	Principal Commissioner of Income Tax/Principal Director of Income Tax/Commissioner of Income Tax/Director of Income Tax
CRS	Common Reporting Standard
DTAA	Double Taxation Avoidance Agreement
DRP	Dispute Resolution Panel
EOI	Exchange of Information
FATCA	Foreign Account Tax Compliance Act
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FIU-IND	Financial Intelligence Unit of India
FTA	Forum on Tax Administration
FT&TR	Foreign Tax & Tax Research
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
I&CI	Intelligence & Criminal Intelligence
Income-tax Act	Income-tax Act, 1961
ISC	Information Security Committee
ISPP	Information Security Policies and Procedures
JITSIC	Joint International Tax Shelter Information Centre

KYC/AML	Know Your Customer/Anti Money Laundering
MCAA	Multilateral Competent Authority Agreement
Multilateral Convention	Multilateral Convention on Mutual Administrative Assistance in Tax Matters
MHA	Ministry of Home Affairs
MLAT	Mutual Legal Assistance Treaty
OECD	Organization for Economic Cooperation and Development
PRG	Peer Review Group
SAARC Agreement	SAARC Limited Multilateral Agreement
TIEA	Tax Information Exchange Agreement
TPO	Transfer Pricing Officer
TRO	Tax Recovery Officer
TPL	Tax Policy and Legislation

CHAPTER – I
INTRODUCTION

1.1 Tackling offshore tax evasion and tax avoidance and unearthing of unaccounted money stashed abroad have become a pressing concern for governments all around the world. The information and/or evidence of such tax avoidance/evasion and the underlying criminal activity is often located outside the territorial jurisdiction and thus this menace can be addressed only through bilateral and multilateral cooperation amongst tax and other authorities. The Government of India has played an important role in international forums in developing international consensus for such cooperation as per globally accepted norms and continuous monitoring of their adoption by every jurisdiction including offshore financial centres.

1.2 Initially, the international norms were to provide assistance to other countries only on satisfaction of the norms of "dual criminality", i.e., in cases of drug trafficking, corruption, terrorist financing etc. which are criminal activities in both countries. However, at present the cooperation has extended to cases of tax evasion and avoidance and countries are obliged to exchange information requested as per provisions of tax treaties/agreements. The third stage of cooperation would be automatic exchange of financial account information without countries having to make requests for the same, thereby enabling the receiving country to verify whether such accounts indicate tax evaded money and to take necessary action.#

1.3 Despite a global consensus on coordinated action to tackle the problem of tax evasion and tax avoidance, foreign governments, particularly offshore financial centres, are most unlikely to provide information on the basis of just letters or on a plea regarding their moral obligations to prevent tax evasion. Among other factors, parting with information without a legal basis may be challenged in their own Courts and may be against their own public policy or public opinion of their citizens. Such information about money and assets hidden abroad and about undisclosed transactions entered into overseas, can be obtained only through "legal instruments" or treaties entered into between India and those countries.

1.4 Tax Treaties, which include, Double Taxation Avoidance Agreements (DTAAs), Tax Information Exchange Agreements (TIEAs), Multilateral Convention on Mutual Administrative

Adapted from the speech of Hon'ble Finance Minister in the Lok Sabha replying on the debate on "Black Money" on 19.11.2014

Assistance in Tax Matters (Multilateral Convention) and SAARC Limited Multilateral Agreement (SAARC Agreement), are the legal instruments which provide a legal obligation on a reciprocal basis for providing various forms of administrative assistance, including Exchange of Information, Assistance in Collection of Taxes, Tax Examination Abroad, Joint Audit, Service of Documents etc. Through one or more of these tax treaties, India has exchange of information relationships with more than 130 countries/jurisdictions including well known offshore financial centres and these jurisdictions are legally committed to provide administrative assistance and are actually providing the same in cases where requests are made.

1.5 Information and other forms of assistance can also be requested through Mutual Legal Assistance Treaties (MLATs) through Ministry of Home Affairs, particularly with countries/jurisdictions with which there is no tax treaty. Information/evidence obtained through MLATs can also supplement the information received under tax treaties when a criminal complaint is made for tax evasion on the basis of information received under tax treaties. Information can also be obtained through Egmont Group of Financial Intelligence Units (FIUs) which may be further supplemented by making further requests under tax treaties/MLATs.

1.6 Despite the existence of legal instruments for administrative assistance and the willingness of our treaty partners to provide information, these provisions are still underutilized, largely because officers of the tax department are not fully aware of the provisions and need guidance for framing effective requests for information under appropriate legal instruments. The officers may also not be fully aware of the recent international developments in transparency including the global adoption of the new standards on automatic exchange of information, which will bring about a sea-change in our ability to receive and utilize information regarding Indians having financial accounts in offshore financial centres. This revised edition of the Manual on Exchange of Information seeks to bridge that gap with the hope that in all appropriate cases request for administrative assistance will be made to our treaty partners with a view to tackle the problem of offshore tax evasion and avoidance.

1.7 At the same time, treaty obligations are reciprocal and accordingly wherever a request for assistance is received from a treaty partner, the same must be given highest priority and all efforts should be made to provide high quality and timely response. The Manual also contains instructions for providing administrative assistance to our treaty partners which should be followed scrupulously by the officers concerned and should be strictly monitored by senior officers not only to fulfil our treaty obligations, but also for giving a moral authority to the Government of India to demand similar assistance from others, including offshore financial centres.

1.8 The content of this Manual on Exchange of Information has been organized in the following manner. After Introduction in the present Chapter, the legislative framework of Exchange of Information (EOI) and other forms of Administrative Assistance under India's DTAAs and TIEAs have been explained in Chapter-II. Chapter-III provides the guidelines for making specific requests for Exchange of Information under the tax treaties. Chapter-IV provides

the guidelines to be followed in case a request is received from our treaty partners. Chapter-V provides the guidelines for other forms of administrative assistance, including assistance in collection of taxes, spontaneous exchange of information, tax examination abroad, simultaneous examination, joint audits, service of documents and automatic exchange of information under the non-standard format. Chapter-VI briefly explains the procedure for making requests under other legal instruments such as MLATs and Egmont Group of FIUs. In Chapter-VII, the necessity to maintain strict confidentiality in all forms of Exchange of Information is explained. In Chapter-VIII, the related international developments in Exchange of Information including Foreign Accounts Tax Compliance Act (FATCA) of USA, the new global standards on automatic exchange of financial accounts information i.e. Common Reporting Standard (CRS) on Automatic Exchange of Information, work of Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum), Exchange of Information under the Project on Base Erosion and Profit Shifting (BEPS), Joint International Tax Shelter Information & Collaboration (JITSIC), as also the tax issues discussed in G20 meetings have been summarized. The Manual also contains important Case Laws on EOI, Glossary of Terms used and a summary of relevant information available on the Internet.

CHAPTER–II

ADMINISTRATIVE ASSISTANCE UNDER TAX TREATIES

2.1 Introduction

Tax treaties are the legal instruments obliging the contracting states to provide wide range of administrative assistance, including exchange of information, assistance in collection of taxes, tax examination abroad etc. These tax treaties include the following:

- **Double Taxation Avoidance Agreements (DTAAs):** The primary purpose of the DTAAs is allocation of taxing rights between the treaty partners and the avoidance of double taxation. However, DTAAs also have as an objective, the prevention of fiscal evasion and contain provisions for providing administrative assistance, including exchange of information for assistance in implementation of the DTAA and in administration or enforcement of domestic tax laws of the Contracting States. As on 1st May, 2015, India has DTAAs with 94 countries. DTAAs with seven more countries are being negotiated.
- **Tax Information Exchange Agreements (TIEAs):** The TIEAs have provisions only for exchange of information and are usually entered into with those countries/jurisdictions (such as offshore financial centres) where it may not be feasible to expediently enter into a comprehensive DTAA. As on 1st May, 2015, India has entered into 16 TIEAs. One TIEA has been signed, but is yet to come into force, while negotiations for 29 TIEAs are going on.
- **Multilateral Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention)** is a multilateral instrument which provides for a wide range of administrative assistance including exchange of information, assistance in collection of taxes, tax examination abroad, etc. It has been in force in India since 1st June, 2012. As on 1st May, 2015, the Multilateral Convention has been signed by 85 countries/jurisdictions and 64 countries/jurisdictions have deposited the instrument of ratification
- **SAARC Limited Multilateral: Agreement (SAARC Agreement)** is a multilateral agreement amongst SAARC countries and has been in force since 1st April, 2011 and has provisions for a wide range of administrative assistance.

Annexure-A lists India's tax treaties with other countries/jurisdictions, including the tax treaties under negotiation. With many countries/jurisdictions, there is more than one tax treaty. Administrative assistance can be requested under the provisions of the appropriate treaty, depending on the purpose of assistance. For instance, with a country "X", assistance in collection

of taxes may not be possible under DTAA, but may be available under the Multilateral Convention making it an appropriate choice of tax treaty for such requests.

2.2 Exchange of Information under Tax Treaties

2.2.1 The tax treaties oblige the Contracting States to exchange information for the purposes of implementation of the treaty or for administration or enforcement of domestic tax laws. Although there are some differences in the language of individual treaties as also between the DTAAs, TIEAs etc., the principles for exchanging information under all these treaties are essentially the same. The "international standards" in this regard have been developed through consensus in international bodies including OECD, United Nations and Global Forum and are best represented by Article 26 of the OECD Model Tax Convention and its Commentary, as updated in 2014, which is at **Annexure-B**.

2.2.2 The principles contained in Article 26 of the OECD Model Tax Convention are summarized below:

(a) The "competent authorities" of the Contracting States are obliged to exchange information. The term "Competent Authority" is defined in the tax treaties as the Minister of Finance/Ministry of Finance or a person authorized by it. In India, JS (FT&TR-I) performs the role of competent authority for countries in North America (including Caribbean) and Europe, while JS (FT&TR-II) performs the role of competent authority for the rest of the world.

(b) The information requested should be "foreseeably relevant" for

(i) carrying out the provisions of the DTAA or

(ii) administration and enforcement of the domestic laws concerning taxes of every kind and description imposed by the Contracting State or their political sub-divisions and local authorities.

In some of the DTAAs, in place of the words "foreseeably relevant", the word "necessary" is used. However, it is internationally accepted that these two terms broadly convey the same meaning.

(c) Exchange of information is not restricted by Article 1 of the OECD Model Convention. Article 1 states that the DTAA is applicable to persons who are residents of one or both of the Contracting States. Thus, as per Article 26, information about residents of third countries can be exchanged. Further, other information related to tax administration and compliance improvements, for example, risk analysis techniques or tax avoidance or evasion schemes, can also be exchanged under the provisions of Article 26 of the DTAA.

(d) Exchange of information is also not restricted by Article 2 concerning taxes covered. Thus, information about indirect taxes, taxes levied by State Governments etc. can also be exchanged under DTAAs, if so agreed to by the Contracting States.

(e) Any information received under the provisions of tax treaties shall be treated as secret in the

same manner as information obtained under the domestic laws of that State. In India, section 138, read with section 280 of the Income-tax Act, governs the disclosure of taxpayer information obtained under domestic law and the same principles would govern information received under treaties also.

(f) In addition, the information received under the tax treaties shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution or deciding appeals in relation to taxes or to the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

(g) The information received by a Contracting State may be used for other (non-tax) purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

(h) The Contracting States are not obliged to carry out administrative measures at variance with laws and administrative practice of either contracting state, to supply information which is not obtainable under the laws or in the normal course of the administration of either contracting state or to supply information which discloses any commercial secret or which would be contrary to public policy.

(i) If information is requested by a Contracting State, the other Contracting State is obliged to use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes.

(j) The Contracting States are obliged to provide information held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity including ownership interests.

2.2.3 The TIEAs entered into by India are modelled on the basis of 2002 Model Agreement on Exchange of Information, the Model TIEA, a copy of bilateral version of which is at **Annexure-C**. The principles for exchange of information, including the standards of foreseeable relevance and confidentiality of information exchanged under TIEAs are generally similar to those under the DTAAs.

2.2.4 The text of the Multilateral Convention and its Commentary is at **Annexure-D**. Articles 4 and 5 of the Multilateral Convention oblige the signatories of the Convention to exchange information which is foreseeably relevant for the administration and enforcement of domestic laws concerning taxes. The principles for exchange of information including confidentiality provisions in the Multilateral Convention are generally similar to those underlying Article 26 of the OECD Model Tax Convention.

2.2.5 The text of SAARC Limited Multilateral Agreement is at **Annexure-E**. The principles for exchange of information and confidentiality of information exchanged are also generally similar in this case.

2.3 Assistance in Collection of Taxes under Tax Treaties

2.3.1 Tax authorities have enough powers to enforce the collection of taxes owed by a taxpayer. However, due to jurisdictional limitation, these powers cannot be exercised when the taxpayer has left the jurisdiction without paying the tax dues or has no assets within the jurisdiction that may serve to recover the debts. The provisions for Assistance in Collection of Taxes provide the legal basis for rendering assistance by one Contracting State in the collection of tax owed to the other Contracting State.

2.3.2 The provisions for Assistance in Collection of Taxes are present in 48 out of 94 DTAAs and in 3 out of 16 TIEAs which are in force in India. The Multilateral Convention and the SAARC Agreement also have provisions for assistance in collection of taxes. However, in the Multilateral Convention, the signatories can place a reservation against providing such assistance and several countries/jurisdictions have put in such reservation. **Annexure-F** lists the countries/jurisdictions with whom India has an agreement under one or the other treaty for assistance in collection of taxes.

2.3.3 Although there may be differences in language used in the different treaties, the provisions for assistance in collection of taxes are generally based on Article 27 of the OECD Model Tax Convention, a copy of which, alongwith its Commentary is at **Annexure-G**. The main principles are summarized below:

- The Contracting States are obliged to render assistance in collection of "revenue claims" which are amounts owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities. Thus, the scope of cooperation is very wide.
- The assistance is extended to interest, administrative penalties and costs of collection or conservancy related to such amounts.
- The "revenue claim" shall be collected by the requested State in accordance with the provisions of its laws applicable to enforcement and collection of its own taxes as if the revenue claim is of its own. The "revenue claim" should be enforceable under the law of the requesting State and it should be owed by a person who, at that time, cannot, under the law of that state, prevent its collection.
- Conservancy measures in accordance with provisions of its own law should also be taken by the requested State if a request is made in this regard as if the revenue claim is its own even if the revenue claim is not enforceable in the requesting State or is owed by a person who has a right to prevent its collection. However, the amount of claim should be quantified and evidenced by a statutory order or notice.
- The assistance is not restricted by Articles 1 and 2 of the Model DTAA and thus extends to taxes owed by residents of third countries and also in respect of taxes not covered by the DTAA, i.e., indirect taxes and taxes levied by State Governments.

- The assistance is provided only when the requesting State has taken reasonable measures of collection or conservancy, as the case maybe, under its own laws or administrative practice.

2.3.4 In some of India's DTAAs, an additional paragraph has been added, referring to cases where interim or provisional measures have been taken by one of the Contracting State to freeze the assets even before the actual raising of tax claim against a person. In DTAAs, where this provision is in place, if an interim or provisional measure under Indian domestic laws, for instance provisional attachment under section 281B of the Income-tax Act, is taken, a request can be made to our treaty partner to take similar measures in accordance with domestic laws of that other State. Article 12 of the Multilateral Convention also allows for making requests for taking interim or provisional measures in such circumstances. Here it may be noted that these requests may be resorted to only if facts and circumstances exist that justify such a request, such as a reasonable probability of the taxpayer alienating its assets (from which the recovery of a revenue claim can be possibly made in consequence of a request for assistance in collection of taxes) in the treaty partner country.

2.4 Spontaneous Exchange of Information

2.4.1 Under the DTAAs, information may also be exchanged on a spontaneous basis without making a specific request by the requesting country. This exchange may be made for example in cases where a Contracting State has acquired through certain investigations, information which it supposes to be of interest to the other State *[refer Para 9(c) of the Commentary to Article 26 of the OECD Model Tax Convention]*.

2.4.2 The OECD Commentary on the Model TIEA, however, states that the parties are not obliged to exchange information spontaneously and thus spontaneous exchange normally does not take place under TIEAs.

2.4.3 The Multilateral Convention has a specific Article on "Spontaneous Exchange of Information" (Article 7). This Article provides that a Party shall, without prior request, forward to another Party information of which it has knowledge in the following circumstances:

- the first-mentioned Party has grounds for supposing that there may be a loss of tax in the other Party;
- a person liable to tax obtains a reduction in or an exemption from tax in the first-mentioned Party which would give rise to an increase in tax or to liability to tax in the other Party;
- business dealings between a person liable to tax in a Party and a person liable to tax in another Party are conducted through one or more countries in such a way that a saving in tax may result in one or the other Party or in both;
- a Party has grounds for supposing that a saving of tax may result from artificial transfer of profits between entities belonging to the same groups of enterprises;
- information forwarded to the first-mentioned Party by the other Party has enabled

information to be obtained which may be relevant in assessing liability to tax in the latter Party.

The Multilateral Convention also provides that each Party shall take such measures and implement such procedures as are necessary to ensure that information described above will be made available for transmission to another Party.

2.5 Simultaneous Examination, Tax Examination Abroad and Industry-wide Exchange of Information

2.5.1 Para 9.1 of the Commentary on Article 26 of the OECD Model Tax Convention states that Contracting States may use other techniques to obtain information which may be relevant to both Contracting States such as simultaneous examinations, tax examinations abroad and industry-wide exchange of information. These forms of administrative assistance are described as under:

(a) **simultaneous examination** is an arrangement between two or more parties to examine simultaneously each in its own territory, the tax affairs of taxpayer(s) in which they have a common or related interest, with a view of exchanging any relevant information which they so obtain;

(b) **tax examination abroad** allows for the possibility to obtain information through the presence of representatives of the competent authority of the requesting Contracting State. To the extent allowed by its domestic law, a Contracting State may permit authorised representatives of the other Contracting State to enter the first Contracting State to interview individuals or examine a person's books and records — or to be present at such interviews or examinations carried out by the tax authorities of the first Contracting State—in accordance with procedures mutually agreed upon by the competent authorities. Such a request might arise, for example, where the taxpayer in a Contracting State is permitted to keep records in the other Contracting State. This type of assistance is granted on a reciprocal basis. Countries' laws and practices differ as to the scope of rights granted to foreign tax officials. For instance, there are States where a foreign tax official will be prevented from any active participation in an investigation or examination on the territory of a country. There are also States where such participation is only possible with the taxpayer's consent;

(c) **industry-wide exchange of information** is the exchange of tax information especially concerning a whole economic sector (e.g. the oil or pharmaceutical industry, the banking sector, etc.) and not taxpayers in particular.

2.5.2 Many of India's DTAAs, as also all the TIEAs, have specific provisions for Tax Examination Abroad under which one country/jurisdiction may allow representatives of the competent authority of the other country/jurisdiction to enter its territory to interview individuals and examine records with the written consent of the persons concerned. Further, at the request of the competent authority of one of the countries/jurisdictions, the competent authority of the other may allow representatives of the first-mentioned competent authority to be present at the appropriate part of a tax examination in the other country/jurisdiction.

2.5.3 Article 8 of the Multilateral Convention provides for simultaneous tax examinations while Article 9 of the Multilateral Convention provides for tax examination abroad and thus these forms of administrative assistance are specifically covered under the Convention.

2.6 Joint Audits

2.6.1 Under the provisions of tax treaties, **Joint Audits** are also possible which can be described as two or more countries joining to form a single audit team to examine an issues or transactions concerning one or more related taxable persons (legal entities or individuals) having cross-border business activities or cross-border transactions involving related affiliated companies in the participating countries, and in which the countries have a common or complementary interest. In such cases, the taxpayer makes joint presentations and shares information with the countries jointly, and the investigating team includes Competent Authority representatives from each country.

2.6.2 The legal framework for conducting joint audits are the DTAAs and Multilateral Convention and the procedure for carrying out the same is described in the 2010 report on "Joint Audit" by the Forum on Tax Administration of the OECD.

2.7 Service of Documents

2.7.1 Under the Multilateral Convention and the SAARC Multilateral Agreement, the Contracting States/Parties have an obligation for "service of documents" including those relating to judicial decisions, which emanate from the applicant State and which relate to a tax covered by this Convention/Agreement. The aim of these provisions is to ensure, as far as possible, that documents such as notices of assessment or tax demand actually reach the taxpayer, in order to avoid enforcement steps being taken against a taxpayer who is genuinely unaware of the tax proceedings or claims against him.

2.7.2 The Multilateral Convention and its Commentary, however, make it clear that notices of assessment, tax demands or other documents may, in the first instance, be sent to the taxpayer abroad by post or may be served on its representative in the jurisdiction. The administrative assistance for "service of documents" should be sought only in cases where a country regards the sending by post of official documents by another country to its residents as an infringement of its sovereignty or if there is genuine concern that the documents will not be delivered by post or could not be served on the authorized representative.

2.7.3 There are no specific provisions for service of documents under the DTAAs and TIEAs.

2.8 Automatic Exchange of Information

2.8.1 Automatic Exchange of Information (AEOI) is the systematic and periodic collection and transmission of "bulk" taxpayer information by the source country to the country of residence of the taxpayer, without the latter country having to make a request for the same. The exchange of information by way of AEOI is permitted under the provisions of DTAAs (unless specifically prohibited) and under the Multilateral Convention.

2.8.2 Many countries, including India, have been exchanging information automatically under the DTAAs and Multilateral Convention with their treaty partners. However, as such exchange of information was not obligatory; there was no uniformity in the nature and type of information exchanged and further, there were no standards on the periodicity of exchange or on the technical solutions to be utilised for collection and transmission of information. Thus, the information exchanged automatically, was often of limited utility to the receiving country.

2.8.3 There is also a growing international consensus that the problem of offshore tax evasion and avoidance can be addressed only if relevant information is exchanged on a bulk basis freely and automatically.

2.8.4 To address these issues, a single uniform and global standard, known as "Common Reporting Standard for Automatic Exchange of Information (CRS on AEOI) has been developed by G20 and OECD countries. The CRS on AEOI has been endorsed by the G20 is countries, including India, who have also given a call for its global implementation on a fully reciprocal basis by 2017 or 2018.

2.8.5 The CRS on AEOI requires the financial institutions of the "source" jurisdiction to collect and provide information to their tax authorities about taxpayers "resident" in other jurisdictions, for transmission of the information on a bulk basis to the tax authorities of those resident jurisdictions. The CRS on AEOI have been designed with a broad scope across the following three dimensions to ensure that meaningful information is exchanged automatically:

(a) The financial information to be reported includes all types of investment income (including interest, dividends, income from certain insurance contracts and other similar types of income) and also includes account balances and sales proceeds from financial assets.

(b) The financial institutions that are required to report under the CRS do not only include banks and custodians but also other financial institutions such as certain brokers, collective investment vehicles and insurance companies.

(c) The accounts that need to be reported include accounts held by individuals and entities, including trusts and foundations, and the standard includes a requirement to look through passive entities, such as shell companies and trusts, to report on the individuals that ultimately control these entities.

2.8.6 The tax authorities of the recipient country would be able to match the information so received with the information available in its databases, e.g., information submitted by taxpayers in their tax returns about the financial assets held abroad either in their own name or as beneficial owners and non-compliance will be identified.

2.8.7 The CRS on AEOI, when fully implemented on a global basis, would enable India to receive information from every country in the world, including from offshore financial centres and tax havens and would be the key to prevent international tax evasion and avoidance.

2.9 Summary of Administrative Assistance under different Tax Treaties

The possible forms of administrative assistance under the different kinds of tax treaties are summarized below:

Types of administrative assistance expressly mentioned or permitted under the treaties	DTAAs based on OECD/UN Model Tax Convention	OECD Model TIEA	Multilateral Convention	SAARC Multilateral Agreement
Exchange on Request	Yes	Yes	Yes	Yes
Assistance in Collection of Taxes	Yes	No	Yes	Yes
Spontaneous Exchange of Information	Yes	No	Yes	Yes
Simultaneous Examination	Yes	No	Yes	Yes
Tax Examination Abroad	Yes	Yes	Yes	Yes
Industry Wide Exchange of Information	Yes	No	Yes	Yes
Joint Audits	Yes	No	Yes	Yes
Service of Documents	No	No	Yes	Yes
Automatic Exchange of Information	Yes	No	Yes	Yes

CHAPTER-III

GUIDELINES FOR MAKING REQUEST FOR EXCHANGE OF INFORMATION

3.1 Introduction and Legal Basis

3.1.1 Under the provisions of the tax treaties, the Competent Authorities are obliged to exchange information which is foreseeably relevant:

(a) for carrying out the provisions of the Tax Convention (in case of DTAAs) or

(b) for the administration and enforcement of domestic laws concerning taxes imposed by the Contracting States (in case of DTAAs, TIEAs, Multilateral Convention and SAARC Multilateral Agreement).

3.1.2 The tax authorities during inquiry or investigation may require information which is available in a country/jurisdiction outside India, for instance in the following cases:

(a) Assessing Officer making an inquiry for the purpose of obtaining full information in respect of the assets, income or loss of any person.

(b) Officers of the Investigation Wing carrying on further inquiry or investigation on the basis of evidence found in a search and seizure operation.

(c) The Transfer Pricing Officer (TPO) seeking further information on the functions performed, assets utilised and risks assumed by the respective associated enterprises, for the purposes of determining the Arm's Length Price.

(d) Officers of the International Taxation Wing determining the correctness of the withholding taxes reported in Form 15CA as payable under section 195 of the Income-tax Act.

(e) Inquiry by Commissioner (Appeals) or Dispute Resolution Panel (DRP) either directly or through directions to the Assessing Officer, for the purposes of deciding appeals or objections.

3.1.3 Such inquiry/investigation may be necessary for carrying out the provisions of the DTAAs or for the administration and enforcement of the Income-tax Act, but may not be possible in normal course since the powers of Income-tax Authorities cannot be exercised beyond India's territorial jurisdiction. In such cases, the information/evidence can be gathered by making a request to foreign authorities under the provisions of tax treaties.

3.1.4 This request can be made through the Indian Competent Authority to the foreign Competent Authority under the provisions of the relevant tax treaty. The foreign Competent

Authority will be obliged to collect the information either directly or through the concerned tax and other authorities. The information so collected will then be transmitted back to the Indian Competent Authority and, in turn, forwarded to the income tax authorities concerned.

3.1.5 Since the facts relating to the inquiry/investigation are in the knowledge of the tax authorities, it is desirable that the request for information be drafted by them. With a view to assist the authorities in this and to ensure that the request contains all necessary particulars, a Proforma (**Form A – see Appendix)** for making the references has been devised, based on a template formulated by the OECD/Global Forum. The Proforma should be filled up by the Principal Commissioner of Income Tax/Principal Director of Income Tax/Commissioner of Income Tax/Director of Income Tax (hereinafter referred to as "CIT/DIT") concerned and forwarded to the Indian Competent Authority for onward transmission to the foreign Competent Authority.

3.1.6 As stated above, the tax treaties oblige information to be exchanged for the purposes of implementing the DTAA or for the administration and enforcement of the domestic tax law. These are discussed in more detail in the following paragraphs.

3.2 Exchange of Information for Carrying out Provisions of the DTAAs

3.2.1 In some of the old DTAAs, for example the DTAA between India and Switzerland before its revision with effect from 7th October, 2011, the administrative assistance by way of Exchange of Information, was limited to information required for carrying out the provisions of the treaty. It was not available for obtaining information in the course of assessment or investigation or for other purposes under the domestic tax law. While concerted efforts were made to amend such DTAAs to bring them in line with present international norms, a few DTAAs still have the old provisions pending such revision.

3.2.2 It is important to note, however, that administrative assistance for carrying out the provisions of the treaty would also be quite useful in many cases, particularly for the officers posted in the International Taxation Directorate and information can be requested from our treaty partners under the provisions of these old tax treaties also. The Commentary to Article 26 of the OECD Model Tax Convention provides the following illustrative examples where requests could be made under DTAAs for carrying out the provisions of the DTAAs:

(a) When applying Article 12, State A where the beneficiary is resident may ask State B where the payer is resident, for information concerning the amount of royalty transmitted and the tax withheld.

(b) Conversely, in order to grant the exemption or lower rate of withholding provided for in Article 12, State B asks State A whether the recipient of the amounts paid is in fact a resident of State A and the beneficial owner of the royalties.

(c) Information may be needed for making a proper allocation of taxable profits between associated enterprises or for adjustment of the profits shown in the accounts of a permanent establishment in one State and in the accounts of the head office in the other State (Articles 7, 9, 23 A and 23 B).

(d) Information may be needed for the purposes of applying Article 25 on Mutual Agreement Procedure.

(e) When applying Articles 15 and 23 A, State A, where the employee is resident, informs State B, where the employment is exercised for more than 183 days, of the amount exempted from taxation in State A.

3.2.3 Thus, useful information can be received even where the request is made on the grounds of implementing the provisions of the DTAA. For example, if interest or royalty is paid to a person in a country with which India has a DTAA laying down a lower rate of withholding and if the information received from that country under Exchange of Information demonstrates that the person is not the beneficial owner of the interest or royalty, the lower rate of withholding would not be applicable. The amount and rate of withholding applied by the Indian taxpayer and reported in Form 15CA can thus be checked by verifying the beneficial ownership utilising the provisions of the tax treaties.

3.2.4 These provisions can also be used in transfer pricing or for the purposes of examining the mismatch in the quantum or nature of payment made by a permanent establishment to its head office.

3.3 Exchange of Information for Administration and Enforcement of Domestic Laws

3.3.1 Introduction

In all the new or modified treaties since 2009 as also in the Multilateral Convention and SAARC Agreement, the administrative assistance by way of Exchange of Information is possible not only for carrying out the provisions of the treaties but also for administration and enforcement of domestic laws of the requesting Contracting State/Party. Possibility of exchange of information for the purposes of the administration and enforcement of domestic laws has significantly enhanced the level of administrative assistance which is possible under the tax treaties. Para 8 of the Commentary to Article 26 of the OECD Model Tax Convention (enclosed at **Annexure-B)** provides illustrative examples for making requests under the tax treaties for administration and enforcement of domestic laws.

3.3.2 Nature and Type of Information Available in Countries/Jurisdictions outside India that may be Requested

3.3.2.1 Substantial information would be available in a country/jurisdiction outside India, which may be of relevance to the tax authorities for carrying out the provisions of the DTAA or for the purposes of tackling tax evasion and avoidance in India. Under the international standards, countries/jurisdictions are required to compulsorily maintain identity and ownership information, accounting information and banking information. The nature and type of information that can be requested under the provisions of tax treaties, particularly for the purposes of assessment and investigation, can be broadly categorized as follows:

(a) Identity and Ownership Information in case of Legal Entities and Arrangements

- Name and address of the legal entities (such as companies and partnership) or arrangements (such as trusts) at the time of formation and all subsequent changes in name and address
- Documents demonstrating formation of the legal entity or arrangement and documents relating to subsequent changes of shareholders/partners
- Documents identifying bearer shares
- Adequate, accurate and up to date information on legal and beneficial owners and other stakeholders
- In case of legal ownership, information about persons in the ownership chain to the extent that information is held by the jurisdiction's authorities or is within the possession or control of persons within the jurisdiction's territorial jurisdiction.
- If the legal owner acts on behalf of any other person as a nominee or under a similar agreement, information about that other person
- Information about beneficial ownership as per FATF recommendations wherein the beneficial owner refers to the natural person(s) who ultimately owns or controls the legal entity or the legal arrangement and include the natural person on whose behalf a transaction is being conducted, including those persons who exercise ultimate effective control over the legal entity or arrangement.
- In the case of legal or beneficial owners, the risk assessment parameters utilised by the jurisdiction to identify the person
- In the case of trusts or other legal arrangements, information which identifies the settler, trustee and beneficiaries of express trusts (i) created under the laws of that jurisdiction (ii) administered in that jurisdiction, or (iii) in respect of which a trustee is resident in that jurisdiction.

(b) Accounting Information

- Accounting records in case of an entity or arrangement including its balance sheet and profit and loss account
- Underlying documents of the accounting records such as invoices, contracts etc. reflecting details of (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place (ii) all sales and purchases and other transactions and (iii) the assets and liabilities of the relevant entity or arrangement
- Copies of contracts/agreements for sale/purchase
- Details of loans or gifts given by the taxpayer in that country/jurisdiction to an Indian taxpayer

- Details of commissions paid by the Indian taxpayer to the taxpayer in another country/jurisdiction
- Details of immovable properties including its ownership, registration documents, location, sale agreement, purchase price etc. if some information is provided by the requesting jurisdiction
- Price paid for acquiring a business asset in a foreign jurisdiction to determine whether the taxpayer has claimed the expenditure correctly, both on revenue account for claim of expenditure for the purposes of business or on capital account for claim of depreciation
- In case of supply of goods to an independent company in a foreign jurisdiction, information regarding what price was paid by the said independent company for the purposes of correct determination of arm's length price

(c) Banking Information

- Information held by Banks and other financial institutions including the following
  - Name, address and other details of the account holder and the beneficiaries of the account
  - In case the account is held by legal entities/arrangements, the details of legal and beneficial owners of the said entity/arrangement including Know Your Customer (KYC) details, risk assessments carried on by the bank to identify the said legal/beneficial owner
  - Name, address and other details of persons authorized to open or operate the account including attorney holders and authorized signatories
  - Name, address and other details of the introducer for opening the account
  - All records pertaining to the accounts as well as to related financial and transactional statements with narration
  - Information about portfolio investment done by the banks/financial institutions

(d) Information Available with Tax Administration

- Copies of tax returns filed containing details of income received in other countries, details of assets disclosed (to determine creditworthiness), deductions claimed etc.
- Taxes paid in that country/jurisdiction including details of refunds given, if any
- Taxes withheld in the country/jurisdiction as per their domestic laws and refunds given, if any

3.3.2.2 The kinds of requests that could be made under the provisions of the tax treaties would depend on the facts of the case. It is not possible to enumerate in this Manual all the situations where information should be requested and what questions should be asked. Listing the questions in a ready-made manner is not the purpose of this Manual and is also not desirable since

requests must be made after proper application of mind by the officers concerned including the CIT/DIT and should be based on facts of the case.

3.3.2.3 The various kinds of information that may be available in a country/jurisdiction outside India as summarized in Para 3.3.2.1 above may be taken as guidance in framing the requests including the questions that may be asked. Some illustrative examples noted from actual experience of Exchange of Information under treaties are set out below which may, however, be used as guidance.

3.3.3 Illustrative Examples/Case Studies on Requests made under Exchange of Information

(a) Brokerage and commission claimed to have been paid to companies located in foreign countries were found to be not for the purposes of business as (i) some companies were not found doing any business and were registered at offices of chartered accountants (ii) some companies although doing business had not done any advertisement or marketing for the products for which the commissions were allegedly paid. Further, the promoters and/or directors of these foreign companies were persons closely related to the Indian promoter. Information was requested and received from four of our treaty partners.

(b) Gifts from foreign persons were received in the bank account of an Indian taxpayer and it was ascertained from the information provided by our treaty partners that these foreign persons had no capacity to make such huge amounts of gift. In another cases, similar information received from foreign countries about loans from persons in foreign jurisdictions were not found to be genuine.

(c) During a survey operation, it was found that an Indian taxpayer frequently travels abroad and spends a lot of money. Details of credit cards issued in a foreign country in the name of other persons were found. The credit card statements were received from the foreign country under the EOI provisions of the treaty and it was noted that huge amounts were spent by the Indian taxpayer through these credit cards.

(d) Information about a bank account held by the taxpayer in country "A" was available. Information provided by country "A" about the details of transactions and the narrations thereof established existence of bank accounts in a number of countries, including in the name of family members. Requests for further information were made to other countries and information provided by them resulted in unearthing of substantial unaccounted income in the name of the taxpayer and their family members.

(e) Commission received by the Indian taxpayer for services rendered in a foreign country was not disclosed in the tax return, the details of which were received under "spontaneous exchange of information" and the same was brought to tax after making further requests under EOI.

(f) A small amount of commission received by an Indian taxpayer in a foreign country was reported by that country under the "automatic exchange of information" route. Requests for

full details of bank accounts and other information were made under the treaty and the information received disclosed substantial amount of tax evaded income.

(g) During a search and seizure operation, information about foreign bank accounts and trading in foreign commodity market was found. The bank statements and detail of trading were provided by the country concerned under the provisions of the tax treaty resulting in unearthing of substantial amount of unaccounted income.

(h) During a search and seizure operation in the case of an Indian taxpayer, information about bank accounts and immovable properties in foreign countries was found. Further information received under exchange of information through the treaty showed that these bank accounts and immovable properties were owned by companies located in a third country. Information was then requested from the third country, which showed that the companies are beneficially owned by persons related to the Indian taxpayer.

(i) During a search and seizure operation in the case of an Indian taxpayer, details of bank accounts in foreign countries were found including in the name of a trust. Information received from the jurisdiction where the trust is located, showed that the beneficial owner of the trust is the Indian taxpayer.

(j) Information in a number of cases received from an offshore financial centre about companies registered in that jurisdiction have shown that the Indian taxpayers are shareholders/ beneficial owners/controlling persons of the companies that maintained bank accounts or made investments in other countries. In many cases, existence of such companies and/or relationship with the companies had been denied initially by the Indian taxpayers.

(k) In a number of cases, information about trustees and beneficiaries of foreign trusts including trust deeds and KYC documents have been received, demonstrating connection with Indian taxpayers.

3.3.4 Fishing Expedition

The Contracting States are not required to provide administrative assistance and exchange information in cases of "fishing expedition", i.e., speculative requests that have no apparent nexus to the inquiry or investigation in the requesting State. Thus, the information about all Indians having bank accounts in a particular country cannot be requested as it would amount to a fishing expedition. The Commentary to Article 26 of the OECD Model Tax Convention provides the following illustrations of what would constitute a "fishing expedition":

(a) Bank B is a bank established in State B. State A taxes its residents on the basis of their worldwide income. The competent authority of State A requests that the competent authority of State B provide the names, date and place of birth, and account balances (including information on any financial assets held in such accounts) of residents of State A that have an account with, hold signatory authority over, or a beneficial interest in an account with Bank B in State B. The request states that Bank B is known to have a large group of foreign account holders but does not contain any additional information.

(b) Company B is a company established in State B. State A requests the names of all shareholders in Company B resident of State A and information on all dividend payments made to such shareholders. The requesting State A points out that Company B has significant business activity in State A and is therefore likely to have shareholders resident of State A. The request further states that it is well known that taxpayers often fail to disclose foreign source income or assets.

3.3.5 Group Requests

After modification of the Commentary on the OECD Model Tax Convention relating to Article 26 (**Annexure – B**) and its adoption as international standards by the Global Forum, "group requests" are also possible under the tax treaties if they meet the condition of "foreseeable relevance". Para 5.2 of the Commentary states that for a group request not to be a "fishing expedition", it is necessary that the requesting State provide a detailed description of the group and the specific facts and circumstances that have led to the request, an explanation of the applicable law and why there is reason to believe that the taxpayers in the group in respect of whom information is requested have been non-compliant with that law, supported by a clear factual basis. It further requires a showing that the requested information would assist in determining compliance by the taxpayers in the group. As illustrated in Example (h) of paragraph 8 of the Commentary, in the case of a group request, a third party will usually, although not necessarily, have actively contributed to the non-compliance of the taxpayers in the group, in which case such circumstance should also be described in the request. Furthermore, and as illustrated in Example (a) of paragraph 8.1 of the Commentary, a group request that merely describes the provision of financial services to non-residents and mentions the possibility of non-compliance by the non-resident customers does not meet the standard of foreseeable relevance. Thus, although "group requests" are now possible, their scope is limited by "foreseeably relevance" and can be made only if the bank/financial institution in the other country/jurisdiction has actively contributed to the non-compliance of the taxpayers in the group, and the requesting State is able to provide evidence for the same.

3.4 Training and Seminars

3.4.1 The illustrative examples and case studies in the preceding paragraphs provide some guidance on making of requests for EOI. However, it is also essential that a sufficient number of training programmes and seminars are organized at different places where typical cases, including cases that are under investigation, are discussed in greater detail. Government has stated in Parliament that conducting training and sensitization programmes for the officers of the tax department in the area of exchange of information with our treaty partners is one of the steps being taken in the fight against tax evasion and avoidance.

3.4.2 Considering the importance of such training, a special three day programme was conducted at National Academy of Direct Taxes, Nagpur (NADT) in 2013 in the form of a Trainer's programme and follow-on Trainee programmes were subsequently conducted in a number of regions across the country. Another such three day training programme is being organized at NADT in 2015, in collaboration with the Global Forum.

3.4.3 The CITs/DITs concerned and the other officers who have attended the training at NADT are expected to act as resource persons for officers of their regions and conduct follow-on training programmes/seminars at least once a year, in which the cases requiring information from a country/jurisdiction outside India and the experience of officers who have made successful requests earlier may be discussed. The nature and type of information that should be requested, including the questions that may be asked in the request, are expected to be discussed in these programmes.

3.5 Procedural Guidelines for Making EOI Requests

3.5.1 All Communication to be made only by CIT/DIT concerned to the Competent Authority

A request for information from a country/jurisdiction outside India, as also other forms of administrative assistance from these countries/jurisdictions, should be made only by the CIT/DIT concerned, through the Indian Competent Authority at the following address:

Countries	Indian Competent Authority
North America (including Caribbean) and Europe	Joint Secretary (FT&TR-I) Room No. 803, 'C' Wing, Bhikaji Cama Place Hudco Vishala Building, New Delhi – 110066 Phone: +91-11-26108402, FAX: +91-11-26177990
Rest of the World	Joint Secretary (FT&TR-II) Room No. 804, 'C' Wing, Bhikaji Cama Place Hudco Vishala Building, New Delhi – 110066 Phone: +91-11-26104504, FAX: +91-11-26104504

The request may be forwarded in **Form A (in duplicate)** to the JS(FT&TR-I) or JS(FT&TR-II), as the case may be, in accordance with the guidelines set out below. Requests for additional information, clarifications, feedbacks etc. should also be made only by the CIT/DIT concerned to JS (FT&TR-I) or JS(FT&TR-II) as the case maybe. The CIT/DIT should not merely forward the letters/reports of his sub-ordinates and must capture the information, if any, contained in the said letters/reports in his own letter, and such letter must be signed only by him and not by the officers in his Headquarters. The CIT/DIT concerned should not forward their requests and other letters through the office of Principal Chief Commissioner of Income Tax/Principal Director General of Income Tax/Chief Commissioner of Income Tax/Director General of Income Tax (hereinafter referred to as "CCIT/DGIT") but a copy may be sent for information, if required.

3.5.2 Responsibility of Range/Unit Head for initiating EOI requests and providing Clarification/Feedback

It will be the responsibility of the Range/Unit Head to ensure that EOI requests to foreign countries under the applicable tax treaties are initiated in all appropriate cases. They would also be responsible for ensuring that clarifications, as and when requested by the foreign Competent Authority, are provided in a timely manner and further, the feedback is provided to the FT&TR

division in accordance with the guidance provided under section 3.9 of this manual. CIT/DIT concerned should monitor and review this aspect periodically and take appropriate action, wherever required.

3.5.3 Request to be made in Form A

The request for EOI under tax treaties should be made in **Form A (in duplicate)**, attached at the end as the Appendix to this Manual, which has two parts. Part I contains the basic information about the taxpayer under investigation in India and the officer(s) making the request while Part II is modelled on the lines of the template formulated by the OECD and is essentially the same as Annexure-D of the Manual on Exchange of Information issued in 2013. Only Part II of Form A is forwarded to the foreign authorities and thus all the relevant information mentioned in covering letters, assessment orders etc. must be captured in Part II of Form A. The background note, summary of the case, factual analysis etc. should be included in Part II and if necessary, Annexures may be added to this Part of the Form. Since the information sent is treated as confidential by the tax authorities in other jurisdictions, copies of relevant incriminating documents seized can and should be enclosed if the same are considered useful for the foreign tax administration, in order to facilitate the obtaining of information by them. Information received from other jurisdictions under tax treaties may also be mentioned, but it should be ensured that the name of the jurisdiction is not mentioned, nor any copies of the correspondence with that jurisdiction are attached. Detailed Instructions for filling up the Form have been provided with the Form itself.

3.5.4 Timely submission of Requests

In time barring cases, the requests should be made at least three months before the cases are getting time barred, giving sufficient time in the office of Competent Authority to process the requests and allow re-submission in cases where the original requests are found to be defective. In exceptional cases, where requests need to be made at the last moment, for instance on account of some new evidence becoming available, the reasons for the same should be clearly explained in the covering letter of the CIT/DIT concerned.

3.5.5 Extension of Time Limit

Sections 153 and 153B of the Income-tax Act provide that in computing the period of limitation, the period commencing from the date on which a reference or first of the references for exchange of information is made by an authority competent under the agreements referred to in sections 90 or 90A (i.e. DTAAs, TIEAs, Multilateral Convention) and ending with the date on which the information requested is last received by the Commissioner or a period of one year, whichever is less, shall be excluded. Further, the proviso to section 153 and 153B provides that where immediately after the exclusion of the aforesaid period, the period of limitation available to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case maybe, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly. The extension of time limit commences from the date on which the reference has been made by the Competent

Authority and thus unless the acknowledgment from the office of Competent Authority is received, it should not be assumed that the reference has actually been made.

3.5.6 Change in Jurisdiction to be intimated to FT&TR Division

In cases where requests have been made by Investigation Wing and subsequently, the matter is referred to the jurisdictional Assessing Officer or the Assessing Officer to whom the case/jurisdiction has been assigned, the fact of having made a request under EOI which is outstanding should be incorporated in the appraisal or other report. Where further action with respect to the EOI request needs to be taken by the officers in the assessment Wing, the Principal DIT(Investigation) should inform the Principal CIT/CIT concerned accordingly, in writing and under intimation to the Competent Authority. Similarly, where a case involving an outstanding EOI request is transferred from one Principal CIT/CIT to another, the transferring Principal CIT/CIT should inform the receiving Principal CIT/CIT of the fact of the pending request, in writing and under intimation to the Competent Authority.

3.5.7 Separate Form for Separate Taxpayers and for Separate Countries

Where EOI requests are to be made in a group of cases under inquiry/investigation, separate Forms should be filled up for different taxpayers. Further, separate Forms need to be filled up for EOI requests to different countries/jurisdictions in the case of the same taxpayer. Thus, for instance, if three members of a family have received gifts from persons located in three different jurisdictions, the total number of Forms to be filled in would be nine.

3.5.8 Person under Investigation to be clearly identified

Full details of the person under investigation or examination by the Indian tax authorities, including PAN, date of birth/date of incorporation, full address and other details, as available in the records should be mentioned. As explained in Para 2.2.2, the tax treaties do not restrict administrative assistance to residents of either Contracting States and thus information about residents of third countries can also be requested. However, relevance of the information about residents of third countries vis-a-vis the person under investigation in India must be clearly explained in the request.

3.5.9 Efforts for Obtaining the information in India to be Exhausted prior to making the Request

Before making the requests, all possible means available should be pursued to obtain the required information in India, through the taxpayer or otherwise and these efforts should be summarized in the request. One of the factors that establishes foreseeable relevance of an EOI request is a declaration that needs to be given with the request that the requesting country has pursued all means available in its own territory to obtain the information except those that would give rise to disproportionate difficulties. This declaration, which is part of Form A, must be given by the CIT/DIT concerned after proper application of mind and should be based on demonstrable evidence which can be provided to the foreign Competent Authority if a request is made in this regard. It may also be noted that in many cases, the taxpayer itself or its related entity in the other

country would be providing the information which is requested from a foreign country/jurisdiction. For instance, if an investment is made by Company X located in Country A in a related Indian Company and if a request is made to the Indian Company to provide financial statements or bank accounts of Company X, it may provide the same. In these types of cases, making request for this information from Country A may not be necessary and must be avoided.

3.5.10 Information from Publicly Available Sources to be verified before making EOI request

3.5.10.1 Before sending the request for EOI, efforts must be made to obtain the required information from publicly available sources in the other country/jurisdiction, such as public data bases maintained by regulators in foreign jurisdictions (similar to database maintained by the Registrar of Companies in case of India and available at www.mca.gov.in). These public databases can provide considerable information such as registration details, ownership information, financial statements, annual reports etc. which need not be again requested through a request for EOI. The information contained in these public databases may also help in making more focussed references and may provide clues for asking the relevant questions for example about beneficial ownership of legal entities/arrangements which may not be publicly available. Focussed and relevant questions, rather than a long list of information some of which is publicly available, will enable the foreign Competent Authority to provide assistance in a more meaningful manner. Some of the public websites are provided in the Bibliography (References of Website and Publicly Available Information) at the end of this Manual which may be referred to before making requests to foreign jurisdictions.

3.5.10.2 Some of the information available on the websites may be free and some can be accessed after making payment of requisite payment. In case of paid services, the CIT/DIT concerned must make the payment rather than seeking information from foreign Competent Authority on this ground only. It must be appreciated that gathering information is a resource intensive work for both requesting as well as requested country/jurisdiction and thus payment of a fee for getting the information on Internet may be more cost efficient.

3.5.11 Demonstrating "Foreseeable Relevance"

3.5.11.1 Under the tax treaties, the Competent Authorities are obliged to exchange information which is foreseeably relevant for administration and enforcement of the domestic laws concerning taxes. The standard of "foreseeable relevance" requires that the requesting State provides an explanation as to how the information requested would be relevant for the tax affairs of the taxpayer concerned relating to investigation, assessment or collection of taxes. The standard provides that the Contracting States are not at liberty to engage in "fishing expeditions" or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer.

3.5.11.2 The standard requires that at the time a request is made, there is a reasonable possibility that the requested information will be relevant; whether the information, once provided, actually proves to be relevant is immaterial. Thus, the requested State would not decline requests in cases where a definite assessment of the pertinence of the information to an ongoing investigation can only be made following the receipt of the information.

3.5.11.3 However, it has to be ensured while making the initial request itself that all the relevant facts of the case are clearly brought out and the relevance of information for the purposes of administration and enforcement of Indian tax laws is spelt out in sufficient detail. These details should be provided in Form A itself, in Row 12 relating to "relevant background". This will help the foreign tax authorities to provide the information requested, prevent legal challenges to proceedings in accessing information, if any, in the requested State, and will obviate the need for further clarifications on their part thereby also avoid delays.

3.5.12 Request for Information should be drafted in Simple Language

The information which is sought has to be specific and should be described as clearly as possible. The language should be simple and easily understandable to foreign tax authorities who may not be aware of India's tax laws and procedures or the terminology used. The questions should be framed in such a manner that they can be answered by the foreign tax authorities directly on the basis of documents or other information available and the details requested should be specific. Thus, if the inquiry relates to gifts from a foreign jurisdiction, the request should not be general (for example asking the foreign authorities to verify the creditworthiness of the donor). Such a request would not be understood by the foreign tax authorities. If the tax officer wishes to establish the credit worthiness of the donor, the request for information should be based on specific facts and details such as Income Tax Return of the donor or its bank accounts for the relevant period or details of assets owned by him etc. may be asked. Further, the language of the request should not offend other countries and terms like "tax havens" must not be used anywhere in Form A or at any further stage of clarification to be provided to foreign jurisdictions.

3.5.13 Request for Voluminous Information should be Avoided

In some cases, it has been observed that a large number of Questions are asked in the request for EOI even though some of the questions do not appear to emanate from the issues under investigation and the relevant questions which should actually be asked are not specifically stated. Request for voluminous information should be avoided as it may become counter-productive on account of the following reasons:

- The request may be considered as having been made in a casual and perfunctory manner and may be responded to accordingly by the foreign tax authorities.
- More critical information which is actually required, may be missed by the foreign tax authorities in a request with a long list of questions and the useful information may not be received.
- Though the foreign tax authorities may be genuinely trying to provide assistance, they may not be able to do so as they would need to collect the requested information from various sources which they may not be able to do in a timely manner.
- Seeking unnecessary details in a casual manner without due consideration of the effort that may be required on he part of treaty partner, is likely to be viewed unfavourably and may

also adversely affect the reputation of India and may also adversely impact on our ability and moral authority to seek information even in genuine cases.

3.5.14 Information about Foreign Taxpayers to be provided

In the request for information, to assist the foreign tax authorities, details about foreign taxpayers related to the person under investigation/examination in India, as available in the records, and which may be of assistance to the foreign tax authorities in providing the information, may be mentioned clearly as part of the background information.

3.5.15 Verification of Documents submitted by the Taxpayers

In many cases, the taxpayers submit documents claiming that the same have been issued by the tax or regulatory authorities or by banks and financial institutions in support of their claim of genuineness of the transactions. In appropriate cases, these documents may be got verified by making a request to the foreign Competent Authority for authentication.

3.5.16 Multi-level Enquiry Necessary in Some Cases

As per the currently agreed international standards, the Contracting States/Parties are obliged to exchange information which is held by the jurisdiction or is within the possession or control of persons within the jurisdiction's territorial jurisdiction. This creates a limitation on exchanged information in multi-level investigations involving entities located in more than one jurisdiction. For instance, if a request is made to jurisdiction A to provide ownership information of a company resident in A, and if it gives the information that the owners of company are residents of country B, then further enquiry will have to be made from country B to identify the next level of ownership. Similar enquiry may be necessitated in case of flow of funds. Thus, in many cases, complete information may not be obtained through requests made to one jurisdiction and may require follow up requests to other jurisdictions to take the investigation to its logical end. While making such follow-up requests, however, care should be taken to ensure that the name of the jurisdiction from which the original information has been received is not mentioned, nor any copies of the correspondence with that jurisdiction are attached.

3.5.17 Time Period or Taxable Event and the Period of Limitations

3.5.17.1 While making the request, the time period or taxable event (e.g. the date of withholding) for which the information is required should be mentioned clearly. Care should be taken in mentioning the time period or taxable event in view of the date of application of the treaty provisions in case of certain treaties as explained below.

3.5.17.2 The general rule is that once the tax treaty is in force, information may be requested for a period prior to the entry into force of the treaty, in both civil and criminal tax matters. In cases where the earlier treaty is restrictive, e.g. no provision for exchange of banking information, and the treaty is revised through a Protocol, the contracting states are obliged to exchange information in a non-restrictive manner even if it relates to the period prior to coming into force of the Protocol.

3.5.17.3 There are, however, certain exceptions to this general rule in case of certain Indian tax

treaties in view of legal and constitutional restrictions in domestic law of the other country/jurisdiction. Some of these exceptions in certain tax treaties are explained below:

- The TIEA with Liechtenstein allows for requests for information with regard to tax years beginning on or after 1st April, 2013. The TIEA, however, provides for exchange of documents or information created in or derived from a date preceding 1st April, 2013 that are foreseeably relevant to a request relating to tax years beginning on or after 1st April, 2013, for example:
  - if assistance is requested with respect to a taxpayer's bank transactions occurring after March 31, 2013, and documents such as, but not limited to, a signature card for the account in question were executed prior to March 31, 2013, the requested jurisdiction would provide the documents;
  - where a request involves a trust or a foundation and documents such as the deed of settlement or the foundation statutes and/or bylaws, as the case may be, were executed prior to April 1, 2013, the requested jurisdiction would provide the documents.
- The DTAA between India and Switzerland was amended with effect from 7th October, 2011 enabling exchange of information which is relevant for administration or enforcement of domestic laws, including banking information. As per Article 14(3) of the Amending Protocol, Switzerland is obliged to provide "information that relates to any fiscal year beginning on or after the first day of January of the year next following the date of signature of the amending Protocol (30th August, 2010)", i.e., information that relates to fiscal years 2011-12 onwards. However, if it can be demonstrated that the information created in Switzerland prior to 1st April, 2011, e.g. KYC details or in situations referred to in TIEA between India and Liechtenstein as mentioned above, would be foreseeably relevant for period after 1st April, 2011, a request for the same can be made.
- The amended DTAA between India and Singapore allows exchange of information for administration or enforcement of domestic laws, including banking information, from 1st April, 2008 onwards.
- In case of Bahamas, the information available with the jurisdiction, which relates to the period prior to coming into force of the TIEA (1st March, 2011), cannot be shared. However, Bahamas has domestic laws that allow sharing of information in criminal tax matters, even without DTAA/TIEA, through the office of the Attorney General. Hence, in case of Bahamas, past information in criminal tax matters could still be obtained through the office of Attorney General.
- In the case of some of the TIEAs (Bermuda, Isle of Man etc.) it has been provided that the TIEA will have effect with respect to "criminal tax matters" as "on that day" and for "civil tax matters" for taxable periods beginning on or after the date on which the TIEA comes into effect. This means that in criminal tax matters, the information relating to period prior to coming into force of the TIEA can be requested but not in civil tax matters. The "criminal tax

matters" include tax matters liable to prosecution under the laws of the requesting country e.g. attempt to evade tax under section 276C of the Income-tax Act.

3.5.17.4 In the case of Multilateral Convention, obligation to provide administrative assistance in "civil tax matters" arises on or after 1 January of the year following the one in which the Convention entered into force in respect of a country/jurisdiction. However, for tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting jurisdiction, i.e., "criminal tax matters", the obligation to exchange information extends to earlier taxable periods also. The Parties to the Multilateral Convention can provide a reservation that they will extend administrative assistance in "criminal tax matters" only for three years prior to the entry into force of the Convention.

3.5.17.5 Thus, utmost care should be exercised in mentioning the time period in cases where the above-mentioned restrictions are there. In particular, where the requested country is obliged to provide information, for the period in question, only in "criminal tax matters', it should be specifically mentioned with reasons that the information requested may lead to in place of prosecution of offenders under various sections of the Income-tax Act including under section 276C(1) of the Income-tax Act for wilful attempt to evade tax, etc. [rigorous imprisonment up-to seven years with fine], under section 277 for false statement in verification [rigorous imprisonment up-to seven years with fine], etc.

3.5.18 Request to Refrain from Notification

Under the laws of certain countries/jurisdictions, the taxpayer or the holder of the information has certain rights including a right to be informed or notified that a request concerning him for information under a tax treaty has been made. The requesting country, however, in certain exceptional cases can make a request that the taxpayer/holder of information may not be so notified. If a request to refrain from notifying the taxpayer(s) concerned is made, the reasons for the same must be clearly explained. Such reasons could be that the information is of a very urgent nature and the process of prior notification to the taxpayer will delay supply of information or the prior notification is likely to undermine the success of the investigation being conducted. A request to refrain from notifying the taxpayer should not be made in a routine manner and such request should be made only if it is essential and can be justified on the basis of documentary evidence. The reason that the taxpayer concerned is likely to file an appeal against the supply of information would generally not be a valid reason for making such a request.

3.5.19 Name and Address of the Person Believed to be in Possession of Information

The name and address (to the extent known) of the person believed to be in possession of the information should be mentioned in the request. This could be the name and address of the Bank (in case of bank accounts), tax administration of the other country (in case of return of income or taxes paid), name and address of agents/service providers (in case of financial accounts requested from offshore financial centres) etc. The purpose of this information is to assist the foreign tax authorities to locate the information quickly and provide the same expeditiously.

3.5.20 Specific Requirements in case of Certain Jurisdictions

The domestic laws of certain countries require additional information to be furnished in certain types of requests, particularly requests for information held by banks. For instance, in UK, a Tribunal decides whether the banking information can be handed over to the requesting country. The UK Tax Authorities have advised that to defend the case in the Tribunal, they need additional information that can clearly establish the nexus between the Indian entity under investigation and the UK bank account, including how the account information is likely to help the investigation. EOI requests involving banking information should therefore contain a detailed justification of the request for such information.

3.5.21 Declarations

While making the request for any information from a foreign jurisdiction, the following should be ensured, including confidentiality which is a major concern for many developed countries and a declaration to that effect should be given as under:

- All information received in relation to the request will be kept confidential and used only for the purposes permitted in the agreement which forms the basis for the request.
- The request is in conformity with Indian laws and administrative practice and is further in conformity with the agreement on the basis of which it is made.
- Such information would be obtainable under Indian laws and the normal course of administrative practice in similar circumstances.
- We have pursued all means available in our own territory to obtain the information, except those that would give rise to disproportionate difficulties.

3.6 Processing in the Office of Competent Authority

3.6.1 Return of Defective Forms

It is important that requests for Exchange of Information are made in all appropriate cases. This is essential for effective prevention of tax evasion and avoidance. However, it is equally important that the requests which are made in Form A should be prepared with extreme care. Requests should be made only after all possible means have been pursued to obtain the required information in India and should be limited to information which is foreseeably relevant for carrying out the provisions of the DTAA or for administration or enforcement of domestic laws. Requests made in Form A which do not satisfy these two criteria or are otherwise defective may be returned in original by the office of the Competent Authority. Fresh requests will have to be made in these cases after addressing the deficiencies pointed out.

3.6.2 Acknowledgment

The request for information is forwarded to the Competent Authority of our treaty partner with a covering letter from the Indian Competent Authority. The office of the Competent Authority will send an acknowledgement to the CIT/DIT concerned in the following format:

Table 1 : Proforma for Acknowledgment by Competent Authority

1.	File No./Reference No. in the office of Competent Authority (to be quoted in all subsequent correspondence)	
2.	Designation of the CIT/DIT from where reference has been received	
3.	File No./Reference No. of the CIT/DIT concerned	
4.	Name and address of the taxpayer under examination in India	
5.	PAN of the taxpayer under examination	
6.	Country/jurisdiction to which the reference has been made	
7.	Date of making the reference by the Competent Authority	
8.	Signature of the Under Secretary/Director	

3.7 Guidelines for Providing Clarification

3.7.1 After making the first request, in many cases, the foreign Competent Authority seeks clarifications on certain aspects of the requests made. These clarifications are often fact intensive and can be provided only by the officers making the request and thus are forwarded by the office of the Indian Competent Authority to the CIT/DIT making the request or to the CIT/DIT currently handling the case.

3.7.2 It has been observed that in many cases, the clarifications are not provided by field authorities promptly, indicating a lack of seriousness and casualness on the part of India in making the requests which can be viewed unfavourably by the foreign Competent Authority, or lead to embarrassment on our part. Further, in such cases, requests are sometimes treated as "closed" by the foreign Competent Authority for want of clarifications, depriving us of the valuable information that would have been provided by them and which could have facilitated investigation/assessment.

3.7.3 The Range/Unit Heads must take responsibility to ensure that the clarifications sought by the foreign Competent Authority are provided at the earliest and in any case, within fifteen days of receipt of such request in the office of CIT/DIT concerned. The CIT/DIT should monitor this aspect on a periodic basis and take appropriate action against the officers concerned wherever required. If the clarifications are received with considerable delay, the reasons for such delay and the action taken should be mentioned by the CIT/DIT concerned in their covering letter.

3.7.4 The letters/emails requesting the clarifications are received by the Indian Competent Authority. Clarifications that are minor or are repetitive in nature on which clarifications have

been provided earlier, would in appropriate cases, be addressed by the office of the Competent Authority. However, in a large number of cases, clarifications can be provided by the officers in the field formations only and in those cases, copy of the email/letter seeking clarifications is forwarded to the CIT/DIT from whom the request has been received or where the current jurisdiction lies.

3.7.5 In search and seizure cases, responsibility to make requests to foreign jurisdictions and follow-up action thereof, wherever required, lies with the Pr. DIT(Inv.) concerned till the forwarding of Appraisal Reports to Central Charges. Once the Appraisal Report is forwarded to the Central Charges, the responsibility in this regard lies with the Pr. CIT(Central)/CIT(Central) concerned or with the Pr. CIT/CIT of normal charges if the case is not centralized. After receipt of the Appraisal Reports, the Pr. CIT(Central) /CIT(Central)/Pr. CIT/CIT concerned would take up these matters including the follow-up action on requests for EOI made earlier by the Investigation Directorates. Investigation Directorates have been separately directed to forward a copy of all the requests made by them for EOI to the assessment charges along with the Appraisal Report, giving a brief note including the background of making the requests and suggested course of further follow-up action and in these cases, the clarifications should be provided by the officers of the assessment charges.

3.7.6 While forwarding the clarifications, care should be taken to fully address the specific queries made by the foreign Authority, detailing all relevant facts. The CIT/DIT concerned should not merely forward the reports of the authorities below, but should compile a comprehensive, self-contained reply to the queries and forward the same under his own signature. Such a reply will enable the foreign Competent Authority to provide a complete and relevant response to the information request.

3.8 Guidelines for Utilizing the Information and Ensuring Confidentiality

3.8.1 Receipt of Information by the Competent Authority and Forwarding it to the Officer concerned

3.8.1.1 Information provided in response to an EOI request made by the Indian tax authorities under the tax treaties is received in the office of the Competent Authority, who then forwards the information **in original** to the CIT/DIT concerned.

3.8.1.2 The CIT/DIT concerned should forward the information to the Assessing Officer/DDIT/TPO who must keep the information in a separate "confidential folder" in his personal custody under lock and key. Copies of information should normally not be kept in the office of CIT/DIT or the Range/Unit Head. However, if for the purposes of monitoring, a copy of the information or extracts thereof is retained in the office of the such supervising officers, it must be kept in a "confidential folder" in the personal custody of officer concerned. Copies of information should not be kept with the officers posted in Headquarters. Where the information has been requested by the CIT(Appeals) or other authority, it must be kept in a "confidential folder" in the personal custody of such CIT(Appeals) or other authority.

3.8.2 Maintaining Confidentiality of Information Exchanged

3.8.2.1 Maintaining the confidentiality of information received under the provisions of tax treaties is a legal requirement under the said treaties and thus any breach of these requirements may invite legal and administrative action against the officer concerned. Maintaining confidentiality is also an international obligation and any breach may seriously impact our ability to receive information in other cases. Detailed guidelines on maintaining confidentiality have accordingly been provided in Chapter-VII of this Manual which should be strictly followed by all the officers who handle the information exchanged under the treaties. The CCIT/DGIT concerned must sensitize the officers in their region on the requirements of maintaining confidentiality. They should also conduct thorough enquiry and fix responsibility in cases of breach of confidentiality.

3.8.2.2 Some of the important guidelines mentioned in Chapter-VII are summarized below and these should be followed strictly.

(a) The information received under the tax treaty provisions is to be classified as "confidential" and thus should be maintained in a confidential folder to be kept in safe custody in a locked safe or steel almirah in the personal custody of the officer concerned. The Government of India's guidelines for handling confidential documents must be followed.

(b) The guidelines on physical security, handling and storage of physical/electronic documents, clean desk policy etc. as mentioned in Chapter-VII must be followed

(c) The information received can be shared with the taxpayer or its proxy in cases where the information is likely to be used against him, while giving an opportunity of being heard. However, care should be taken that only the information which is relevant to him or is likely to be used against him should be provided to the taxpayer. Correspondence in the form of letters/emails of the foreign Competent Authority should never be shared, under any circumstances, and only the contents of the letter/extracts that are required to be shared with the taxpayer for giving him an opportunity of being heard are to be shared.

(d) The information which is used against the taxpayer may be made part of the assessment order. However, care should be taken that only the information which is relevant to the taxpayer and which is actually used against him should be included as part of the assessment order. The letter of the Competent Authority should never be made part of the assessment order under any circumstances, e.g. by scanning and pasting in the order, although the relevant contents of the letter/extracts may be included.

(e) As per the provisions of the tax treaties, the information received shall be disclosed only to persons or authorities, including courts and administrative bodies, concerned with the assessment/collection/enforcement/prosecution/determination of appeals in relation to taxes. Such persons or authorities may use the information only for such purposes but may disclose the information during their public court proceedings or in their judicial decisions. The proceedings before the Assessing Officer and CIT(A) are not public court proceedings

and thus the information cannot be disclosed to third parties during these proceedings. However, since the proceedings before the Income Tax Appellate Tribunal (ITAT)/High Court/Supreme Court are public court proceedings, the information may be disclosed in such proceedings as also in the decisions of the ITAT and of the High Courts and Supreme Court.

(f) Further, once a prosecution is launched in a regular criminal court based on information received through a treaty and the court takes cognizance, the prosecution complaint or charge-sheet would necessarily contain details of tax evasion and its culmination would amount to a judicial decision. The information may become public in this manner also and may be used by other law enforcement agencies dealing with corruption, money laundering, terrorist financing etc.

(g) In a large number of tax treaties, the information received can be used for non-tax purposes including for the purposes of combating money laundering, corruption and terrorist financing, if such use is permissible under the laws of the supplying State and the Competent Authority of the supplying State gives its consent for the same. Request for sharing of information with other law enforcement agencies, if found necessary, should be made on a case-to-case basis, clearly specifying the grounds for believing that the information may be useful for other purposes, such as money laundering, corruption and terrorist financing and such request should be forwarded to the Competent Authority for taking up the matter with his counterpart.

3.8.2.3 Extreme care should be taken to ensure that the letters/emails of the foreign Competent Authority are not shared with the taxpayer or its proxy and the same is not made part of the assessment order e.g. by scanning and pasting, although in the assessment order, the fact of receipt of information under the provisions of tax treaties may be mentioned. The letters/emails of the foreign Competent Authority should not be provided during the tribunal/court proceedings also but in case of specific directions, at least the names and other details of the foreign Competent Authority should be redacted.

3.8.3 Fresh Request during Appellate and other Proceeding

3.8.3.1 Additions made on the basis of information received may be challenged before CIT (A) or an objection may be filed before the DRP. Under section 250(4) and 144C (7) of the Income-tax Act, the CIT(A) or the DRP may conduct necessary inquiry either directly or through directions to the Assessing Officer. Accordingly, in cases whether the CIT(A) or the DRP considers that necessary inquiry, including multi-level inquiry, to take the investigation to its logical end has not been carried out, they may carry out such enquiry by making fresh requests for information under tax treaties in Form A through Competent Authority as per the procedure prescribed in this Manual. Since the information received under tax treaties can be used for appeal purposes, the information available with the Assessing Officer, even if not used during assessment can be used by CIT(A) or the DRP and they may request the Assessing Officer to produce the information.

3.8.4 Fresh Request during Penalty/Prosecution Proceeding

It is possible that due to time barring date, full enquiries, including multi-level enquiries, could not be conducted but still, additions are made on the basis of other evidence and penalty/prosecution proceedings are initiated. If during the penalty/prosecution proceeding, it is noted that additional information is required for the purposes of taking the investigation to its logical end, fresh references requesting for information may be made in Form A through the office of Competent Authority as per the procedure prescribed in this Manual.

3.9 Guidelines for Providing Feedback

3.9.1 Introduction

It is essential that the information received under the tax treaties is examined by the officers making the request in the first place and it is ascertained whether full and complete information has been received. In case, full and complete information is not received, the matter needs to be taken up immediately with the foreign Competent Authority and a request made for providing the balance information. After the information has been utilised, the CBDT should know whether the information received has been useful so that guidance may be provided for making future references. The foreign Competent Authority may also need to be apprised of the usefulness or otherwise of the information and appreciating its efforts in appropriate cases. The CIT/DIT concerned should accordingly provide both initial feedback as also feedback on completion of assessment/other proceedings, in accordance with the following guidance.

3.9.2 Initial Feedback and Request for further Information

3.9.2.1 Information received from the foreign Competent Authority is forwarded **in original** to the CIT/DIT from where the request has been received or to the CIT/DIT where the current jurisdiction lies. The CIT/DIT concerned should examine the same and ascertain whether information as requested by him has actually been received and state the same in the initial feedback submitted. If part of the information is not received, this fact should be clearly stated in the feedback and the foreign tax authorities may be requested to provide the balance information. In case of substantial shortcomings or where additional information is required on further examination of the evidence, fresh reference in **Form A** should be made.

3.9.2.2 To streamline the process, the information received in the office of Competent Authority from the foreign Competent Authority will be forwarded to the CIT/DIT concerned with a request to provide the initial feedback in the following format and the same should be filled up and sent to the Competent Authority at the earliest.

Table 2 : Proforma for providing Initial Feedback and Request for further Information by the CIT/DIT concerned

1.	File No./Reference No. in the office of Competent Authority	
2.	Designation of the CIT/DIT from where reference has been received or where the current jurisdiction lies	
3.	File No./Reference No. of the CIT/DIT concerned	
4.	Name and address of the taxpayer under examination in India	
5.	PAN of the taxpayer under examination	
6.	Whether information has been received on all the points requested? If not, please specify which information is pending and whether the same is still required? (enclose Annexures wherever required).	
7.	Points on which information has been provided but is not full and complete in the opinion of the officer concerned with reasons therefore and whether the information is still required (enclose Annexures wherever required)	
8.	Should the request be considered closed on the basis of information received	
9.	Signature of the CIT/DIT concerned	

3.9.2.3 This initial feedback will be communicated to the foreign Competent Authority with a request to provide the balance information and/or with a letter thanking him for providing the information.

3.9.2.4 It should be the responsibility of the Range/Unit Head to ensure that the initial feedback is provided at the earliest and in any case, within fifteen days of receipt of the information in the office of the CIT/DIT concerned. The CIT/DIT should monitor this aspect and take appropriate action wherever required to ensure these guidelines.

3.9.3 Feedback on Completion of Assessment and Other Proceedings

3.9.3.1 On completion of assessment, the Assessing Officer should provide a feedback to the office of the Competent Authority in which the following details should be mentioned

- Name, address and PAN of the taxpayer under examination
- Details of request made for information

- Whether the information received was useful or not and if it was not useful, the reasons for the same
- How the information received was used in investigation and assessment
- Details of additions made and additional taxes realized
- Tax evasion/avoidance scheme detected, if any
- Any other suggestion for making the mechanism of exchange of information more useful.

3.9.3.2 In appropriate cases, the above information will be summarized in the office of Competent Authority and will be forwarded to the foreign Competent Authority appreciating their efforts in combating tax evasion/avoidance in India. Case studies in appropriate cases may also be prepared for future guidance of the officers of the field formation.

3.10 Information to be Maintained by the CIT/DIT concerned

3.10.1 As stated earlier, in view of the confidentiality requirements, copies of information received should normally not be kept in the office of the CIT/DIT concerned.

3.10.2 However, for the purposes of monitoring and supervision, some basic details should be maintained by the CIT/DIT concerned, both in cases where the requests have been made by his office and also where outstanding requests have been received by him from other charges, e.g. from the Investigation Wing. The basic information should be maintained in the following sample Proforma for each of the requests made by him or forwarded to him by other charges.

Table 3 : Sample Proforma for Maintaining Information by the CIT/DIT concerned for the purposes of Monitoring

1.	File No./Reference No. in the office of CIT/DIT	
2.	Designation of the DDIT/Assessing Officer	
3.	Designation of the Range/Unit Head	
4.	Country/Jurisdiction to which the reference has been made	
5.	Date of Making the Reference to FT&TR	
6.	Name and address of the taxpayer under examination in India	
7.	PAN of the taxpayer under examination	
8.	Brief description of the request made	
9.	File No./Reference No. in the office of Indian Competent Authority	
10.	Date of making reference by the Indian Competent Authority	

11.	Date(s) of Clarification(s) sought by the Foreign Tax Authority	
12.	Date(s) of Providing the Clarification(s)	
13.	Date(s) of receipt of Information	
14.	Date(s) of providing the initial feedback as per Para 3.9.2.2 of the Manual	
15.	Brief description of closure of request	

3.10.3 It should be noted that the basic information as maintained above by the CIT/DIT concerned are also confidential and the guidelines provided in Chapter-VII shall be applicable in this case also.

3.10.4 This basic information may be captured in a columnar format in a Manual or Electronic register (e.g. in Excel Sheets) under the personal custody of the CIT/DIT concerned and should be monitored by the CIT/DIT concerned especially with regard to providing clarification/feedback.

3.11 Information to be maintained in the Office of Competent Authority

3.11.1 In the office of the Competent Authority, for each of the outbound requests on "request basis", the following basic information should be maintained.

Table 4 : Information maintained in the office of Competent Authority in case of Outbound Requests

1.	File No./Reference No. in the office of Indian Competent Authority	
2.	Reference Number of foreign Competent Authority	
3.	Designation of the CIT/DIT from whom the request was received	
4.	File No./Reference No. in the office of CIT/DIT who made the request	
5.	Designation of the CIT/DIT who is presently handling the case	
6.	File No./Reference No. in the office of CIT/DIT who is presently handling the case	
7.	Designation of the Range/Unit Head handling the case	
8.	Designation of the DDIT/Assessing Officer handling the case	

9.	Country/Jurisdiction to which the reference has been made	
10.	Name and address of the taxpayer under examination in India	
11.	PAN of the taxpayer under examination	
12.	Name of the foreign taxpayer/holder of information if referred to in the request	
13.	Date of making the reference by the CIT/DIT	
14.	Date of making the reference by the Indian Competent Authority	
15.	Date(s) of Clarification(s) sought by the Foreign Tax Authority	
16.	Date(s) of forwarding the clarification to the CIT/DIT concerned	
17.	Date(s) of clarification(s) provided by the CIT/DIT concerned	
18.	Date(s) of forwarding the clarification to the foreign Competent Authority	
19.	Date(s) of receipt of Information	
20.	Date(s) of forwarding the Information to the CIT/DIT concerned	
21.	Date(s) of providing the initial feedback by the CIT/DIT concerned	
22.	Date(s) of forwarding the initial feedback to Foreign Competent Authority	
23.	Date(s) of request for additional information made by CIT/DIT	
24.	Date(s) of forwarding additional request to foreign Competent Authority	
25.	Brief description of closure of request	

3.11.2 This basic information should also be captured in a columnar format in a Manual or Electronic register (e.g. in Excel Sheets) to be monitored by the Competent Authority.

CHAPTER-IV

GUIDELINES FOR HANDLING THE REQUESTS IN SPECIFIC CASES FROM FOREIGN TAX AUTHORITIES

4.1 Introduction

4.1.1 Under the provisions of the tax treaties entered into under sections 90 and 90A of the Income-tax Act, 1961 including DTAAs, TIEAs and the Multilateral Convention, the Government of India has the legal obligation to provide information requested under these treaties for the purposes of preventing tax evasion or avoidance in the other country/jurisdiction. The Government of India as a matter of policy also places very high emphasis on global transparency in tax matters and cooperation amongst nations to tackle the problem of global tax evasion and avoidance. Accordingly, it is our responsibility to provide necessary assistance to our treaty partners.

4.1.2 Further, ensuring fulfilment of our obligation to provide comprehensive and quality information in a timely manner, is also required for seeking similar cooperation from our treaty partners. Fulfilment of these obligations is essential to attain a respectable "Rating" of India in the peer review assessment in the Global Forum, and closely linked with the moral authority with which India can seek information from other treaty partners.

4.1.3 Accordingly, requests received from our treaty partners for information should be the requisite given priority by the officer concerned and all efforts should be made to provide comprehensive information in a timely manner. The work of the officers assigned the responsibility of collecting and providing the information should be supervised and strictly monitored by their senior officers.

4.2 Receipt of Requests and Forwarding to the Officers in Field Formation

4.2.1 Requests Received by the Indian Competent Authority

Requests for information are made by the foreign Competent Authority to the Indian Competent Authority, i.e., JS (FT&TR-I) or JS (FT&TR-II) as the case maybe.

4.2.1.1 The office of the Competent Authority verifies the validity of the request, i.e., whether the request has been made in accordance with the provisions of the relevant tax treaty and whether it is complete in all respects. This verification process includes the following:

(a) Whether there is a legal instrument for exchange of information, i.e., a tax treaty in place (DTAA/TIEA/Multilateral Convention/SAARC Limited Multilateral Agreement)

(b) Does the information relate to taxes covered by the tax treaty

(c) Does the information relate to tax years covered by the treaty

(d) Is the information requested foreseeably relevant to an ongoing tax examination, investigation or inquiry in the other country/jurisdiction

(e) Is the request detailed enough, that is, whether sufficient background information is provided to understand the request and if the information is sufficient to identify a taxpayer or group of taxpayers by name or otherwise etc.

(f) Is the request signed by the foreign Competent Authority or its authorized representative

4.2.1.2 If the request is determined to be valid, an acknowledgment is sent to the foreign Competent Authority and the request is forwarded to the officers of the field formation for collecting the information. The office of the Competent Authority makes all efforts to ensure that the acknowledgment is sent and request forwarded at the earliest and in any case, within seven days of the receipt of the request.

4.2.2 Forwarding the Requests for Gathering of Information

4.2.2.1 In case of simple requests, where the information can easily be provided by accessing the central database of the Income Tax Department, such as requests for current address or copies of returns filed, the requests are forwarded to the Director General of Income Tax (Systems) with a request to provide the information.

4.2.2.2 Most of the requests, however, are forwarded to the jurisdictional Director General of Income Tax (Investigation) as the information can be provided only after carrying out necessary enquiries. In cases where jurisdiction cannot be identified readily, or where co-ordinated investigation is required, the request is forwarded to a Director General of Income Tax (Investigation), to be decided by Member (Investigation) CBDT, for taking necessary action.

4.2.2.3 The Director General concerned should forward the request to an officer not below the rank of Deputy Director to collect the information, if required, by carrying out necessary enquiries, and forward the same to the Competent Authority. The Director Generals may consider appointing Nodal officers, not below the rank of Deputy Director, at major stations for the purpose of collecting information.

4.2.3 Acknowledgment by the DGIT

4.2.3.1 The office of the Competent Authority while forwarding the requests to the Director General will also request the DGIT to acknowledge the receipt of the letter and communicate the contact details of the officer and the reporting chain including the Unit Head and the DIT to whom the task is assigned, as these information is maintained in the office of Competent Authority. Maintenance of contact details of the officer concerned, in the office of Competent Authority is essential for monitoring and further follow up.

4.3 Guidelines for Collecting Information

4.3.1 Availability and Collection of Information

The information requested by the foreign Tax Authorities can be varied and may include requests for ownership of legal entities and arrangements, accounting information, banking information etc. The sources from which the information could be collected include Income Tax database, Banks and Financial Institutions, information available with other organizations such as Registrar of Companies, service providers for the purposes of Prevention of Money Laundering Act, taxpayers or its authorized representatives. The officer who is assigned the responsibility to collect information may use his statutory powers to collect information from one or other sources that may be selected so as to obtain comprehensive information in the shortest possible time. In appropriate cases, powers of summons, survey and search & seizure may be used to collect the information.

4.3.2 Providing Additional Information under Spontaneous Exchange

If during investigation any additional information becomes available or if some evidence of tax evasion/avoidance comes to the notice of the officer concerned, the same should be provided to the foreign Competent Authority, even if a specific request for the same has not been made. Exchange of such information is possible under "Spontaneous Exchange of Information" and must be undertaken in appropriate cases.

4.3.3 Non-disclosure of Source of Request for Information and Competent Authority Letter

The person from whom the information is being collected should not be informed that the request in this regard has been received from a foreign Tax Authority under the provisions of the tax treaties. The letter of the foreign Competent Authority including the letter requesting information should under no circumstances be provided to the person from whom the information is being collected including the taxpayer concerned. Only that minimum information, which may be necessary for collecting the information, should be disclosed.

4.3.4 Maintaining Confidentiality

The confidentiality provisions under the tax treaties are applicable to both in bound and outbound requests and the guidelines on maintaining confidentiality provided in Chapter-VII must be followed in case of requests received from foreign Competent Authorities also.

4.4 Timelines to be Followed: Interim and Final Reports

4.4.1 The international standards require that the information should be collected and transmitted to the requesting Competent Authority within 90 days. The timelines are monitored in the Peer Review Process of the Global Forum and are one of the important criteria in determining the "Ratings"of countries, including India. A High Rating would not only demonstrate greater commitment of India to the international standards but, as stated earlier, will give us the moral authority to demand the same from others.

4.4.2 In view of the above, and also taking into consideration the time that would be spent in the office of the Competent Authority and the Director General and in communication of letters, the officer who is given the responsibility of collecting the information must do so within 30 days of receipt of request in his office. In cases, where the information can be provided by accessing the database of the Income Tax Department, for example, current address or taxes paid in India, the same must be provided within 15 days. The officer given the responsibility of collecting the information must not carry the impression that the entire period of 90 days is available to him alone.

4.4.3 It is possible that some requests may be complex requiring detailed investigation and collection of information from various sources and thus it may not be possible to collect the requisite information within 30 days. Delay may also be possible on account of the efforts made by the officer in collecting quality information. In such cases, immediately on completion of 30 days, an interim report must be sent which may contain the information collected so far, difficulties in collecting the information, further efforts to be made for collecting quality information, likely date by which the full and complete information will be provided etc.

4.4.4 It is also possible that all or part of the information may not be available in the jurisdiction of the officer concerned. In such cases, an interim report on the above lines should be prepared and sent to the Competent Authority. In the covering letter of the officer concerned, the jurisdiction of the officer where the information is likely to be available should be mentioned.

4.4.5 The CIT/DIT concerned should monitor the work of the officer concerned and ensure that the interim or final report containing quality information is provided within 30 days.

4.5 Preparing Reports and Forwarding to the Competent Authority

4.5.1 Self-contained Report

A self-contained report containing all the details requested by the foreign Competent Authority, to which additional material such as the documents collected are annexed, should be forwarded by the DGIT/DIT concerned to the Indian Competent Authority . Since this self-contained report itself will be sent to the foreign Competent Authority, all the necessary details should be included in this report and not in any covering letter. If the supervising officers desire to include additional points, they should get these points included in this self-contained report before it is sent to the Indian Competent Authority.

4.5.2 Points to be Included in the self-contained Report

The self-contained report, as mentioned above, should be prepared in a comprehensive manner and should include the following:

(a) Name, address and other details of the taxpayer under examination in the foreign country, in whose case the request was received and information was collected in India

(b) Brief summary of actions taken and efforts made for collecting the information

(c) Problems in collecting the information, if any

(d) In case it is an interim report, the likely date by which the full and complete information will be provided should be mentioned

(e) Point Wise reply to the Questions asked by the foreign Competent Authority reproducing the question and then providing the answer

(f) Additional information, if any, to be sent to foreign Competent Authority as Spontaneous Exchange of Information

(g) Annexures as required.

4.5.3 Quality Information and Appreciation by the Foreign Competent Authority

There have been several instances in the past when quality information was provided by officers of the tax department to foreign Competent Authorities under the provisions of the tax treaties. In some cases, letters appreciating our efforts resulting in tackling tax evasion and avoidance in those countries have been received.

4.6 Information maintained in the Office of Director General

4.6.1 For the purposes of monitoring, some basic information should be maintained in the office of the Director General in the following sample Proforma, for each of the requests received from the foreign Competent Authority.

Table 5 : Sample Proforma for maintaining Information in the office of Director General for the purposes of Monitoring

1.	File No./Reference No. in the office of Director General	
2.	Date of receipt in the office of Director General	
3.	File No./Reference No. in the office of Indian Competent Authority	
4.	Country/Jurisdiction from where the request has been received	
5.	Name and designation of the Officer entrusted with the responsibility to collect information	
6.	Date of forwarding to the Officer concerned	
7.	Date of interim report(s) or final report(s) sent by Officer concerned	
8.	Date of closure	

4.6.2 The information may be captured in a columnar format in a Manual or Electronic register (e.g. in Excel Sheets) so as to facilitate monitoring and generation of reports.

4.6.3 It should be noted that the basic information as maintained above are also confidential and the guidelines provided in Chapter-VII shall be applicable in this case also.

4.7 Information maintained in the Office of Competent Authority

4.7.1 In the office of the Indian Competent Authority, for each of the requests received from the foreign Competent Authority, the following basic information is maintained.

Table 6 : Information Maintained in the office of Competent Authority in case of Inbound Request

1.	File No./Reference No. in the office of Indian Competent Authority	
2.	Reference Number of Foreign Competent Authority	
3.	Country/Jurisdiction from where the request has been received	
4.	Date of receipt in the office of Competent Authority	
5.	Details of the person under investigation in the foreign country	
6.	Designation of the Director General to whom the request was forwarded	
7.	Date of forwarding to the Director General	
8.	Name, designation and contact details of the Officer to whom the collection of information is assigned, including phone number, FAX and email	
9.	Contact details of the Additional Director concerned including phone, number, FAX and email	
10.	Contact details of the Director concerned including phone, number, FAX and email	
11.	Date(s) of receipt of interim reply(ies)	
12.	Date of forwarding of the interm reply(ies)	
13.	Date(s) of receipt of Final Reply	
14.	Date of forwarding of the Final Reply	
15.	Date(s) of Feedback received from Foreign Competent Authority	
16.	Brief description of the Feedback/Outcome	
17.	Date of closure of request	

4.7.2 This basic information shall also be captured in a columnar format in a Manual or Electronic register (e.g. in Excel Sheets) to be monitored by the Competent Authority.

CHAPTER-V

GUIDELINES FOR OTHER FORMS OF ADMINISTRATIVE ASSISTANCE

5.1 Introduction

As stated in Chapter-II, in addition to exchange of information on request basis, the tax treaties oblige the Contracting States to provide a wide range of administrative assistance, which includes the following:

(a) Assistance in Collection of Taxes

(b) Spontaneous Exchange of Information

(c) Simultaneous Examination

(d) Tax Examination Abroad

(e) Industry Wise Exchange of Information

(f) Joint Audits

(g) Service of Documents

(h) Automatic Exchange of Information

Guidelines for making the above-mentioned administrative assistance and handling the requests for assistance from the foreign Competent Authority are provided in the following paragraphs.

5.2 Making Requests for Assistance in Collection of Taxes

5.2.1 As tabulated in **Annexure-F**, a large number of tax treaties entered into by India include a provision for Assistance in Collection of Taxes under which the Contracting States are obliged to lend assistance to each other in collection of revenue claims or in taking measures of conservancy (e.g. attachment of assets) as if the revenue claims are their own. Section 228A(2) of the Income-tax Act, 1961 provides that where an assessee is in default or is deemed to be in default in making a payment of tax, the Tax Recovery Officer (TRO) may, if the assessee has property in a country outside India with which the Central Government has entered into an agreement for recovery of income-tax, forward to the Board a certificate drawn up by him under section 222 of the Income-tax Act, 1961 which may be forwarded to the other country under the terms of the agreement.

5.2.2 As stated earlier in Chapter II, the assistance in collection is provided under the treaties in respect of a "revenue claim", which is defined to mean an amount owed in respect of a tax

imposed in the country requesting assistance. The claim should be enforceable under the law of the requesting country and should normally be undisputed by the taxpayer. It should be owed by a person who, at the time of making the request, cannot prevent its collection under the law of the requesting country. Most importantly, the requesting country should have taken all reasonable measures for collection of the claim under its own laws and administrative practice.

5.2.3 Further, Conservancy measures in accordance with provisions of its own law should also be taken by the requested State if a request is made in this regard as if the revenue claim is its own even if the revenue claim is not enforceable in the requesting State or is owed by a person who has a right to prevent its collection. This would be a case where, e.g., a tax demand has been raised but is disputed and the taxpayer has a right to prevent its collection. However, the amount of claim should be quantified and evidenced by a statutory order or notice.

5.2.4 In addition, in some of India's DTAAs, there are provisions for providing assistance in cases where interim or provisional measures have been taken to freeze the assets even before the actual raising of tax claim against a person, for instance through provisional attachment under section 281B of the Income-tax Act. In these cases, requests for taking interim or provisional measures may be made if facts and circumstances exist that justify such a request, such as a reasonable probability of the taxpayer alienating its assets (from which the recovery of a revenue claim can possibly be made in consequence of a request for assistance in collection of taxes) in the treaty partner country.

5.2.5 Requests for Assistance in Collection of Taxes should be made in accordance with the following guidelines:

(a) The request should be made by the CIT/DIT concerned to the Indian Competent Authority, i.e., JS (FT&TR-I) or JS (FT&TR-II) as the case maybe. The Competent Authority will forward the requests to the foreign Competent Authority.

(b) The CIT/DIT concerned should not merely forward the certificates or letters of the TRO/Assessing Officer but must include all the details of the request in his letter which must be signed by him and not by the officers in his Headquarters. The request may not be routed through the office of CCIT/DGIT but a copy may be sent to him.

(c) The request need not be made in any standard format, but should be as detailed as possible and should at the least contain the following details:

   i. Name, address, PAN and status of the taxpayer in whose case the tax demand has been raised;

   ii. Date of raising the tax demand with a brief description of the nature of the demand, assessments made, penalty levied etc.;

   iii. Amount of tax, interest and/or penalty

   iv. The fact whether the demand is undisputed or disputed; Where the demand is disputed, the status of the appeal, disposal of stay petition etc. should be clearly indicated as also brief facts of challenges, if any, made in the High Courts or Supreme Court;

(d) The efforts made for collection of the demand in India. The request for assistance in collection of taxes should be accompanied with a notice of demand and a certificate under section 222 of the Income-tax Act drawn by the TRO. Where the treaty allows assistance by way of provisional attachment of assets, a statutory order or notice quantifying the amount of tax payable may be attached with the request.

(e) In the case of a request for conservancy, the details of actions taken for conservancy in India, including that under section 281B of the Income-tax Act should be indicated and the facts and circumstances that justify making such a request to the treaty partner, such as the likelihood of the taxpayer alienating its assets in the treaty partner country in foreseeable future should be elaborated.

(f) The request should also indicate the PD account details of the CIT/DIT concerned with a request that the tax amount recovered by the foreign government may be deposited in this account. These details should include Swift Code, PD Bank Account Number, Bank name, Branch name and address, etc.

5.2.6 The letters, documents and information exchanged in relation to requests made for assistance in collection of taxes are subject to the same confidentiality requirements as in the case of requests for information and hence, the guidelines for maintaining confidentiality as provided in Chapter-VII must be followed.

5.3 Handling Requests for Assistance in Collection of Taxes Received from Foreign Competent Authority

5.3.1 Requests for Assistance in Collection of Taxes may also be received from a foreign Competent Authority. These requests are received by the Indian Competent Authority and are forwarded to the jurisdictional CCIT/CIT who may assign the task to the jurisdictional TRO.

5.3.2 Section 228A (1) of the Income-tax Act empowers the TRO to recover the amount specified in the request in the manner in which he would proceed to recover the amount specified in a certificate drawn up by him under section 222 of the Income-tax Act and remit any sum so recovered after deducting his expenses in connection with recovery proceedings.

5.3.3 On drawing the certificate under section 222, the TRO may recover the amount by attachment and sale of moveable or immovable property or by appointing a receiver for the management of the movable and immovable properties. However, in many cases, attachment may not be necessary and the TRO is advised to take the following steps when the request is received from a foreign Competent Authority.

(a) The taxpayer in case of which the request has been received should be contacted and he may be requested to state whether any tax dues are payable by him in the requesting country/jurisdiction. If the tax dues are accepted by him and he is ready to pay the taxes directly in the other country/jurisdiction, he may be requested to do so and produce evidence of the same. This evidence with a report may be sent to the Indian Competent Authority through the CIT/DIT concerned.

(b) If the taxpayer claims that no amount or a lesser amount of tax is payable by him, his claim should be examined by the TRO on the basis of documentary evidence and if it is found to be genuine, the foreign Competent Authority should be informed through the Indian Competent Authority with a request for providing clarification/further information.

(c) In cases, where a view has been taken by the Indian Competent Authority that such taxes are due in the requesting country, steps for attaching the assets of the taxpayer, for example, a bank account may be taken. The process of remittance, which may for example be done directly by the banks to the account of the foreign Competent Authority, may be carried out in consultation with the Indian Competent Authority who may, if so required, also consult the foreign Competent Authority for this purpose.

(d) If a request for taking conservancy measures or collection of tax dues without informing the taxpayer concerned has been made by the foreign Competent Authority, steps for the same should be taken in consultation with the Indian Competent Authority.

5.3.4 The confidentiality standards apply to the information, letters or documents exchanged for the purpose of assistance in collection of taxes and hence the guidelines for maintaining confidentiality as provided in Chapter-VII must be followed while dealing with such requests.

5.4 Spontaneous Exchange of Information Received from Foreign Competent Authority

5.4.1 As stated in Chapter-II, under the DTAAs and the Multilateral Convention, information may be exchanged on a spontaneous basis, i.e., in the absence of a specific request by the requesting country. The foreign Competent Authority, in appropriate cases, where he comes across information that might be of interest to India for its tax purposes, may send the information without any specific request made by the Indian Competent Authority.

5.4.2 The spontaneous information so received by the Indian Competent Authority, i.e., JS (FT&TR-I) or JS (FT&TR-II) as the case maybe, is forwarded to Member (Investigation), CBDT who then forwards it to the jurisdictional Director General (Investigation) for carrying out the necessary enquiries and taking appropriate action for the purposes of avoiding tax evasion and avoidance in India. If the jurisdiction where such information is likely to be utilized cannot be readily determined or if the information is likely to necessitate coordinated action across various jurisdictions, the information would be forwarded to a Director General (Investigation), to be decided by Member (Investigation) CBDT, for taking necessary action. If the information is likely to result in an undisclosed income of less than Rs. 500,000, normally no action needs to be taken.

5.4.3 The Director General concerned should provide feedback on the usefulness of the information including details of action taken, additional revenue realized, penalties imposed, prosecution launched etc. in the following format.

Table 7 : Proforma for Feedback in case of Spontaneous Exchange of Information

1.	Name and address of the taxpayer in India	
2.	Permanent Account Number of the taxpayer in India	
3.	Jurisdiction from where information is received and date of receipt	
4.	Whether the information was useful – Yes or No	
5.	If the information was not useful, what are the reasons, e.g. data not readable, taxpayer not identified, incomplete address, period of limitation over, etc.	
6.	Whether the taxpayer has disclosed the information in his tax return	
7.	If the information received has not been disclosed, the details of actions taken	
8.	Results of action taken as on date, for instance assessment made, taxes collected, penalties levied, prosecution launched etc. This information may be updated on new developments and revised Proforma should be sent	

5.4.3 This feedback may be provided to Member (Inv.) who will forward the same to the Competent Authority for sharing with the foreign Competent Authority.

5.4.4 Since the information is provided under the provisions of tax treaties, the guidelines on maintaining confidentiality as provided in Chapter-VII of this Manual should be strictly followed.

5.5 Spontaneous Information shared with Foreign Competent Authority

5.5.1 Under the provisions of the DTAAs and Multilateral Convention, the Indian Competent Authority may provide information on a spontaneous basis if there is evidence available in India that a person has not paid the due taxes in the foreign country/jurisdiction. Presently this provision in not widely used but is an effective tool to prevent global tax evasion and avoidance. Further, if we provide information on spontaneous basis to our treaty partners, we may expect reciprocal assistance from them also.

5.5.2 Thus, during an investigation by the Investigation Wing or the assessment, if some information which may be of relevance to foreign tax authorities, comes to the notice of the officer concerned, the said information may be sent to the Indian Competent Authority, through the Pr. CIT/DIT concerned.

5.5.3 Since the information is exchanged under the provisions of tax treaties, the guidelines on maintaining confidentiality as provided in Chapter-VII of this Manual should be strictly followed.

5.6 Tax Examination Abroad

5.6.1 As stated in Chapter-II, Tax Examination Abroad is another form of administrative assistance and is possible under most of the tax treaties including DTAAs, TIEAs, Multilateral Convention and SAARC Agreement.

5.6.2 Tax examination abroad allows for the possibility to obtain information and assistance through the presence of representatives of the competent authority of the requesting Contracting State. 'Tax Examination Abroad' may be carried out in the following situations:

- The written procedure required to be followed in case of exchange of information may be time-consuming and may for that reason not be as effective as other compliance methods when rapid action on the part of the tax administration is required, for example, in cases involving international hiring out of labour or itinerant activities.
- In order to enable a tax administration to obtain a clear and detailed understanding of business and other relations between a resident of a country, who is the subject of a tax examination and his foreign associates, it is often useful to follow at close proximity, an examination initiated in the foreign country.
- Situations may arise, where tax auditors are unable to inspect books and records in their own country because the laws of that country enable taxpayers to keep certain records in another country.
- This form of assistance is especially relevant in cases involving complex issues that are not likely to be resolved by way of exchange of information.

5.6.3 It may be noted that the participation of authorised foreign tax officials in a tax examination being carried out by the requested country may be passive or active. Some countries may only permit passive participation of foreign tax officials in a tax examination. In such instances, participation by foreign tax officials would be limited to observing relevant parts of the tax examination and only liaising directly with the tax officials of the requested country. In such cases, foreign tax officials would not be permitted to directly interview taxpayers or other individuals. Other countries may permit active participation of authorised foreign tax officials. Under such circumstances, some countries may, for example, allow foreign tax officials to conduct interviews and examine records pertaining to the taxpayers under examination.

5.6.4 Guidelines for conducting Tax Examination Abroad as per the Module on "Tax Examination Abroad", in the OECD's Manual on Exchange of Information may be referred to for furthe guidance.

5.6.5 In cases, where a request is required to be made for Tax Examination Abroad, the CIT/DIT concerned should make a reference to the Competent Authority, that is JS(FT&TR-I) or JS(FT&TR-

II) as the case maybe, with a copy to the CCIT/DGIT concerned. While making the request, full details of the case should be given including (a) Reasons and motives for the request for Tax Examination Abroad (b) reasons why the physical presence of their tax official(s) is required (c) details of the specific issues requested to be examined (d) details of the preferred timing of the tax examination and (e) any other details that may be applicable in the nominated case.

5.6.6 Appropriate proposals would be forwarded by the Indian Competent Authority to the foreign Competent Authority requesting his assistance, depending on the domestic laws of that country/jurisdiction. The "Tax Examination Abroad" will be coordinated by the two Competent Authorities.

5.7 Simultaneous Examination

5.7.1 As stated in Chapter-II, a simultaneous examination is an arrangement between two or more parties to examine simultaneously, each in its own territory, the tax affairs of a taxpayer(s) in which they have a common interest or related interest, with a view to exchanging any relevant information which they so obtain. This may be useful in cases of scrutiny assessment of multi-national corporations having operations in different countries or in transfer pricing audits. Request for the same may also be made through the office of Competent Authority.

5.7.2 Some illustrative situations that might necessitate a Simultaneous Examination are given below:

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

5.7.3 Guidelines for Simultaneous Examination are given in the Module on "Simultaneous Tax Examination", in the OECD's Manual on Exchange of Information which may be referred to for guidance.

5.7.4 In cases, where a request is required to be made for Simultaneous Examination, the CIT/DIT concerned should make a reference to the Competent Authority, that is JS(FT&TR-I) or JS(FT&TR-II) as the case maybe, with a copy to the CCIT/DGIT concerned. While making the request, full details of the case should be given including (a) Taxpayer Name and Address (b) PAN (c) Taxpayer's business sector and activities (d) Details of pending proceedings under Income-tax Act (e) Reason/Justification for simultaneous audit selection (f) Audit plan (g) Previous exchange of information, if any: (reference numbers, date), (h) Any other relevant information.

5.7.5 Appropriate proposals would be forwarded by the Indian Competent Authority to the foreign Competent Authority requesting his assistance depending on the domestic laws of that country/jurisdiction. The "Simultaneous Examination" will be coordinated by the two Competent Authorities.

5.8 Joint Audits

5.8.1 As stated in Chapter-II, a joint audit means two or more countries joining together to form a single audit team to examine issues/conduct audit of one or more related taxable persons with cross-border business activities, involving the participating countries in which the countries have a common or complementary interest. It also includes the taxpayer jointly making presentations and sharing information with the joint audit team comprising officials of participating countries. The joint audit team may include Competent Authority representatives, joint audit team leaders and examiners/auditors from each of the participating country. Joint audits are possible under the provisions of tax treaties.

5.8.2 An Indicative (not exhaustive) list of issues suitable for a joint audit approach is given below:

a) Transfer Pricing Issues

b) Taxpayer residency or Permanent Establishment determinations

c) Analysis of complex tax structures and entities operating in tax havens and aggressive tax planning schemes

d) Complex business restructuring processes; Split benefit agreements (including royalty payments)

e) Cost allocation agreements

f) Hybrid financial instruments

g) Back-to-back loans

h) Structured transactions

i) Double-dip leases

j) Service agreements and cost sharing agreements

k) Private equity funds

l) Dealings with source issues

5.8.3 Guidelines for conducting joint audits are provided in the 2010 report on "Joint Audit" by the Forum on Tax Administration of the OECD which may be referred to for guidance.

5.8.4 In cases, where a request is required to be made for Joint Audit, the CIT/DIT concerned should make a reference to the Competent Authority, that is, JS(FT&TR-I) or JS(FT&TR-II) as the case maybe, with a copy to the CCIT/DGIT concerned. While making the request, full details of the case should be given including (a) Taxpayer Name and Address (b) PAN (c) Taxpayer's business sector and activities (d) Details of pending proceedings under the Income-tax Act (e) Reason/Justification for simultaneous audit selection (f) Audit plan (g) Previous exchange of information, if any: (reference numbers, date), (h) Any other relevant information.

5.8.5 Appropriate proposals would be forwarded by the Indian Competent Authority to the foreign Competent Authority requesting his assistance depending on the domestic laws of that country/jurisdiction. The "Joint Audit" will be coordinated by the two Competent Authorities.

5.9 Incoming Automatic Exchange of Information under non-standard format

5.9.1 Introduction

As stated in Chapter-II, the G20 countries have endorsed the new global standards on AEOI and India will be receiving and sending information automatically under the new standards from 2017 and under the proposed IGA under FATCA from September, 2015. The new global standards and the scope of exchange therein, including under the IGA will be discussed in the next Chapter. In the following paragraphs, the guidelines for handling the information currently received under the non-standard format are given.

5.9.2 Nature of Information Received

Under the non-standard format, India receives information on an automatic basis from some of its treaty partners which typically contains information about Indian residents receiving income in the form of interest, dividend, salary, pension etc. in foreign countries. The information received currently could not be utilized optimally since in many cases the information is not complete, it is in different formats, does not contain PAN or full address and there is no matching facility available. Further, it is received only from countries having high standards of disclosure and compliance and not from offshore financial centres where the unaccounted money is more likely to be located. Despite the above constraints, the Directorate of Intelligence and Criminal Investigation (I&CI) have used some of the information gainfully and identified cases of tax evasion, which are at different levels of processing, investigation and assessment.

5.9.3 Forwarding of Information to Directorate of I&CI

The data/information under the Automatic Exchange of Information is received by the Competent Authority, that is, JS (FT&TR-I) and JS (FT&TR-II), as the case maybe, from the foreign

Competent Authority. This data/information is forwarded by the Competent Authority to DGIT (I&CI) in a secured manner.

5.9.4 Handling of Information by Directorate of I&CI

On receipt of the information, the DGIT (I&CI) should:

1. Access the data, examine its integrity, and convert the data into usable format with the help of an utility provided by Pr. DGIT (Systems).
2. Segregate the data into PAN and non-PAN.
3. Populate PAN in the non-PAN data/information wherever possible with the help of a utility provided by Pr. DGIT (Systems). Till the utility is made available, PAN population shall be done by using alternate methods.

5.9.5 Use of non-PAN data/information

(a) Out of the non-PAN data, cases shall be selected for enquiry to verify the information for the purposes of proceedings under the Income-tax Act by DIT(I&CI), New Delhi, who is designated as the Nodal Officer, on the basis of monetary threshold limit or any other criteria prescribed by DGIT(I&CI) for the respective financial year.

(b) Selection of cases for enquiry in respect of the data/information received in a financial year shall ordinarily be made by 31st December of the following financial year.

(c) After selection, the case shall be sent by the nodal officer to the jurisdictional DIT (I&CI), who shall assign the case for enquiry to the officer within his jurisdiction.

(d) After enquiry, report on actionable cases shall be sent by the DIT (I&CI) to the jurisdictional CIT/DIT for taking necessary action in accordance with the provisions of the Income-tax Act, 1961.

(e) The non-PAN data/information which has not been selected for enquiry shall be maintained by the Nodal Officer in a database and linked to additional information received subsequently in that case for consideration of selection for enquiry. In addition to the above, the non-PAN information may be disseminated to the CCIT/DGIT concerned on the basis of territorial jurisdiction for appropriate action. The mode of such dissemination may be decided in consultation with the Pr.DGIT (Systems).

(f) The Nodal Officer on specific request by the DGIT(Inv.) or DIT(Inv.) shall provide the non-PAN data/information after matching with the name and other identifying features, if available in the database.

5.9.6 Use of PAN data/information

(a) The PAN data/information shall be forwarded by the Nodal Officer to Pr. DGIT (Systems) to match the information with the Return of Income and ascertain as to whether corresponding income/transactions have been disclosed in the return, where the returns of income have been filed.

(b) The Pr. DGIT (Systems) shall provide case-wise result of analysis to the Nodal Officer.

(c) After analysis, in cases where prima facie, the corresponding income/transactions is not disclosed either partly or fully in the return of income for the relevant assessment years and, the assessment or re-assessment proceedings for any of the assessment years is pending, the Pr. DGIT (Systems) shall push the relevant data/information to the assessing officer for taking necessary action.

(d) In cases other than those mentioned in para (c), where prima facie, the corresponding income/transaction is not fully or partly disclosed in the return of income, or the return of income has not been filed, the Nodal Officer shall:-

(i) segregate the data on the basis of a monetary threshold to be decided by DGIT(I&CI) with the approval of Member(Inv.);

(ii) forward the cases above that monetary threshold to the jurisdictional DIT(I&CI) for enquiry;

(iii) consider usage of information below the monetary threshold, including dissemination to the Pr. CCIT(CCA) for enquiry under the provisions of Income-tax Act and feedback, which shall be decided by DGIT(I&CI) on the basis of the quantum of information, value and other relevant criteria with the approval of Member(Inv.).

5.9.7 Procedure for obtaining additional Information

During the enquiry either by the officers of I&CI or the assessing officer, the person to whom the information relates, denies the transaction fully or partly, or does not respond to the notices issued by the officer who is conducting the enquiry, the officer concerned may obtain the evidence in respect of that transaction from the treaty partner as per the procedure prescribed in chapter III of this manual for completing the enquiry/proceedings.

5.9.8 Feedback on use of Information under Automatic Exchange

The DIT(I&CI) or Pr. CCIT (CCA), as the case may be, shall submit feedback to the Nodal Officer on the result of the enquiry/proceedings within one month of completion of enquiry/proceedings in the following format.

Table 8 : Feedback of the Information received under AEOI in non-standard Format

1.	Name and address of the taxpayer in India	
2.	Permanent Account Number of the taxpayer in India	
3.	Jurisdiction from where information received and date of receipt	
4.	Whether the information was useful – Yes or No	
5.	If the information was not useful, what are the reasons, e.g. data not readable, taxpayer not identified, incomplete address, period of limitation over, etc.	

6.	Whether the taxpayer has disclosed the information in his tax return	
7.	If the information received has not been disclosed, the details of actions taken	
8.	Results of action taken as on date, for instance assessment made, taxes collected, penalties levied, prosecution launched etc. This information may be updated on new developments and revised Proforma should be sent	

Supplementary feedback shall be sent by Pr. CCIT(CCA) in cases where penalty has been imposed and also when prosecution is launched. The Nodal Officer shall forward the same to Competent Authority for transmission to the foreign Competent Authority. The DGIT (I&CI) shall on the basis of feedback received from DIT(I&CI) or Pr. CCIT(CCA) compile the gist of significant findings and forward the same to the Investigation Division of CBDT on a quarterly basis.

5.9.9 Small Tax Effect

Where the information is likely to result in an undisclosed income of below Rs. 500,000, the DGIT(I&CI) shall not ordinarily disseminate such data/information for enquiry/proceedings.

5.10 Outgoing AEOI under non-standard format

5.10.1 Consequent to the G20 leaders' declaration of Las Cabos in 2011, India has transmitted about 2 million pieces of information relating to F.Y. 2009-10, 2010-11 and 2011-12 to more than fifty of its treaty partners. This information has been collected from Form 15CA filed by the remitters.

5.10.2 Feedback received from our treaty partners indicated that in most of the cases, the information provided by India was not usable as it was not in authorized OECD format and there were errors. In view of the above and in view of the adoption of the new global standard, the practice of sending information automatically collected from Form 15CA has now been discontinued.

CHAPTER-VI

ASSISTANCE FROM FOREIGN COUNTRIES UNDER OTHER LEGAL INSTRUMENTS

6.1 Introduction

Information and other forms of assistance can also be requested through Mutual Legal Assistance Treaties (MLATs) through Ministry of Home Affairs, particularly with countries/jurisdictions with which there is no tax treaty. Information/evidence obtained through MLATs can also supplement the information received under tax treaties when a criminal complaint is made for tax evasion on the basis of information received under tax treaties. Information can also be obtained through Egmont Group of Financial Intelligence Units (FIUs) which may be further supplemented by making further requests under tax treaties/MLATs. The officers of the tax department are encouraged to make use of these avenues for the purposes of investigation and assessment.

6.2 Mutual Legal Assistance Treaties

6.2.1 The MLATs are legal instruments through which the Contracting States agree to provide each other with the widest measures of mutual legal assistance in criminal matters. The scope of cooperation is different in different MLATs but is normally quite wide and may include the following:

- Provision of information, documents and other records
- Taking of evidence and obtaining of statements of persons
- Location and identification of persons and objects
- Execution of requests for search and seizure
- Measures to locate, restrain and forfeit the proceeds and instruments of crime
- Facilitating the personal appearance of the persons giving evidence
- Service of documents including judicial documents
- Delivery of property, including lending of exhibits
- Other assistance consistent with the objects of the MLAT which is not inconsistent with the law of the requested State (catch all provision)

6.2.2 Since offences under direct taxes fall within the category of economic crimes, the MLATs can be used subject to the conditions contained therein, for seeking the above-mentioned wide range

of assistance for tax purposes also. It is pertinent to note some of the forms of assistance available under the MLATs may not be possible under the tax treaties, and thus if those types of assistance is required from a foreign country the same may be requested under MLATs. Further, on examination of information obtained under the tax treaties, if a need is felt to receive additional and wider range of assistance from a foreign country, request for the same can be made under the MLATs. The MLATs can also be used for seeking assistance from countries with which there is no tax treaty such as Hong Kong.

6.2.3 In some of the MLATs, the requirement of dual criminality needs to be satisfied and thus requests need to be framed appropriately. For instance, in many countries "tax evasion" (under reporting of income) is not a crime but "tax fraud" **(**scheme of lies, use of false documents / information to deceive the tax authorities**)** is a crime and in such cases, the fact of tax fraud needs to be brought out clearly while seeking assistance under MLATs.

6.2.4 As on 1st May, 2015, India has entered into MLATs with 38 countries (**Annexure-H).** The text of these treaties is available at the website of Central Bureau of Investigation.

6.2.5 Under MLAT, exchange of information takes place between authorities designated as 'Central Authority' in the requesting and requested state. In India the 'Central Authority' is the Joint Secretary, Internal Security Division–II, Ministry of Home Affairs (MHA), NDCC Building (1st Floor), Jaisingh Road, Near Jantar Mantar, New Delhi-110001.

6.3 Making a Request under MLAT

6.3.1 Nodal Officer in CBDT

For the purpose of MLAT, the Nodal Officer in CBDT is Director/Dy. Secretary (Investigation-I), CBDT, Ministry of Finance, Room No. 243-F, North Block, New Delhi, Tele-fax: 011-23093902. Requests under the MLAT should be sent by the CIT/DIT concerned to the Nodal Officer in CBDT who, after examining the request, will forward it to the Central Authority in MHA. No request should be sent directly to the MHA.

6.3.2 Issues to be kept in mind while Making Requests under MLAT

(a) Before making a request under MLAT to a country, relevant provisions of the MLAT with that country should be seen as the requirements differ from country to country.

(b) The request forms are different for different countries depending on the nature of requests. These are generally available on the website of the Central Authority of respective Governments. Search on internet may help if specific website is not known. Further information regarding MLAT is available on the website of the Ministry of Home Affairs and CBI. Reference of certain relevant and useful material - "*Requesting Mutual Legal Assistance in criminal matters from G20 countries - A Step-By-Step Guide (2012)*" and "*Requests for Mutual Legal Assistance in Criminal Matters - Guidelines for Authorities Outside of the United Kingdom – 2015*", which are available on Internet, may be made which could provide useful guidance in this regard. Further assistance / information in this regard may be obtained from the office of

the Central Authority in MHA at New Delhi, as stated above, or Director / Dy. Secretary (Investigation-I), CBDT, Ministry of Finance, Room No. 243-F, North Block, New Delhi, Telefax: 011-23093902.

(c) The MLAT can be used for assistance only in criminal matters emanating out of proceedings under direct taxes and not for other tax enquiries. Criminal investigation in direct taxes denotes investigation into an offence under the provisions of the Income-tax Act or Wealth-tax Act. Therefore, while making the reference, it is important to highlight the tax offence committed/being investigated. A description of nature of the criminal matter (in particular, whether it relates to an investigation, a prosecution, or other matter, and details of the offence committed or alleged) and a statement setting out a summary of the laws contravened needs to be given in the request. In this connection, it may be mentioned in the request under MLAT that Income Tax investigations and proceedings involve both civil and criminal consequences. Tax investigations conducted under the Income-tax Act may lead to criminal consequences which include rigorous imprisonment up-to 7 years with fine for wilful attempt to evade tax under section 276C(1) of the Income-tax Act, besides civil consequences of tax, interest and penalty. Section 277 of the Income-tax Act, inter alia, provides that if one furnishes false statement in declaration, etc. even during investigation by an Investigating Officer, he shall be punishable with rigorous imprisonment up-to 7 years with fine.

(d) In addition to the above, a request under MLAT should include the following – (a) statement regarding the maximum punishment / penalty for the offence to which the criminal matter relates; (b) a summary of the relevant facts including, in particular, the circumstances indicating their connection with any evidence sought in the requested jurisdiction; (c) full particulars of persons under investigation and/or prosecution including name, gender, date of birth, nationality/residence, passport or travel document number, etc.; (d) a description of the purpose of the request and of the nature of the assistance being sought; (e) relevance of the required evidence (the manner in which the evidence is expected to assist in the investigation or to be used in the prosecution); (f) details of the procedure that the requesting jurisdiction wishes the requested jurisdiction to follow in giving effect to the request, including details of the manner and form in which any information, document or thing is to be supplied under the request; (g) if confidentiality of the request is required, a statement expressing the requirement supported by reasons, why confidentiality is needed; (h) if the original of a document, etc. is requested, a statement specifying the reason for requiring the original; (i) details of the period within which the requesting jurisdiction wishes the request to be complied with; (j) any other information which may assist the requested jurisdiction in giving effect to the request.

(e) It is also useful to have a glimpse of the relevant laws in the requested country because under the relevant MLAT, it could be provided that the request from India can be executed only in accordance with domestic laws of the requested state. It will strengthen the request if it is explained in the Letter of Request (LOR) that the offence committed/being investigated in India has not only violated various Indian laws like Income-tax Act, Indian Penal Code, Oath

Act, Evidence Act, etc., as the case may be, but would have also constituted an offence in the requested state had it been committed in that country. This may enhance the possibility of getting information from the requested state.

(f) Relevant supporting evidence like Income-tax return, copy of seized document(s), relevant portion of statement [along with the legal admissibility of statement recorded by the Income-tax authority under section 131/ 132(4), etc.], relevant provisions of Income-tax and other law, etc. may be enclosed with the request to demonstrate the above. It may also be demonstrated that the request is in accordance with relevant clause(s) of MLAT.

(g) It is desirable that the draft of the request by the 'Central Authority' of India (MHA) to the 'Central Authority' of the foreign jurisdiction concerned is prepared by the Income-tax authority concerned as he is better placed to appreciate the facts and offences under direct taxes than MHA officials. Such draft may be enclosed with the letter addressed to the Indian Central Authority.

6.3.3 Use of Information and Confidentiality

The information received under the MLATs should be kept confidential in accordance with the terms of the agreement including the conditions of use which may be imposed by the country providing the information. The information should be handled as per the principles of confidentiality prescribed in Chapter-VIII of the Manual. Further, the information received under MLAT could be used only for that purpose for which the same has been received. If it is intended to use the information for any other purpose, prior permission of the requested jurisdiction must be obtained. For example, Article 7 of MLAT with USA in this regard reads as under:

"The Central Authority of the Requested State may request that the Requesting State not use any information or evidence obtained under this Treaty in any investigation, prosecution, or proceeding other than that described in the request without the prior consent of the Central Authority of the Requested State. If the Requested State makes such a request, the Requesting State shall comply with the conditions."

6.4 Egmont Group of FIUs

6.4.1 Exchange of Information between FIUs

The Egmont Group is an informal network of FIUs established with a view to have international cooperation including information exchange in the fight against money laundering and financing of terrorism. As on 1st May, 2015, FIUs of 147 countries are part of the Egmont Group. The FIUs of the Group exchange information in accordance with Egmont Principles for Information Exchange and Operational Guidance for FIUs, which is available on the Internet. The tax authorities may request information available with FIUs of other countries through FIU-IND (the Indian FIU) using the information exchange mechanism of the Egmont Group.

6.4.2 Nodal Officer in CBDT

For the purpose of information from Egmont Group, the Nodal Officer in CBDT is

Director/Deputy Secretary (Investigation-IV), CBDT, A.R.A. Centre (Ground Floor), E-2; Jhandewalan Extension, New Delhi – 110055. Tele-fax:011-23547511 [email ID: dirinv4cbdt-itax@nic.in]. Requests in this regard should be sent by the CIT/DIT concerned to the Nodal Officer in CBDT who, after examining the request, will forward it to FIU-IND. No request should be sent directly to the FIU-IND.

6.4.3 MoU between FIU and CBDT

On 20th September, 2013, a Memorandum of Understanding (MoU) was entered into between FIU and CBDT (copy at **Annexure-I**) in which it has been provided that if CBDT requires information from a foreign FIU, a request will be made to FIU-IND in EGMONT prescribed proforma in electronic format and CBDT shall abide by the conditions that may be imposed by the foreign FIU on the use of information provided by the foreign FIU.

6.4.4 Issues to be kept in mind while Making Requests under Egmont Group

(a) The request should be made in EGMONT prescribed format which is available in Egmont operational guidance, a copy of which is also enclosed as **Annexure-J.**

(b) The request for intelligence should be self-contained. It may include the facts relating to the offence committed / under investigation, laws violated, their civil and criminal nature and tax/ penalty/prosecutions under different provisions of law.

(c) Relevant provisions of law may be reproduced and scanned copies of relevant evidence, as may strengthen the request, may be incorporated in the request.

6.4.5 Use of Information and Confidentiality

6.4.5.1 The information received under the Egmont Group of FIUs should be used only for that purpose for which the same has been received and should be kept confidential in accordance with the terms of the agreement including the conditions of use which may be imposed by the country providing the information. If it is intended to use the information for any other purpose, prior permission of the requested jurisdiction must be obtained. The information should be handled as per the principles of confidentiality prescribed in Chapter-VII of the Manual.

6.4.5.2 As per Para 14 of the MoU between FIU-IND and CBDT, the information provided by FIU-IND will not be used as evidence in any departmental or judicial proceedings. The information provided is in the nature of intelligence and not evidence. The source/identity of the entity from whom the information is received or the name of the officer who has forwarded the information shall also not be disclosed in any departmental or judicial proceeding.

6.4.5.3 It does not appear necessary to take prior permission of the requested jurisdiction before making reference under DTAA/TIEA/MLAT on the basis of intelligence received from FIU-IND with a view to collect evidence because the source of the intelligence is not to be disclosed in such reference and the reference is part of investigation by the Income-tax authority. However, where such a request is made, it should be ensured that there is no indication in the reference that the information has been received from FIU.

CHAPTER-VII
CONFIDENTIALITY

7.1 Introduction

7.1.1 Confidentiality of taxpayer information has always been a fundamental cornerstone of tax systems. The tax administration is obliged to keep the information submitted by the taxpayers, including their sensitive financial and personal information, confidential and is required to take steps to ensure that they are not disclosed inappropriately, either intentionally or by accident. The citizens and Government of a country/jurisdiction will accordingly agree to exchange information with another country only if the information exchanged is kept confidential, used only for the specified purposes and disclosed only in accordance with the agreement on the basis of which it is exchanged.

7.1.2 In many countries, Governments have given commitments to their citizens through Parliament/Senate that information will not be provided under the tax treaty if the recipient country has not complied with its obligations under the agreement to protect the confidentiality of information and using the information solely for collecting and enforcing taxes covered by the agreement.# Further, in many countries, in taxpayer charters, Governments have recognized that the taxpayers have a right to expect that their information will remain confidential. In addition, the offshore financial centres have agreed to exchanging information under tax treaties, only if the information is treated as confidential and used for the purposes specified in the agreement through which it is exchanged. Any breach of these requirements may provide an excuse to them not to provide information in future.

7.1.3 One of the "Terms of Reference" for the peer review assessment of the Global Forum requires that the receiving jurisdiction should ensure that safeguards are in place to protect the confidentiality of information exchanged. Since all members of the Global Forum participate in the process of peer review on an equal footing, any unauthorized disclosure, either intentionally or by accident, in addition to bilateral action by the country/jurisdiction concerned may also lead to multilateral action by the members of the Global Forum by refusing to provide information unless remedial action is taken.

7.1.4 It is, therefore, essential that for continued assistance by our treaty partners, the information received should be kept confidential and should be used and disclosed as per the terms of the agreement. The officers of the tax department should ensure that no inappropriate disclosure is made either intentionally or by accident or carelessness.

See the text of opening statement made by Mr. Robert B. Stack, Treasury Deputy Assistant Secretary (International Tax Affairs), USA before the Senate Committee on Foreign Relations on 26th February, 2014 (http://www.treasury.gov/resource-center/tax-policy/Documents/OTPTest-2014-1-26-Stack-SenFR.pdf)

7.2 Confidentiality Provisions under Tax Treaties

7.2.1 The provisions relating to confidentiality of information exchanged under the tax treaties are contained in Article 26(2) of the Model DTAA, Article 8 of the Model TIEA, Article 22 of the Multilateral Convention and Article 5(1) of the SAARC Limited Multilateral Agreement. Although there may be some differences in the language of the individual agreements, the provisions and the principles contained in all these tax treaties are generally similar. These have been explained most recently in the OECD Commentary to Article 26 of the Model Tax Convention as amended in 2014 and are widely accepted as the international standards and are explained below in some detail.

7.2.2 Article 26(2) of the OECD Model DTAA provides that:

> *"Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use."*

7.2.3 The provision states that information received under the provisions of a tax treaty shall be treated as secret in the same manner as information obtained under the domestic laws of the receiving State. It goes on to provide the purposes for which the information may be used and limits the disclosure of the information to persons or authorities (including courts and administrative bodies) involved in the:

- assessment;
- collection;
- enforcement;
- prosecution; and
- determination of appeals

in relation to the taxes with respect to which information may be exchanged under the treaty. The information can also be disclosed to oversight bodies, which includes bodies which supervise the work of tax administration and enforcement authorities as part of the general administration of the Government.

7.2.4 The above referred persons or authorities can use the information only for tax purposes and may disclose the information during their proceedings if such proceedings are open to public, or in their judicial verdicts. Once the information becomes public in this way, the information can be used for other purposes.

7.2.5 Thus, the information received in the first instance would be used by tax authorities including the Assessing Officer and the CIT (Appeals), who will complete the assessment and decide the appeal and at this stage a copy of the order would be available only to the assesse. These authorities do not conduct public proceedings that public can attend, and thus the information will not be made public. However, when the matter comes before the ITAT/High Court/Supreme Court, the same would amount to public court proceedings and once the information is used in these proceedings and an order is passed, the same would be in the public domain. Similarly, once a prosecution is launched in a regular criminal court based on information received through a treaty and the court takes cognizance, the prosecution in the form of a complaint or charge-sheet would necessarily contain details of tax evasion and its culmination would amount to a judicial decision. The information may become public in this manner also and may be used by other law enforcement agencies dealing with corruption, money laundering, terrorist financing etc.

7.2.6 Para 12 of the OECD Commentary to Article 26 of the Model Tax Convention makes it clear that the information received can be shared with the taxpayer or its proxy in cases where the information is likely to be used against him, for giving an opportunity of being heard. However, only the information which is relevant to him or is likely to be used against him should be provided to the taxpayer. The letter/email of the foreign Competent Authority should not be shared although the contents of the letter/extracts may be shared. The information which is used against the taxpayer may be made part of the assessment order. However, only the information which is relevant to the taxpayer and which is actually used against him should be included as part of the assessment order. The letter of the Competent Authority, under no circumstance should be made part of the assessment order, e.g. by scanning and pasting in the order, although the relevant contents of the letter/extracts may be included.

7.2.7 The Commentary in Paragraph 13 states that once information is used in public court proceedings or in court decisions and thus rendered public, it is clear that from that moment such information can be quoted from the court files or decisions for other purposes even as possible evidence. But this does not mean that the persons and authorities concerned are allowed to provide on request additional information received by them.

7.2.8 The Commentary in Para 12 also states that the information received under the tax treaties may not be disclosed under the domestic information disclosure laws such as freedom of information or other legislation that allows greater access to governmental documents. Further, the information received from foreign Government is exempt under section 8(1)(a) and 8(1)(f) of the Right to Information Act, 2005, and thus the information cannot be disclosed under the said Act. It may also be noted that the Supreme Court in the case of Girish Ramchanda Deshpande vs. Central Information Commissioner & Ors., SLP (Civil) No. 27734 of 2012, has held that the details disclosed by a person in his income tax returns are "personal information" which stand exempted under clause (j) of section 8(1) of the Right to Information Act, 2005, unless it involves a large public interest.

7.2.9 The Commentary in Paragraph 11makes it clear that the confidentiality rules apply to all types of information exchanged including both information provided in a request and information transmitted in response to a request. Thus, the confidentiality rules cover, for instance, competent authority letters, including the letter requesting information.

7.2.10 It has also been stated in Paragraph 11 of the Commentary that in situations in which the requested State determines that the requesting State does not comply with its obligations regarding the confidentiality of the information exchanged under Article 26, the requested State may suspend assistance under this Article until such time as proper assurance is given by the requesting State that those obligations will indeed be respected.

7.3 Domestic Provisions for Maintaining Confidentiality and Precedence of Treaty Provisions

7.3.1 As stated above, the tax treaties provide that information received under the provisions of a tax treaty shall be treated as secret in the same manner as information obtained under the domestic laws of the receiving State. The Indian tax authorities are required to keep the taxpayer information received by them confidential under section 138 of the Income-tax Act, and these provisions would be applicable for the information received under tax treaties also.

7.3.2 Section 138 of the Income-tax Act, read with notifications issued under that section, provides that, subject to certain exceptions, no public servant shall furnish any information contained in any statement made, return furnished or accounts or documents produced under the provisions of the Act, or in any evidence given, affidavit or depositions made in the course of any assessment proceedings under the Act. Section 280 of the Income-tax Act provides that if a public servant furnishes any information or produces any document in contravention of the above, he shall be punishable with imprisonment which may extend to six months and shall also be liable for fine.

7.3.3 The provisions of sections 138 and 280 would also apply in case of information received under the tax treaties including the competent authority letters and the letters requesting the information. Thus, any unauthorized disclosure by a public servant may attract action under section 280 in addition to administrative actions.

7.3.4 The international standards, as monitored by the Global Forum, also require that the domestic legislation should have provisions to ensure that all treaty obligations are respected under the domestic law. This may be done through a specific provision in the domestic law or through judicial interpretation that the provisions of tax treaties take precedence over domestic law in case of inconsistencies. The Global Forum in its Peer Review reports examines this aspect and has noted different approaches to address the same.

7.3.5 Under the Indian jurisprudence, the provisions of international agreements take precedence over domestic or municipal laws. The Hon'ble Supreme Court in the case of Azadi Bachao Andolan reported in (2004) 10 SCC 1, has held that provisions of agreements entered into under sections 90 and 90A of the Income-tax Act, 1961 would operate even if inconsistent with the provisions of domestic law. Accordingly, even if the domestic laws such as section 138 allow

sharing of taxpayer information in certain circumstances, such sharing of information received under tax treaties is not possible if the same is not allowed under the provisions of the tax treaties.

7.3.6 The Commentary on Double Taxation Convention by Klaus Vogel explains the provisions of confidentiality in tax treaties and their precedence over domestic law in the following words:

> *"Apart from that, the fifth sentence of Article 26(1) envisages the possibility for persons authorized to use the information to disclose it in public court proceedings or in judicial decisions. This refers exclusively to court proceedings within the meaning of the third and fourth sentences of Article 26(1), i.e., cases dealt with by fiscal courts or in penal proceedings for fraud or other tax offences. Once information has thus been disclosed, it should be regarded as common knowledge and ceases to be subject to the restrictions on the uses to which it may be put under the third and fourth sentences of Article 26(1) of Model Convention. However, the Model Convention does not allow any disclosure outside court proceedings or for reasons other than those named in Article 26. To the extent that domestic rules on secrecy in tax matters envisage such possibilities for disclosure, they are not applicable to information received under the international exchange of information system."*

7.4 Use of Information Received for Non-tax Purposes

7.4.1 Article 26 of the OECD Model Tax Convention provides that information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

7.4.2 In most of the old Indian treaties (before 2009), there is no such provision and thus the information exchanged under those treaties may not be used for other purposes. However, most of the DTAAs and TIEAs entered into or modified after 2009 by India contain the above provision permitting use of information for non-tax purposes. Similar provisions are contained in the Multilateral Convention also, but not in SAARC Agreement. **Annexure-A,** which lists the countries/jurisdictions with which India has a tax treaty, contains a column indicating whether the information received can be used for non-tax purposes also with the consent of the supplying State.

7.4.3 The import of such a provision has been explained in OECD Commentary to Article 26 of Model Tax Convention in the following words:

> *"12.3 Information exchanged for tax purposes may be of value to the receiving State for purposes in addition to those referred to in the first and second sentences of paragraph 2 of Article 26. The last sentence of paragraph 2 therefore allows the Contracting States to share information received for tax purposes provided two conditions are met: first, the information may be used for other purposes under the laws of both States and, second, the competent authority of the supplying State authorises such use. It allows the sharing of tax information by the tax authorities of the receiving State with other law enforcement agencies and judicial authorities in that State on certain high priority matters (e.g. to combat money laundering, corruption, terrorism financing). When a receiving State desires to use the information for an additional purpose (i.e. non-tax purpose), the receiving State should specify to the*

supplying State the other purpose for which it wishes to use the information and confirm that the receiving State can use the information for such other purpose under its laws. Where the supplying State is in a position to do so, having regard to, amongst others, international agreements or other arrangements between the Contracting States relating to mutual assistance between other law enforcement agencies and judicial authorities, the competent authority of the supplying State would generally be expected to authorise such use for other purposes if the information can be used for similar purposes in the supplying State. Law enforcement agencies and judicial authorities receiving information under the last sentence of paragraph 2 must treat that information as confidential consistent with the principles of paragraph 2."

7.4.4 Thus, the information received under the tax treaties can be used for non-tax purposes including for the purposes of combating money laundering, corruption and terrorist financing, if such use is permissible under the laws of the supplying State and the competent authority of the supplying State gives its consent for the same.

7.4.5 However, normally the supplying State would not give its consent in a general manner and thus request for sharing of information for other purposes should be made on a case-to-case basis, clearly specifying the grounds for believing that the information may be useful for other purposes such as money laundering, corruption and terrorist financing.

7.4.6 In addition, as stated above, if the information becomes public in public court proceedings, for instance during a complaint filed by tax authorities for tax evasion, the same can be used for other purposes.

7.5 Administrative Policies and Practices to Protect Confidentiality

7.5.1 Introduction

In addition to the legal provisions as stated above, as per international standards, the jurisdiction receiving the information should have adequate administrative policies and practices to effectively implement their treaty and domestic law obligations. These policies and practices which are applicable to information received under the provisions of the tax treaties are summarized in the following paragraphs.

7.5.2 Classification of Treaty Exchanged Information

The information received under tax treaties needs to be safeguarded since its unauthorized disclosure may cause embarrassment to the Government. Accordingly, the information received from a treaty partner is classified as "Confidential" in terms of the Departmental Security Instructions issued by the Ministry of Home Affairs. These Instructions that provide guidelines for handling "Confidential Papers", are summarized below:

- A confidential paper is intended for a perusal of a limited number of persons who have direct concern with the subject manner. It should be addressed to an officer by name and should be opened by the addressee by name or in his absence by an officer performing his duties

- The confidential papers should be kept in safe custody in a locked safe or steel almirah
- The confidential papers should move from one office to other in a single sealed cover addressed by name and marked "Confidential"
- All confidential documents when sent by post should be enclosed in double covers. The inner cover should be marked "Confidential" and sealed with the metal departmental seal giving a distinct and clearly legible impression on the sealing wax, and addressed by name to the officer for whom it is intended. The number of the documents and particulars of the enclosures, if any, should also be mentioned on the inner cover. The outer cover should bear only the name, designation and official address of the addressee and the frank of the dispatching officer.

7.5.3 Measures for Protection of Treaty Exchanged Documents

The CIT/DIT concerned should take adequate measures for protection of treaty exchanged information/documents which should include the following

- There should be restricted entry to the building/premises for security reasons, including the protection of confidential tax information. Measures for security may include presence of security guards, policies against unaccompanied visitors, security passes, etc. The employees may wear visible badges to prevent unauthorized access to the premises by others.
- The physical documents should be stored in locked steel almirahs and cabinets and access should be strictly controlled and on a need to know basis.
- The cabin/room/chambers where sensitive data/information is stored should be locked when not in use.
- "Clean Desk Policy" should be followed, including requiring supervisors/last employee out of the office to spot check employees' desks after office hours.
- Electronic documents should be kept on secure servers and firewalled and password protected to be accessed only through unique id and password with record of access by the employee concerned. The original CDs or storage media should be kept in the personal custody of the officer concerned.
- It should be ensured that the information transmitted through mail or electronically is transmitted securely and in the case of electronic transmission only with an appropriate level of encryption. In cases where information is sent in CD, the same should be encrypted and password conveyed separately.
- The information, whether physical or electronic, should be disposed off in a secure manner to ensure that they may not be used subsequently.

7.5.4 Training and Awareness

The CIT/DIT concerned should conduct internal training programmes on data protection

safeguards and guidelines to maintain the confidentiality of tax treaty information. The training programme should be updated to incorporate the evolving threat landscape. Reminders should be issued on a regular basis which makes clear to the officers/staff posted under them of their responsibilities with respect to confidential tax information including a clear understanding of where they can obtain assistance, if they have questions or require assistance.

7.5.5 Investigation for Unauthorized disclosure

If an unauthorized disclosure takes place, the Chief Commissioner/Director General concerned should undertake an investigation and prepare a complete report, fixing responsibility and recommending actions to be taken against the person(s) concerned for the breach. The report should also suggest measures to be taken to avoid similar incidents in the future. This report may be forwarded to the Information Security Committee constituted by the Central Board of Direct Taxes. Action for breach of confidentiality including under the conduct rules and initiation of proceeding under section 280 of the Income-tax Act may be taken in appropriate cases.

7.6 Information Security Committee

7.6.1 Through order dated 7th April, 2015, F. No. 500/137/2011-FTTR-III, an Information Security Committee (ISC) in the Central Board of Direct Taxes (CBDT) has been constituted comprising the following officers:-

(a) Member (IT), CBDT

(b) Joint Secretary (FT&TR-I)

(c) Joint Secretary (TPL-II)

(d) CIT (Inv.)

(e) CIT (M&TP)

(f) DIT (I&CI), New Delhi

(g) DIT (Systems-II)

Member (IT), CBDT is the Chairman of the ISC. CIT (M&TP) shall also perform the role of Chief Information Security Officer (CISO).

7.6.2 Broad Responsibilities of ISC have been specified as under:

(a) Ratification of the Information Security Policies and Procedures (ISPP) suggested by the CISO.

(b) Ensure that ISPP is implemented by ensuring the involvement of the business heads.

(c) Conduct the management review of the ISPP to ensure continuing suitability, adequacy and effectiveness of ISPP.

(d) Initiate internal and external security reviews and ensure that action is taken to rectify any identified shortfalls.

(e) Responsible for disciplinary action in cases of breach of ISPP.

7.6.3 Broad Responsibilities of CISO have been specified as under:

(a) Responsible for preparing, maintaining and communicating ISPP.

(b) Oversee all information security processes and serve as the focal point for all information security issues and concerns.

(c) Ensure that responsibilities are defined for and that procedures are in effect to promptly detect, investigate, report and resolve security incidents.

(d) Ensure that ongoing information security awareness education and training is provided to all employees.

(e) Provide reports to the ISC on the status of information security, policy violations and information security incidents.

CHAPTER-VIII

RELATED INTERNATIONAL DEVELOPMENTS IN EXCHANGE OF INFORMATION

8.1 Foreign Accounts Tax Compliance Act (FATCA)

8.1.1 Consequent to serious concerns raised in the USA on offshore tax evasion, the United States Senate Permanent Sub-Committee on Investigations chaired by Mr. Carl Levin submitted a report on 17th July, 2008. The report estimated that every year, the United States loses an estimated $100 billion in tax revenues due to offshore tax abuses and made certain recommendations, which resulted in introduction of Foreign Accounts Tax Compliance Act (FATCA) in 2010, which essentially has two components

(a) 30% withholding tax on US source payments made to Foreign Financial Institutions (FFIs) unless they enter into an agreement with the US IRS to provide information about accounts held with them by USA persons or entities controlled by USA person through the new Chapter 4 of subtitle "A" comprising of sections 1471 to 1474 in Internal Revenue Code of 1986 of USA.

(b) Requiring U.S. persons, owning foreign accounts or other specified financial assets, to report these on a new IRS Form 8938, Statement of Specified Foreign Financial Assets, and filing of the same with tax returns.

8.1.2 The provisions of FATCA require Financial Institutions of other countries to enter into agreements with IRS of USA and provide confidential client related information. However, the domestic laws of respective sovereign nations may not permit sharing of such information directly with USA. At the same time, non-compliance with FATCA would subject the FFIs to the 30% withholding tax on all US source payments. Recognizing that this would be neither in the interest of USA nor of the countries where the FFIs have been established, the USA proposed entering into Inter-Governmental Agreements (IGAs) to facilitate compliance with FATCA without violating the domestic laws of respective countries. Under Model 1 of the IGA, the financial institutions would be providing information to their own governments which will be transmitted to the USA. Model 1 has two versions, Model-1A ('reciprocal') and Model-1B ('non-reciprocal'). Under Model-1A, USA would also be providing information to the Partner jurisdiction by collecting it from its own financial institutions, although the extent of information exchanged by it will not be fully reciprocal. Under Model-1B, USA would not be providing any information to the Partner Jurisdiction.

8.1.3 The FFIs covered by Model 1 IGA that are not otherwise excepted or exempt pursuant to the agreement, are required to identify US accounts pursuant to due diligence rules agreed to and

adopted by the partner jurisdiction and report specified information about the US accounts to the partner jurisdiction. The partner jurisdiction then exchanges the information with the IRS on an automatic basis. Under Model 2 IGA, a partner jurisdiction agrees to direct and enable all FFIs that are located in its jurisdiction, and that are not otherwise excepted or exempt pursuant to the Model 2 IGA, to register with the IRS and report specified information about US accounts directly to the IRS, which could be supplemented by exchange of information in specific cases as per DTAA/Tax Information Exchange Agreement/Multilateral Convention between USA and the said jurisdiction.

8.1.4 IGA based on Model 1A is not fully reciprocal in terms of information to be exchanged. The major difference is that the USA will be entitled to receive information about non-USA entities which have one or more US controlling persons, as determined after due diligence procedures. In contrast, the FATCA partner will be entitled to receive information only about its resident persons having an account in USA. No information about controlling persons or beneficial owners of entities would be available to the FATCA partner. Further, while USA will be receiving information including account balance or value, the FATCA partner would get information only about the existence of the account and the interest and other income paid or credited to the account, but not the account balance or value.

8.1.5 Even though the level of exchange of information under FATCA is not fully reciprocal, a decision was taken to enter into an IGA Model 1A with USA on account of the following reasons:

- Non-compliance with FATCA requirements would result in Indian Financial Institutions facing 30% withholding tax on US source payments
- Indian banks need to maintain Nostro A/cs in USA for settlement of international transactions. They would not be able to transact business in US Dollars without being FATCA compliant and this would seriously impede their global business
- Most of the other countries in the world (112 as on 31st March, 2015 including all the major economies) had agreed to enter into IGA with USA which is not fully reciprocal
- Under Article 6 of the IGA, USA has acknowledged the need for equal level of reciprocity and the progress made in this regard will be reviewed prior to 31st December, 2016
- India as a matter of policy and as a G20 member is fully supportive of the automatic exchange of information for prevention of tax evasion and avoidance

8.1.6 The Union Cabinet in its meeting on 17th March, 2015 has given its approval to sign the IGA Model 1A with the USA and the IGA is likely to be signed soon.

8.1.7 Under the terms of the IGA, USA will provide certain information to India, including (a) the name, address and Indian TIN of any person that is resident of India and holds a reportable account in USA (b) Account number (c) Gross amount of interest, US source dividends or other income paid or credited, depending on the nature of the financial account. The above information will be provided on an automatic basis and for the calendar year 2014, the information is expected to be received before 30th September, 2015.

8.1.8 The Standard Operating Procedure (SOP) to handle the information and utilize it for the purposes of improving tax compliance in India including matching the same with the internal database of the tax department while maintaining confidentiality will be finalized by the Information Security Committee. Till the time this SOP is finalized, the procedure prescribed in the case of information received under the non-standard format mentioned in Para 5.9.1 to 5.9.9 will be followed.

8.2 Common Reporting Standards on Automatic Exchange of Information

8.2.1 Development of the new Global Standards on AEOI

8.2.1.1 Limitation of Information Exchanged on Request Basis

Although exchange on "request basis" has resulted in improving transparency, it is also evident that its scope is limited and offshore financial centres are obliged to provide information only when the requesting State has some information already in its possession and the investigation has already commenced, since the prerequisite of making requests is demonstration of "foreseeable relevance" of the information for administration or enforcement of domestic tax laws. The information on "request" thus may have limited effect in identifying the financial assets hidden in offshore jurisdictions and tax havens through a complex web of entities. For instance, if an Indian taxpayer, through a trust, has an account in a tax haven, this information can be provided by the said tax haven only when the investigation for tax evasion through that trust is already carried out which would not be possible in most cases.

8.2.1.2 Limitation of AEOI under non-standard Format

The need for automatic exchange of information on a "bulk" basis, without making a specific request in this regard, has accordingly always been felt. The AEOI is possible under the DTAAs and the Multilateral Convention and thus many countries including India have been exchanging information automatically. However, this was not very useful in absence of a common standard on the nature and periodicity of exchange and standard technical solutions for collection and transmission of information. The exchange was voluntary and thus the offshore financial centres were not part of the same.

8.2.1.3 Enactment of FATCA and Leveraging for Development of Global Standard

As stated in Para 8.1, in 2010, the USA enacted FATCA and subsequently entered into IGAs with major economies and offshore financial centres for receiving information about US persons holding financial accounts in other jurisdictions on an automatic basis. Leveraging on the development of FATCA, the G20 countries including India decided to support development of a new uniform global standard for automatic exchange of information similar to FATCA. These new standards, known as CRS on AEOI enable every country to receive financial information from every other country/jurisdiction on an automatic basis. Thus, the offshore financial centres will not only be providing information to USA under FATCA but to every other country including India in accordance with globally accepted standards. The CRS on AEOI was finalized

by the OECD working with G20 countries and was endorsed by the G20 Leaders in November, 2014.

8.2.2 Global Adoption of the CRS on AEOI

8.2.2.1 The G20 countries first took a lead in asserting that they will adopt the new global standards on automatic exchange of information and then gave a call to every country/jurisdiction to adopt the new standards. In its various communiqué and declarations, the G20 noted that adoption of the new standards on a global basis would be essential for combating offshore tax evasion and avoidance. India as a G20 country played a leading role in this process including seeking support and technical assistance to developing countries for adopting the new global standards.

8.2.2.2 In keeping with the leadership role, India has also joined a group of 48 countries as "early adopters" of the new standards and has committed to exchange information automatically by 2017 as under:

- First exchange in September, 2017 for new accounts (both individuals and entity) opened after 1.1.2016 and for pre-existing (as on 1.1.2016) individual high value accounts (balance more than USD 1,000,000)
- Exchange in September, 2018 of pre-existing (as on 1.1.2016) individual low value accounts and pre-existing (as on 1.1.2016) entity accounts

8.2.2.3 As on 1st May, 2015, 93 countries/jurisdictions have agreed to adopt CRS on AEOI. **Annexure-K** contains a list of countries/jurisdictions including the timeline indicated by them to exchange information automatically as per the new global standards. It is expected that other countries/jurisdictions will be giving similar commitments in near future.

8.2.3 Main Features of the CRS on AEOI

8.2.3.1 Overview

The CRS on AEOI is a uniform global standard for the collection of financial account information by financial institutions in participating jurisdictions in respect of account holders, who are residents in another jurisdiction and reporting of that information to the jurisdictions' tax authority on an automatic basis. It has been designed with a broad scope across the following three dimensions to ensure that meaningful information is exchanged automatically:

(a) The financial information to be reported with respect to reportable accounts includes all types of investment income (including interest, dividends, income from certain insurance contracts and other similar types of income) and also includes account balances and sales proceeds from financial assets.

(b) The financial institutions that are required to report under the CRS do not only include banks and custodians but also other financial institutions such as brokers, certain collective investment vehicles and certain insurance companies.

(c) Reportable accounts include accounts held by individuals and entities (which includes trusts and foundations), and the standard includes a requirement to look through passive entities to report on the individuals that ultimately control these entities.

8.2.3.2 Who will report under CRS

Under the CRS on AEOI, the Financial Institutions are required to collect and report information to the tax administration of their country unless they are explicitly exempt. The CRS broadly defines a Financial Institution as:

- a depository institution;
- a custodial institution;
- an investment entity; or
- an insurance company that issues or makes payments to investment linked life insurance or annuity contracts.

Thus, the Reporting Financial institutions not only include banks and other deposit taking institutions, but also custodial institutions, some brokers, exchange traded funds, most collective investment entities and certain insurance companies.

8.2.3.3 What Accounts need to be Reported

Under the CRS on AEOI, the Reporting Financial Institutions are required to collect and report the financial account information for accounts and insurance policies that they identify as being owned or controlled by a non-resident (the Reportable Accounts). The Reportable Accounts may be held by non-resident individuals or entities, including companies, trusts and foundations. The due diligence procedures require Reporting Financial Institutions to look through certain entities [passive non-financial entities (NFEs)] to report on accounts that have a Controlling Person who is a non-resident. The Controlling Persons are the natural persons who exercise control over an entity and corresponds to the 'beneficial owners' as described in the Financial Action Task Force Recommendations. Some financial accounts are not subject to reporting, provided specific requirements are satisfied, as they are also considered as low risk for evading tax.

8.2.3.4 Procedure to determine that an Account holder is a Non-resident

Under the CRS on AEOI, the Reporting Financial Institutions are required to undertake due diligence procedures to identify financial accounts that have a non-resident account holder in a Reportable Jurisdiction. The Reportable Jurisdiction is a jurisdiction with which India has entered into an arrangement for AEOI. However, to minimize the costs to the financial institutions and to implement the AEOI at one go, a decision has been taken to implement the "wider approach" and collect information about every person who is a non-resident. The due-diligence requirements vary depending on whether the account is held by an individual or an entity, and whether the account is a Pre Existing or a New Account and are summarized below:

(a) Pre-existing individual accounts (No threshold)

i. For Lower Value Accounts (balance less than USD 1,000,000) permanent residence address based test based on documentary evidence

ii. For Higher Value Accounts (balance more than USD 1,000,000) – enhanced due diligence procedures including paper record search and an actual knowledge test by relationship manager

(b) New individual accounts – No threshold - self-certification based on KYC/AML rules and the confirmation of its reasonableness

(c) Pre-existing entity accounts (No review if balance below USD 250,000) - Financial Institutions are required to determine

i. Whether the entity itself is a reportable person, which can generally be done on the basis of available information (KYC/AML procedures)

ii. Where the entity itself is not a reportable person but a passive NFE, the determination of the residence of controlling persons

(d) New Entity Accounts - Same assessment as in case of pre-existing entity accounts but no threshold

8.2.3.5 Account Information which needs to be Reported

Reporting Financial Institutions are to report the following information with respect to each Reportable Account:

1. for accounts held by an individual - their name, address, jurisdiction(s) of residence, Taxpayer Identification Number(s) (TIN(s)) and date and place of birth of the individual;
2. for accounts held by an entity - its name, address, jurisdiction(s) of residence and TIN(s);
3. for accounts held by an entity that is a passive NFE, and is identified as having one or more non-resident Controlling Persons -
   (a) the name, address, jurisdiction(s) of residence and TIN(s) of the entity; and
   (b) the name, address, jurisdiction(s) of residence, TIN(s) and date and place of birth of each non-resident Controlling Person;
4. the account number (or functional equivalent in the absence of an account number);
5. the name and identifying number (if any) of the Reporting Financial Institution; and
6. the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account.

7. For a Custodial Account, the following information is also to be reported:-

   (a) the total gross amount of interest paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period;

   (b) the total gross amount of dividends paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period;

   (c) the total gross amount of other income generated with respect to the assets held in the account paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and

   (d) the total gross proceeds from the sale or redemption of property paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder.

8. For a Depository Account, the following information shall also be reported:- the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period.

9. For any other account, such as equity or debt interests in certain Investment Entities and investment-linked insurance or annuity contracts, the following information shall also be reported:- the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period, with respect to which the Reporting Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

8.2.3.6 Competent Authority Agreement

The Model Competent Authority Agreement (CAA) provided in the standards links the CRS and the legal basis for exchange, such as DTAA or the Multilateral Convention, allowing the financial account information to be exchanged. The Model CAA provides for modalities of the exchange to ensure the appropriate flow of information and contains provisions for confidentiality, safeguards and the existence of the necessary infrastructure for an effective exchange relationship. The CAA can be entered on bilateral or multilateral basis.

8.2.3.7 Technical Solutions

The standards contain guidance on relevant technical solutions including a schema to be used for exchanging the information. It also provides a standard in relation to the IT aspects of the data safeguards and confidentiality, and transmission and encryption for the secure transmission of information under the CRS. The CRS Schema will be used for transmission of information by the Competent Authorities. It will also be used by the Financial Institutions for the purposes of reporting the information to their tax authorities.

8.3 Implementation of CRS on AEOI

8.3.1 Overview

As stated earlier, India has given a commitment to implement CRS on AEOI from 2017 and will be receiving and transmitting substantial amount of information automatically from/to a number of countries/jurisdictions. In addition, under the IGA with USA for the purposes of FATCA, information will be exchanged on an automatic basis with USA from September, 2015. The steps taken for implementing the CRS on AEOI and FATCA are briefly explained below.

8.3.2 Entering into Agreements for Exchanging Information Automatically

8.3.2.1 The legal basis for exchange of information including on an automatic basis is provided in the DTAAs and Multilateral Convention. The information, however, can be exchanged only through a CAA which provides the modalities of information exchanged in accordance with CRS on AEOI, including the requirements of confidentiality and data safeguards and the same needs to be entered into by the Indian Competent Authority.

8.3.2.2 Fifty-one countries/jurisdictions joined a Multilateral Competent Authority Agreement (MCAA) on 29th October, 2014 which provides a framework for exchange of information on automatic basis as per the new global standards and signed a declaration to comply with the provisions of the MCAA with an intended date for commencement of exchange of information on automatic basis, which for most countries/jurisdictions is from 2017. Switzerland became the fifty-second country to join the MCAA on 19th November, 2014 and has committed to exchange information automatically from 2018.

8.3.2.3 India will also be joining the MCAA soon and will be able to receive information on automatic basis from the said 52 jurisdictions as also from the jurisdictions which join the MCAA subsequently.

8.3.2.4 With countries/jurisdictions that will not be joining the MCAA, separate CAA under the provision of DTAA/Multilateral Convention will be entered.

8.3.2.5 It may be noted that with USA also, in addition to the IGA as stated above, a CAA will be entered for facilitating the exchange of information on an automatic basis in accordance with the IGA.

8.3.3 Domestic Legislation, Regulations and Guidelines

For implementing the CRS on AEOI as also FATCA, modifications in domestic laws enabling the Financial Institutions to provide information to the CBDT and issue of necessary regulations and guidelines is required. As a first step in this regard, amendments in sections 285BA and 271FA (and introduction of a new section 271FAA) of the Income-tax Act have been carried out through Finance (No. 2) Act, 2014. As per new clause (k) of sub-section (1) of section 285BA, a prescribed reporting financial institution is required to furnish a statement in respect of specified financial transaction or prescribed reportable account to the prescribed income-tax authorities and failure to do so will result in penal consequences. The new provisions would also override the

provisions relating to client confidentiality for both residents and non-residents. The necessary rules and guidelines are being formulated in consultation with financial institutions. Under the proposed rules, the Financial Institutions will be providing information related to residents of all the countries and not only to the residents of USA or of the countries with which bilateral arrangements for AEOI have been agreed to. This "wider approach" for implementation of CRS was adopted for reducing compliance burden to Financial Institutions as they would not need to perform additional due diligence each time a new jurisdiction joins.

8.3.4 IT and Administrative Infrastructure

Implementation of CRS on AEOI also requires building of the necessary IT and administrative infrastructure and necessary steps are being taken in this regard including for the following

(a) Collecting the Information from Financial Institutions in the standard format for encryption and transmission

(b) Validating the data and using it for domestic tax purposes wherever required

(c) Transmitting the information to treaty partners in a standard format in a secured manner

(d) Using the information received from treaty partners and matching the information with the Income Tax database maintaining confidentiality and data safeguarding standards

8.3.5 Broad Responsibility for Implementing the CRS on AEOI

The responsibility for implementing the CRS on AEOI, as approved by the CBDT, is summarized below:

- The Competent Authority (FT&TR Division) would be responsible for entering into CAA with other countries/jurisdictions at the earliest which will provide the legal basis and modalities for exchange of information on automatic basis
- The TPL Division will be finalizing the Rules and Form for receiving information from Financial Institutions and will issue necessary guidelines in consultation with FT&TR Division
- The Directorate of I&CI is entrusted with the work of
  - receiving information from Financial Institutions under the said Rules and also ensure their compliance
  - handling the information received from USA and other treaty partners under AEOI.
- The Systems Directorate
  - will provide necessary support to Directorate of I&CI in handling the information received from USA and other treaty partners under AEOI including the platform for matching the data from Income Tax database, designing Risk assessment system, forwarding the report of Directorate of I&CI to the designated Assessing Officers and designing the Feedback Report.

- will design systems for registration of reporting entities, collection of prescribed reports from reporting entities and managing compliance of reporting entities in consultation with Directorate of I&CI
- will issue the schema for receiving the information from Financial Institutions in accordance with FATCA/CRS Schema
- will facilitate information exchange with treaty partners including USA through a secured platform.

➢ To ensure the confidentiality and data safeguard standards, the Information Security Committee will be finalizing the Information Security Policies and Procedures to be followed by the officers of the tax department. The ISC will also develop a SOP to handle the information and clearly defining the roles and responsibilities of Directorate of I&CI, Systems Directorate and Designated Assessing Officers.

8.4 Global Forum on Transparency and Exchange of Information for Tax Purposes

8.4.1 Introduction

8.4.1.1 The global financial crisis of 2008 and subsequent developments in this regard highlighted the need for enhanced cooperation amongst the tax administrators to prevent offshore tax evasion and avoidance. A need was also felt to implement the standards of information exchange in a transparent manner through a body where all the jurisdictions participate on an equal footing. The G20 Leaders through their London Declaration on 2nd April, 2009, agreed to take action against non-cooperative jurisdictions, including tax havens and stated that they stand ready to deploy sanctions to protect their public finances and financial systems while declaring that the "the era of banking secrecy is over". They also gave a call to promote tax cooperation and information exchange amongst tax administrators.

8.4.1.2 The Global Forum, originally established in 2001 by OECD member countries, was accordingly restructured in 2009, and has now 126 countries/jurisdictions as members who participate in the work of the Global Forum on an equal footing. The mandate of the Global Forum is to promote the rapid implementation of the international standards of transparency and exchange of information by every jurisdiction in the world to tackle international tax evasion and avoidance.

8.4.2 Peer Review of Exchange of Information on Request

8.4.2.1 Since restructuring in 2009, the Global Forum through a process of Peer Review has been examining the extent to which a jurisdiction has implemented the international standards on transparency and exchange of information for tax purposes and suggesting ways and means by which the deficient jurisdictions can improve and come upto the recognized international standards. The Peer Reviews are done in two Phases. Phase 1 relates to the existence of legal and regulatory frameworks as per international standards while Phase 2 relates to practical implementation of those legal and regulatory frameworks. The Peer Reviews are carried out by a

Peer Review Group (PRG) comprising of 30 member countries/jurisdictions. France is Chair of PRG while India is a vice-chair. By virtue of being vice-chair of PRG, India is also member of the Steering Group of the Global Forum.

8.4.2.2 The international standards against which jurisdictions are assessed provide for exchange on request of foreseeably relevant information for carrying out the provisions of a tax treaty or for the administration or enforcement of the domestic tax laws of the requesting country. These standards have been developed with the underlying concept that exchange of information for tax purposes is effective when relevant information is available in a jurisdiction, is accessible to the authorities concerned and there are legal mechanisms for exchange of information with the requesting country. Thus, the transparency and exchange of information embraces three basic components

- availability of information e.g. with tax authorities, public registries, money laundering authorities, banks etc.
- appropriate access to the information by way of legislative and administrative powers in the hands of the competent authority
- the existence of exchange of information mechanisms by way of DTAAs/TIEAs/ Multilateral Convention etc.

If any of these three elements are missing, information exchange will not be effective and jurisdictions will not be able to enforce their own laws effectively.

8.4.2.3 After completion of Phase 2 review, ratings (Compliant, Largely Compliant, Partially Compliant or Non Complaint) are allocated on the following ten elements, divided into the three parts, viz. (a) availability of information, (b) access to information and (c) exchanging information. An overall rating is also allocated.

Elements of Review by the Global Forum

A.	**Availability of Information**
A1.	Ownership and identity information: Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to the competent authorities.
A2.	Accounting information: Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.
A3.	Bank information: Banking information should be available for all account holders.
B.	**Access to Information**
B1.	Powers to access information: Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information agreement from any person within their territorial jurisdiction who is in possession or control of such information.

B2.	Rights and safeguards: The rights and safeguards that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.
C.	**Exchanging Information**
C1.	Effective exchange: Exchange of information mechanisms should provide for effective exchange of information.
C2.	Network of agreements: The jurisdictions' network of information exchange mechanisms should cover all relevant partners.
C3.	Confidentiality: Jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received.
C4.	Rights and safeguards: Exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties.
C5.	Timely exchange: The jurisdiction should provide information under its network of agreements in a timely manner

8.4.2.4 India after Phase 1 and Phase 2 review is rated as "Compliant" on all the above ten essential elements and accordingly was allocated an overall rating of "Compliant". Overall rating of number of jurisdictions are "compliant", however, there are only nine jurisdictions other than India which have been rated as Compliant on all the ten essential elements.

8.4.2.5 The Global Forum will be carrying out Phase 3 reviews from 2016 with revised Terms of Reference, which will now include a requirement to maintain beneficial ownership information. A lack of knowledge about who ultimately owns and controls legal entities and arrangements facilitates tax evasion, money laundering and corruption. Therefore, ensuring availability of beneficial ownership information is essential. Responding to this need and calls from G20, Phase 3 review is likely to intensify focus on beneficial ownership to ensure that all jurisdictions have information regarding the beneficial ownership of entities operating in their jurisdiction as per FATF standards.

8.4.3 Global Forum work on Automatic Exchange of Information

Recognizing that the Global Forum has a proven track record of fair and effective implementation of the standards of transparency through a process where members participate on an equal footing, the G20 countries have requested the Global Forum to take on the work of implementation of the new global standard on automatic exchange of information, the CRS on AEOI. The work of Global Forum presently being carried out in this regard has the following components:

(a) **Committing to the new standards**: Almost all the members of the Global Forum, except developing countries which are not financial centres, have committed to the new standards and have agreed to exchange information automatically from 2017 or 2018.

(b) **Monitoring effective implementation of the standards**: On request of G20 countries, the Global Forum agreed to monitor the implementation of the new standards on AEOI through a peer review process likely to commence in 2016. The Methodology and Terms of Reference for the review is likely to be finalized in 2015. This work will be done by the AEOI Group chaired by Italy in which India is one of the vice-chairs.

(c) **Supporting developing countries**: The Global Forum is also taking steps to support developing countries and increase their capacity to participate in the new standard on AEOI which would be essential for preventing tax evasion. At the request of the G20 Development Working Group, the Global Forum has prepared a Roadmap describing a stepped approach for participation of the developing countries in the new standards, which also include an outline for pilot projects to be undertaken between developing and G20/developed country partners.

8.5 Exchange of Information under G20/OECD BEPS Project

8.5.1 What is BEPS Project

8.5.1.1 Base Erosion and Profit Shifting refers to strategies adopted by taxpayers having cross-border operations to exploit gaps and mismatches in tax rules of different jurisdictions which enable them to shift profits outside the jurisdiction where the economic activities giving rise to profits are performed and where value is created. BEPS has been a cause of concern for developing and emerging economies for long as it erodes their tax base depriving them of much needed resources for developmental activities. It is also unfair to general taxpaying public and further provides an unfair competitive advantage to Multinational Enterprises (MNEs) vis-à-vis domestic companies having no opportunities for the BEPS strategies.

8.5.1.2 At the request of G20 Finance Ministers, in July 2013 the OECD, working with G20 countries, launched an Action Plan on BEPS, identifying 15 specific actions needed in order to equip governments with the domestic and international instruments to address this challenge. The Action Plan provides for 15 actions to be undertaken to put an end to double non-taxation and ensure that profits are taxed where the economic activities that generate them are carried out and where value is created.

8.5.1.3 The first set of seven deliverables described in the Action Plan was presented to G20 Finance Ministers in September 2014 and to Leaders in November, 2014. These include recommendations for realigning taxation and relevant substance to restore the intended benefits of international standards both in the area of bilateral tax treaties by preventing treaty abuse and in the area of transfer pricing to assure that transfer pricing outcomes are in line with value creation, particularly in the context of intangibles. Recommendations have also been made for ensuring better transparency for tax administrations and better consistency of requirements for taxpayers through improved transfer pricing documentation and a template for country-by-country reporting. Work is being carried out in the Working Parties to develop recommendations under other Action Items and is likely to be completed by the 2015 G20 Leaders' Summit.

8.5.2 Combating BEPS through Exchange of Information

A number of recommendations for combating BEPS envisage enhanced cooperation amongst the tax administrations and exchange of information as per the provisions of the existing network of tax treaties, including the following

(a) Automatic Exchange of CbC Reports – Action 13

Action 13 of the BEPS Action Plan relates to a three-tieredstandardised approach to transfer-pricing documentation comprising

- a master file of information relating to the global operations of the MNE Group, which will be filed by all MNE group members,
- a local file referring specifically to material transactions of the local taxpayer, and
- a Country-by-Country (CbC) report of information relating to the global allocation of the MNE group's income and taxes paid, alongwith certain indicators of economic activity.

While the master file and local file will be filed by the taxpayer in the local jurisdiction, the CbC report will be filed in the country where the MNE is resident and will be transmitted on an automatic basis to the jurisdictions in which the MNE operates through a multilateral instrument modelled on the basis of MCAA, maintaining confidentiality and data safeguarding standards.

(b) Spontaneous Exchange of Rulings – Action 5

Action 5 of the BEPS Project relates to countering harmful tax practices more effectively taking into account transparency and substance. To address this, the taxpayer specific rulings related to tax regimes resulting in BEPS need to be mandatorily exchanged on a spontaneous basis. Taxpayer-specific rulings for this purpose would include both pre-transaction, including advance tax rulings or clearances and advance pricing agreements, and post transaction.

(c) Exchange of Mandatory Disclosure Regimes – Action 12

Under Action Item 12, modular rules for mandatory disclosure of aggressive or abusive transactions, arrangements, or structures would be recommended to enable tax administrators to receive information about tax planning strategies at an early stage so as to respond quickly to tax risks either through timely and informed changes to legislation and regulations or through improved risk assessment and compliance programmes (targeted audits). Under these rules, the "international tax schemes" would also be disclosed and the same may be shared by tax administrators using the mechanism of Exchange of Information.

8.6 Joint International Tax Shelter Information & Collaboration

8.6.1 Original JITSIC

The original Joint International Tax Shelter Information Centre was created in 2004 as a joint revenue authority initiative of Australia, Canada, the United Kingdom and the United States to counter abusive tax schemes and tax avoidance structures. Later on Japan, Germany, South Korea, France and China joined the JITSIC. The Competent Authorities of these countries exchange information through the legal instrument of DTAAs including sharing expertise relating to the identification and understanding of abusive tax arrangements. Under the JITSIC framework, the Competent Authorities are able to put the various international pieces together to examine complex cross border transactions, such as non-commercial capital and finance arrangements, aggressive transfer pricing strategies and foreign tax credit generation schemes. Similarly, structures involving tax havens and trust structures in connection with high net wealth individuals also came under JITSIC scrutiny.

8.6.2 New Mandate of JITSIC

Recognizing that the information exchanges should not be limited to the original JITSIC member countries, on a call from G20, the Forum on Tax Administration (FTA) of the OECD in its 9th Meeting in Dublin on 24th October, 2014, determined that the composition of JITSIC would be expanded and remodelled with a greater focus on collaboration. Reflecting this change, the taskforce was renamed as the Joint International Tax Shelter Information & Collaboration (still called JITSIC) with an emphasis on collaboration on information exchange and a de-emphasis on the need for exchange to occur through central hubs. The JITSIC Network is open to all FTA members on a voluntary basis and integrates existing JITSIC cooperation procedures among tax administrators within the larger FTA network. India has joined the JITSIC Network and JS(FT&TR-I) has been appointed as the Single Point of Contact for India.

8.6.3 Enhanced Collaboration

The JITSIC Network is likely to enhance collaboration amongst tax administrators enabling them to exchange information on a sustained and systematic basis to combat multinational tax evasion. The JITSIC Network is also likely to play an important role in countering BEPS tax avoidance.

8.7 Text of Communiqué and Intervention in G20 Meetings

8.7.1 G20 Finance Ministers' Meeting in Cairns, Australia on 20th and 21stSeptember, 2014

The relevant extracts from the Communiqué issued after the meeting are as under:

"8. We are strongly committed to a global response to cross-border tax avoidance and evasion so that the tax system supports growth-enhancing fiscal strategies and economic resilience. Today, we welcome the significant progress achieved towards the completion of our two-year G20/OECD Base Erosion and Profit Shifting (BEPS) Action Plan and commit to finalising all action items in 2015. We

endorse the finalised global Common Reporting Standard for automatic exchange of tax information on a reciprocal basis which will provide a step-change in our ability to tackle and deter cross-border tax evasion. We will begin exchanging information automatically between each other and with other countries by 2017 or end-2018, subject to the completion of necessary legislative procedures. We call on all financial centres to make this commitment by the time of the Global Forum meeting in Berlin, to be reported at the Brisbane Summit, and support efforts to monitor global implementation of the new global standard. We support further coordination and collaboration by our tax authorities on their compliance activities on entities and individuals involved in cross-border tax arrangements. We welcome progress so far, and encourage further steps by G20 countries to deliver the St Petersburg commitment to lead by example in meeting the Financial Action Task Force standards on beneficial ownership. We will continue to take practical steps to assist developing countries preserve and grow their revenue bases and stand ready to help those that wish to participate in automatic information exchange. We are deepening developing country engagement in tackling BEPS issues and ensuring that their concerns are addressed."

8.7.2 G20 Leaders Meeting in Brisbane on 15th and 16th November, 2014

The relevant extracts from the Communiqué issued after the meeting are as under:

"13. We are taking actions to ensure fairness of the international tax system and to secure countries' revenue bases. Profits should be taxed where economic activities deriving the profits are performed and where value is created. We welcome the significant progress on the G20/OECD Base Erosion and Profit Shifting (BEPS) Action Plan to modernise international tax rules. We are committed to finalising this work in 2015, including transparency of taxpayer-specific rulings found to constitute harmful tax practices. We welcome progress being made on taxation of patent boxes. To prevent cross-border tax evasion, we endorse the global Common Reporting Standard for the automatic exchange of tax information (AEOI) on a reciprocal basis. We will begin to exchange information automatically with each other and with other countries by 2017 or end-2018, subject to completing necessary legislative procedures. We welcome financial centres' commitments to do the same and call on all to join us. We welcome deeper engagement of developing countries in the BEPS project to address their concerns. We will work with them to build their tax administrations capacity and implement AEOI. We welcome further collaboration by our tax authorities on cross-border compliance activities."

8.7.3 G20 Finance Ministers' Meeting in Istanbul, Turkey on 9th and 10th February, 2015

The relevant extracts from the Communiqué issued after the meeting are as under:

"We reiterate our full support to the G20/OECD Base Erosion and Profit Shifting(BEPS) Project, showing our resolve to tackle cross-border tax avoidance by modernizing international tax rules. We will finalize the deliverables under the BEPS Action Plan by year end. We endorse the mandate to develop a multilateral instrument to streamline the implementation of the tax treaty-related BEPS measures. We also reaffirm our commitment to strengthen tax transparency to prevent cross-border evasion. With respect to the exchange of information on request, we urge all jurisdictions to fully comply with the Global Forum standards and join the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. We will work towards completing the necessary legislative

procedures to begin the automatic exchange of information (AEoI) within the agreed timeframe. We look forward to the practical and full implementation of the new standard on a global scale and reiterate our commitment to making AEoI attainable by all countries, including all financial centers, and support the pilot projects. We welcome the direct engagement of developing countries in the BEPS Project ensuring that their concerns are addressed and acknowledge that their timing of application may differ from other countries. We will closely monitor progress in preparation of toolkits to assist developing countries in implementing the BEPS actions. We will continue to support developing countries in strengthening their capacity. We will implement the G20High-Level Principles on Beneficial Ownership Transparency."

8.7.4 G20 Finance Ministers' Meeting in Washington D.C. on 18th April, 2015

The relevant extracts from the Communiqué issued after the meeting are as under:

"7. We are committed to take actions to reach a globally fair and modern international tax system. In this regard, we are on track to finalize the G20/OECD Base Erosion and Profit Shifting (BEPS) Action Plan in 2015 and we are also working towards delivering our commitments pertaining to the exchange of information. We reiterate our commitment to support developing countries' engagement in the international tax agenda. We commit to implement actively the G20 High Level Principles on Beneficial Ownership Transparency."

8.7.5 PM's Intervention during G20 Leaders' Summit in Brisbane on 16th November, 2014

The website of the PMO states the following on the PM's Intervention during the G20 Leaders' Summit in Brisbane on 16.11.2014

"Prime Minister, Shri Narendra Modi, today expressed India's support for a new global standard on automatic exchange of information, which would be instrumental in getting information about unaccounted money hoarded abroad and enable its eventual repatriation. He was making an intervention during the G20 session on Delivering Global Economic Resilience. He said he supported all initiatives to facilitate exchange of information and mutual assistance in tax policy and administration.

Noting that increased mobility of capital and technology have created new opportunities for avoiding tax and profit shifting, the Prime Minister said he urged every jurisdiction, especially tax havens, to provide information for tax purposes in accordance with treaty obligations.

The Prime Minister reiterated his call for close policy coordination among major economies, saying this is important not just for also addressing the challenge of black money, but also for security issues like terrorism, drug trafficking, arms smuggling etc. He said although all countries have their domestic priorities, coordinated decisions would "help us all" in the long run. He said the resilience of the global financial system will also depend on cyber security."

8.7.6 FM's Intervention during G20 FMs meeting in Washington on 18th April, 2015

The text of the intervention is as under:

"Base Erosion and Profit Shifting (BEPS) has been a cause of concern for developing and emerging

economies for long as it erodes their tax base depriving them of much needed resources for developmental activities. It is also unfair to the general taxpaying public. It also provides an unfair competitive advantage to Multinational Enterprises (MNEs) vis-à-vis domestic companies which have no opportunities for BEPS strategies. We welcome the progress made in BEPS project incorporating the participation of eight (8) non-OECD G20 countries.

Although exchange of information on "request basis" has resulted in improving transparency, its scope is limited; as offshore financial centers and tax havens are obliged to provide information only when investigation in a particular case has already commenced. The problem of offshore tax evasion and flow of illicit money can be addressed only by the free flow of financial account information, exchanged amongst countries on an automatic basis.

We strongly feel that there is a need to ensure that the Common Reporting Standards on Automatic exchange of Information should be implemented on a fully reciprocal global basis and those countries which have not yet committed to the timeline of 2017 or 2018 should do it without any further delay. The problem of black money and illicit flow to offshore jurisdictions and tax havens can be addressed only if this is implemented at a global level.

The Global Forum should monitor the implementation of common reporting standards on exchange of information and ensure that every country/jurisdiction is effectively implementing them, have necessary legal and regulatory frameworks and are also exchanging information in practice."

Annexure-A
India's Tax Treaties as on 1st May, 2015

No.	Jurisdiction	Type of EOI agreement	Date signed	Date from which in force	Can the information be used for non-tax purposes with the consent of the supplying State
1.	Afghanistan	SAARC Multilateral Agreement	13.11.2005	19.5.2010	No
2.	Albania	Double Taxation Avoidance Agreement ("DTAA")	08.07.2013	4.12.2013	No
		Multilateral Convention on Mutual Administrative Assistance in Tax Matters ("Multilateral Convention")	1.3.2013	1.12.2013	Yes
3.	Andorra	Multilateral Convention	05.11.2013	Not yet in force in Andorra	Yes
4.	Anguilla	Multilateral Convention	Extension by the United Kingdom	01.03.2014	Yes
5.	Argentina	Taxation Information Exchange Agreement ("TIEA")	21.11.2011	28.01.2013	Yes
		Multilateral Convention	03.11.2011	01.01.2013	Yes
6.	Armenia	DTAA	31.10.2003	09.09.2004	No
7.	Aruba	Multilateral Convention	Extension by the Netherlands	01.09.2013	Yes

8.	Australia	DTAA	25.07.1991	30.12.1991	No
		Protocol	16.12.2011	02.04.2013	Yes
		Multilateral Convention	03.11.2011	01.12.2012	Yes
9.	Austria	DTAA	08.11.1999	05.09.2001	No
		Multilateral Convention	29.5.2013	01.12.2014	Yes
10.	Azerbaijan	Multilateral Convention	23.5.2014	Not yet in force in Azerbaijan	Yes
11.	Bahamas	TIEA	11.02.2011	01.03.2011	Yes
12.	Bahrain	TIEA	31.05.2012	11.04.2013	Yes
13.	Bangladesh	DTAA	27.08.1991	27.05.1992	No
		Protocol	16.02.2013	13.06.2013	Yes
		SAARC Multilateral Agreement	13.11.2005	19.05.2010	No
14.	Belarus	DTAA	27.09.1997	17.07.1998	No
15.	Belgium	DTAA	26.04.1993	01.10.1997	No
		Multilateral Convention	04.04.2011	Not yet in force in Belgium	Yes
16.	Belize	TIEA	18.09.2013	25.11.2013	No confidentiality provision
		Multilateral Convention	29.05.2013	01.09.2013	Yes
17.	Bermuda	TIEA	07.10.2010	03.11.2010	Yes
		Multilateral Convention	Extension by United Kingdom	01.03.2014	Yes
18.	Bhutan	SAARC Multilateral Agreement	13.11.2005	19.05.2010	No
		DTAA	04.03.2013	17.07.2014	Yes
19.	Botswana	DTAA	08.12.2006	30.01.2008	No
20.	Brazil	DTAA	26.04.1988	11.03.1992	No
		Protocol	15.10.2013	Not yet in force	Yes
		Multilateral Convention	03.11.2011	Not yet in force in Brazil	Yes

21.	British Virgin Islands	TIEA	09.02.2011	22.08.2011	Yes
		Multilateral Convention	Extension by United Kingdom	01.03.2014	Yes
22.	Bulgaria	DTAA	26.05.1994	23.06.1995	No
23.	Canada	DTAA	11.01.1996	06.05.1997	No
		Multilateral Convention	03.11.2011	01.03.2014	Yes
24.	Cameroon	Multilateral Convention	25.06.2014	Not yet in force in Cameroon	Yes
25.	Cayman Islands	TIEA	21.03.2011	08.11.2011	Yes
		Multilateral Convention	Extension by United Kingdom	01.01.2014	Yes
26.	China	DTAA	18.07.1994	21.11.1994	No
		Multilateral Convention	27.08.2013	Not yet in force in China	Yes
27.	Chinese Taipei (Taiwan)	DTAA	12.07.2011	12.08.2011	Yes
28.	Chile	Multilateral Convention	24.10.2013	Not yet in force in Chile	Yes
29.	Colombia	DTAA	13.05.2011	07.07.2014	Yes
		Multilateral Convention	23.05.2012	01.07.2014	Yes
30.	Costa Rica	Multilateral Convention	01.03.2012	01.08.2013	Yes
31.	Croatia	DTAA	12.02.2014	06.02.2015	Yes
		Multilateral Convention	11.10.2013	01.06.2014	Yes
32.	Curacao	Multilateral Convention	Extension by the Netherlands	01.09.2013	Yes
33.	Cyprus	DTAA	13.06.1994	21.12.1994	No
		Multilateral Convention	10.07.2014	01.04.2015	Yes
34.	Czech Republic	DTAA	01.10.1998	27.09.1999	No
		Multilateral Convention	26.10.2012	01.02.2014	Yes

35.	Denmark	DTAA	08.03.1989	13.06.1989	No
		Protocol	10.10.2013	01.02.2015	Yes
		Multilateral Convention	27.05.2010	01.06.2011	Yes
36.	Egypt (United Arab Republic)	DTAA	20.02.1969	30.09.1969	No
37.	Estonia	DTAA	19.09.2011	20.06.2012	Yes
		Multilateral Convention	29.05.2013	01.11.2014	Yes
38.	Ethiopia	DTAA	25.05.2011	15.10.2012	Yes
39.	Faroe Islands	Multilateral Convention	Extension by Denmark	01.06.2011	Yes
40.	Fiji	DTAA	30.01.2014	15.05.2014	Yes
41.	Finland	DTAA	15.01.2010	19.04.2010	No
		Multilateral Convention	27.05.2010	01.06.2011	Yes
42.	France	DTAA	29.09.1992	01.08.1994	No
		Multilateral Convention	27.05.2010	01.04.2012	Yes
43.	Gabon	Multilateral Convention	03.07.2014	Not yet in force in Gabon	Yes
44.	Georgia	DTAA	24.08.2011	08.12.2011	Yes
		Multilateral Convention	03.11.2010	01.06.2011	Yes
45.	Germany	DTAA	19.06.1995	26.10.1996	No
		Multilateral Convention	03.11.2011	Not yet in force in Germany	Yes
46.	Ghana	Multilateral Convention	10.07.2012	01.09.2013	Yes
47.	Gibraltar	TIEA	01.02.2013	11.03.2013	Yes
		Multilateral Convention	Extension by the United Kingdom	01.03.2014	Yes
48.	Green Land	Multilateral Convention	Extension by the Denmark	01.06.2011	Yes

49.	Greece	DTAA	11.02.1965	17.03.1967	No
		Multilateral Convention	21.02.2012	01.09.2013	Yes
50.	Guatemala	Multilateral Convention	05.12.2012	Not yet in force in Guatemala	Yes
51.	Guernsey	TIEA	20.12.2011	11.06.2012	Yes
		Multilateral Convention	Extension by the United Kingdom	01.08.2014	Yes
52.	Hungary	DTAA	03.11.2003	04.03.2005	No
		Multilateral Convention	12.11.2013	01.11.2014	Yes
53.	Iceland	DTAA	23.11.2007	21.12.2007	No
		Multilateral Convention	27.05.2010	01.02.2012	Yes
54.	Indonesia	DTAA	07.08.1987	19.12.1987	No
		Revised DTAA	27.07.2012	Not yet in force	Yes
		Multilateral Convention	03.11.2011	01.05.2015	Yes
55.	Ireland	DTAA	06.11.2000	26.12.2001	No
		Multilateral Convention	30.06.2011	01.09.2013	Yes
56.	Isle of Man	TIEA	04.02.2011	17.03.2011	Yes
		Multilateral Convention	Extension by the United Kingdom	01.03.2014	Yes
57.	Israel	DTAA	29.01.1996	15.05.1996	No
58.	Italy	DTAA	19.02.1993	23.11.1995	No
		Multilateral Convention	27.05.2010	01.05.2012	Yes
59.	Japan	DTAA	07.03.1989	29.12.1989	No
		Multilateral Convention	03.11.2011	01.10.2013	Yes
60.	Jersey	TIEA	03.11.2011	07.02.2014	Yes
		Multilateral Convention	Extension by the United Kingdom	01.06.2014	Yes

61.	Jordan	DTAA	20.04.1999	16.10.1999	No
62.	Kazakhstan	DTAA	09.12.1996	02.10.1997	No
		Multilateral Convention	23.12.2013	01.08.2015	Yes
63.	Kenya	DTAA	12.04.1985	20.08.1985	No
64.	Korea (Republic of)	DTAA	19.07.1985	31.08.1986	No
		Multilateral Convention	27.05.2010	01.07.2012	Yes
65.	Kuwait	DTAA	15.06.2006	17.10.2007	No
66.	Kyrgyz Republic	DTAA	13.04.1999	10.01.2001	No
67.	Latvia	DTAA	18.09.2013	28.12.2013	Yes
		Multilateral Convention	29.05.2013	01.11.2014	Yes
68.	Liechtenstein	TIEA	28.03.2013	20.01.2014	Yes
		Multilateral Convention	21.11.2013	Not yet in force in Liechtenstein	Yes
69.	Liberia	TIEA	03.10.2011	30.03.2012	No confidentiality provision
70.	Libya	DTAA	02.03.1981	01.07.1982	No
71.	Lithuania	DTAA	26.07.2011	10.07.2012	Yes
		Multilateral Convention	07.03.2013	01.06.2014	Yes
72.	Luxembourg	DTAA	02.06.2008	09.07.2009	No
		Multilateral Convention	29.05.2013	01.11.2014	Yes
73.	Macau, China	TIEA	03.01.2012	16.04.2012	Yes
74.	Macedonia	DTAA	17.12.2013	12.9.2014	Yes
75.	Malaysia	DTAA	14.05.2001	14.08.2003	No
		Revised DTAA	09.05.2012	26.12.2012	Yes
76.	Maldives	SAARC Multilateral Agreement	13.11.2005	19.05.2010	No
77.	Malta	DTAA	28.09.1994	08.02.1995	No
		Revised DTAA	08.04.2013	07.02.2014	Yes
		Multilateral Convention	26.10.2012	01.09.2013	Yes
78.	Mauritius	DTAA	24.08.1982	06.12.1983	No

79.	Mexico	DTAA	10.09.2007	01.02.2010	No
		Multilateral Convention	27.05.2010	01.09.2012	Yes
80.	Moldova	Multilateral Convention	27.01.2011	01.03.2012	Yes
81.	Monaco	TIEA	31.07.2012	27.03.2013	Yes
			13.10.2014	Not yet in force in Monaco	
82.	Mongolia	DTAA	22.02.1994	29.03.1996	No
83.	Montenegro	DTAA	08.02.2006	23.09.2008	No
84.	Montserrat	Multilateral Convention	Extension by the United Kingdom	01.10.2013	Yes
85.	Morocco	DTAA	30.10.1998	20.02.2000	No
		Protocol	08.08.2013	Not yet in force	Yes
		Multilateral Convention	21.05.2013	Not yet in force in Morocco	Yes
86.	Mozambique	DTAA	30.09.2010	28.02.2011	Yes
87.	Myanmar	DTAA	02.04.2008	30.01.2009	No
88.	Namibia	DTAA	15.02.1997	22.01.1999	No
89.	Nepal	DTAA	18.01.1987	01.11.1988	No
		Revised DTAA	27.11.2011	16.03.2012	Yes
		SAARC Multilateral Agreement	13.11.2005	19.05.2010	No
90.	Netherlands	DTAA	30.07.1988	21.01.1989	No
		Protocol	10.05.2012	02.11.2012	Yes
		Multilateral Convention	27.05.2010	01.09.2013	Yes
91.	New Zealand	DTAA	17.10.1986	23.12.1986	No
		Multilateral Convention	26.10.2012	01.03.2014	Yes
92.	Nigeria	Multilateral Convention	29.05.2013	Not yet in force in Nigeria	Yes

93.	Norway	DTAA	02.02.2011	20.12.2011	Yes
		Multilateral Convention	27.05.2010	01.06.2011	Yes
94.	Oman	DTAA	02.04.1997	03.06.1997	No
95.	Pakistan	SAARC Multilateral Agreement	13.11.2005	19.05.2010	No
96.	Philippines	DTAA	12.02.1990	21.03.1994	No
		Multilateral Convention	26.09.2014	Not yet in force in Philippines	Yes
97.	Poland	DTAA	21.06.1989	26.10.1989	No
		Protocol	29.01.2013	01.06.2014	Yes
		Multilateral Convention	09.07.2010	01.10.2011	Yes
98.	Portugal	DTAA	11.09.1998	30.04.2000	No
		Multilateral Convention	27.05.2010	01.03.2015	Yes
99.	Qatar	DTAA	07.04.1999	15.01.2000	No
100.	Romania	DTAA	10.03.1987	14.11.1987	No
		Revised DTAA	08.03.2013	16.12.2013	No confidentiality provision
		Multilateral Convention	15.10.2012	01.11.2014	Yes
101.	Russia	DTAA	25.03.1997	11.04.1998	No
		Multilateral Convention	03.11.2011	01.07.2015	Yes
102.	San Marino	TIEA	19.12.2013	29.08.2014	Yes
		Multilateral Convention	21.11.2013	Not yet in force in San Marino	Yes
103.	Saint Kitts and Nevis	TIEA	11.11.2014	Not yet in force	Yes
104.	Saudi Arabia	DTAA	25.01.2006	01.11.2006	No
		Multilateral Convention	29.05.2013	Not yet in force in Saudi Arabia	Yes
105.	Serbia	DTAA	08.02.2006	23.09.2008	No
106.	Seychelles	Multilateral Convention	24.02.2015	Not yet in force in Seychlles	Yes

107.	Singapore	DTAA	24.01.1994	27.05.1994	No
		Protocol	29.06.2005	01.08.2005	No
		Protocol	24.06.2011	01.09.2011	No
		Multilateral Convention	29.05.2013	Not yet in force in Singapore	Yes
108.	Sint Maarten	Multilateral Convention	Extension by the Netherlands	01.09.2013	Yes
109.	Slovak Republic	DTAA	27.01.1986	25.05.1987	Yes
		Multilateral Convention	29.05.2013	01.03.2014	Yes
110.	Slovenia	DTAA	13.01.2003	17.02.2005	No
		Multilateral Convention	27.05.2010	01.06.2011	Yes
111.	South Africa	DTAA	04.12.1996	28.11.1997	No
		Protocol	26.7.2013	26.11.2014	Yes
		Multilateral Convention	03.11.2011	01.03.2014	Yes
112.	Spain	DTAA	08.02.1993	12.01.1995	No
		Protocol	26.10.2012	Not yet in force	Yes
		Multilateral Convention	11.03.2011	01.01.2013	Yes
113.	Sri Lanka	DTAA	27.01.1982	24.03.1983	No
		Revised DTAA	22.01.2013	22.10.2013	Yes
		SAARC Multilateral Agreement	13.11.2005	19.05.2010	No
114.	Sudan	DTAA	22.10.2003	15.04.2004	No
115.	Sweden	DTAA	24.06.1997	25.12.1997	No
		Protocol	07.02.2013	16.08.2013	Yes
		Multilateral Convention	27.05.2011	01.09.2011	Yes
116.	Switzerland	DTAA	02.11.1994	29.12.1994	No
		Protocol	30.08.2010	07.10.2011	Yes
		Multilateral Convention	15.10.2013	Not yet in force in Switzerland	Yes

117.	Syria	DTAA	06.02.1984	25.06.1985	No
		Revised DTAA	18.06.2008	10.11.2008	No
118.	Tanzania	DTAA	27.05.2011	12.12.2011	No
119.	Tajikistan	DTAA	20.11.2008	10.04.2009	No
120.	Thailand	DTAA	22.03.1985	13.03.1986	No
121.	Trinidad and Tobago	DTAA	08.02.1999	13.10.1999	No
122.	Tunisia	Multilateral Convention	16.07.2012	01.02.2014	Yes
123.	Turkey	DTAA	31.01.1995	01.02.1997	No
		Multilateral Convention	03.11.2011	Not yet in force in Turkey	Yes
124.	Turkmenistan	DTAA	25.02.1997	07.07.1997	No
125.	Turks & Caicos	Multilateral Convention	Extension by the United Kingdom	01.12.2013	Yes
126.	Uganda	DTAA	30.04.2004	27.08.2004	No
127.	Ukraine	DTAA	07.04.1999	31.10.2001	No
		Multilateral Convention	27.05.2010	01.09.2013	Yes
128.	United Arab Emirates	DTAA	29.04.1992	22.09.1993	No
		Protocol	26.03.2007	03.10.2007	No
		Protocol	16.04.2012	12.03.2013	No
129.	United Kingdom	DTAA	25.01.1993	26.10.1993	No
		Protocol	30.10.2012	27.12.2013	Yes
		Multilateral Convention	27.05.2010	01.10.2011	Yes
130.	United States	DTAA	12.09.1989	18.12.1990	No
		Multilateral Convention	27.05.2010	Not yet in force in United States	Yes
131.	Uruguay	DTAA	08.09.2011	21.6.2013	Yes
132.	Uzbekistan	DTAA	29.07.1993	25.01.1994	No
		Protocol	11.04.2012	20.07.2012	Yes

133.	Vietnam	DTAA	07.09.1994	02.02.1995	Yes
134.	Zambia	DTAA	05.06.1981	18.01.1984	No

DTAAs presently under negotiation –Azerbaijan, Chile, Hong Kong, Iran, Nigeria, Senegal and Venezuela.

TIEAs presently under negotiation - Costa Rica, Marshall Islands, Panama, Maldives, Seychelles, Andorra, Anguilla, Antigua and Barbuda, Aruba, Barbados, Brunei Darussalam, Cook Islands, Curacao, Democratic Republic of Congo, Dominica, Dominican Republic, Faroe Islands, Greenland, Grenada, Honduras, Jamaica, Montserrat, Peru, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sint Maarten, Turks and Caicos and Vanuatu.

ANNEXURE-B

ARTICLE 26 OF THE OECD MODEL TAX CONVENTION AND ITS COMMENTARY

ARTICLE 26
EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation there under is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

COMMENTARY ON ARTICLE 26
CONCERNING THE EXCHANGE OF INFORMATION

I. Preliminary remarks

1. There are good grounds for including in a convention for the avoidance of double taxation provisions concerning co-operation between the tax administrations of the two Contracting States. In the first place it appears to be desirable to give administrative assistance for the purpose of ascertaining facts in relation to which the rules of the convention are to be applied. Moreover, in view of the increasing internationalisation of economic relations, the Contracting States have a growing interest in the reciprocal supply of information on the basis of which domestic taxation laws have to be administered, even if there is no question of the application of any particular article of the Convention.

2. Therefore the present Article embodies the rules under which information may be exchanged to the widest possible extent, with a view to laying the proper basis for the implementation of the domestic tax laws of the Contracting States and for the application of specific provisions of the Convention. The text of the Article makes it clear that the exchange of information is not restricted by Articles 1 and 2, so that the information may include particulars about non-residents and may relate to the administration or enforcement of taxes not referred to in Article 2.

3. The matter of administrative assistance for the purpose of tax collection is dealt with in Article 27, but exchanges of information for the purpose of tax collection are governed by Article 26 (see paragraph 5 of the Commentary on Article 27). Similarly, mutual agreement procedures are dealt with in Article 25, but exchanges of information for the purposes of a mutual agreement procedure are governed by Article 26 (see paragraph 4 of the Commentary on Article 25).

4. In 2002, the Committee on Fiscal Affairs undertook a comprehensive review of Article 26 to ensure that it reflects current country practices. That review also took into account recent developments such as the *Model Agreement on Exchange of Information on Tax Matters* developed by the OECD Global Forum Working Group on Effective Exchange of Information and the ideal standard of access to bank information as described in the report *Improving Access to Bank Information for Tax Purposes*.1 As a result, several changes to both the text of the Article and the Commentary were made in 2005.

4.1 Many of the changes that were then made to the Article were not intended to alter its substance, but instead were made to remove doubts as to its proper interpretation. For instance, the change from "necessary" to "foreseeably relevant" and the insertion of the words "to the administration or enforcement" in paragraph 1 were made to achieve consistency with the *Model Agreement on Exchange of Information on Tax Matters* and were not intended to alter the effect of the provision. Paragraph 4 was added to incorporate into the text of the Article the general understanding previously expressed in the Commentary (see paragraph 19.6). Paragraph 5 was added to reflect practices among the vast majority of OECD member countries (see paragraph 19.10). The insertion of the words "or the oversight of the above" into paragraph 2, on the other hand, constituted a reversal of the previous rule.

4.2 The Commentary was also expanded considerably. This expansion in part reflected the addition of paragraphs 4 and 5 to the Article. Other changes were made to the Commentary to take into account

developments and country practices and more generally to remove doubts as to the proper interpretation of the Article.

4.3 The Article and the Commentary were further modified in 2012 to take into account recent developments and to further elaborate on the interpretation of certain provisions of this Article. Paragraph 2 of the Article was amended to allow the competent authorities to use information received for other purposes provided such use is allowed under the laws of both States and the competent authority of the supplying State authorises such use. This was previously included as an optional provision in paragraph 12.3 of the Commentary.

4.4 The Commentary was expanded to develop the interpretation of the standard of "foreseeable relevance" and the term "fishing expeditions" through the addition of: general clarifications (see paragraph 5), language in respect of the identification of the taxpayer under examination or investigation (see paragraph 5.1), language in respect of requests in relation to a group of taxpayers (see paragraph 5.2) and new examples (see subparagraphs *e*) to *h*) of paragraph 8 and paragraph 8.1). The Commentary further provides for an optional default standard of time limits within which the information is required to be provided unless a different agreement has been made by the competent authorities (see paragraphs 10.4 to 10.6) and that in accordance with the principle of reciprocity, if a Contracting State applies under paragraph 5 measures not normally foreseen in its domestic law or practice, such as to access and exchange bank information, that State is equally entitled to request similar information from the other Contracting State (see paragraph 15). Other clarifications were added in paragraphs 3, 5.3, 6, 11, 12, 12.3, 12.4, 16, 16.1 and 19.7.

II. Commentary on the provisions of the Article

Paragraph 1

5. The main rule concerning the exchange of information is contained in the first sentence of the paragraph. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant to secure the correct application of the provisions of the Convention or of the domestic laws of the Contracting States concerning taxes of every kind and description imposed in these States even if, in the latter case, a particular Article of the Convention need not be applied. The standard of "foreseeable relevance" is intended to provide for exchange of information in tax matters to the widest possible extent and, at the same time, to clarify that Contracting States are not at liberty to engage in "fishing expeditions" or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. In the context of information exchange upon request, the standard requires that at the time a request is made there is a reasonable possibility that the requested information will be relevant; whether the information, once provided, actually proves to be relevant is immaterial. A request may therefore not be declined in cases where a definite assessment of the pertinence of the information to an ongoing investigation can only be made following the receipt of the information. The competent authorities should consult in situations in which the content of the request, the circumstances that led to the request, or the foreseeable relevance of requested information are not clear to the requested State. However, once the requesting State has provided an explanation as to the foreseeable relevance of the requested information, the requested State may not decline a request or withhold requested information because it believes that the information lacks relevance to the underlying investigation or examination. Where the requested State becomes aware of facts that call into question whether part of the information requested is foreseeably relevant, the competent authorities should consult and the requested State may ask the requesting State to clarify

foreseeable relevance in the light of those facts. At the same time, paragraph 1 does not obligate the requested State to provide information in response to requests that are "fishing expeditions", *i.e.* speculative requests that have no apparent nexus to an open inquiry or investigation.

5.1 As is the case under the *Model Agreement on Exchange of Information on Tax Matters*1a request for information does not constitute a fishing expedition solely because it does not provide the name or address (or both) of the taxpayer under examination or investigation. The same holds true where names are spelt differently or information on names and addresses is presented using a different format. However, in cases in which the requesting State does not provide the name or address (or both) of the taxpayer under examination or investigation, the requesting State must include other information sufficient to identify the taxpayer. Similarly, paragraph 1 does not necessarily require the request to include the name and/or address of the person believed to be in possession of the information. In fact, the question of how specific a request has to be with respect to such person is typically an issue falling within the scope of subparagraphs *a*) and *b*) of paragraph 3 of Article 26.

5.2 The standard of "foreseeable relevance" can be met both in cases dealing with one taxpayer (whether identified by name or otherwise) or several taxpayers (whether identified by name or otherwise). Where a Contracting State undertakes an investigation into a particular group of taxpayers in accordance with its laws, any request related to the investigation will typically serve "the administration or enforcement" of its domestic tax laws and thus comply with the requirements of paragraph 1, provided it meets the standard of "foreseeable relevance". However, where the request relates to a group of taxpayers not individually identified, it will often be more difficult to establish that the request is not a fishing expedition, as the requesting State cannot point to an ongoing investigation into the affairs of a particular taxpayer which in most cases would by itself dispel the notion of the request being random or speculative. In such cases it is therefore necessary that the requesting State provide a detailed description of the group and the specific facts and circumstances that have led to the request, an explanation of the applicable law and why there is reason to believe that the taxpayers in the group for whom information is requested have been non-compliant with that law supported by a clear factual basis. It further requires a showing that the requested information would assist in determining compliance by the taxpayers in the group. As illustrated in the example in subparagraph *h*) of paragraph 8, in the case of a group request a third party will usually, although not necessarily, have actively contributed to the non-compliance of the taxpayers in the group, in which case such circumstance should also be described in the request. Furthermore, and as illustrated in the example in subparagraph *a*) of paragraph 8.1, a group request that merely describes the provision of financial services to non-residents and mentions the possibility of non-compliance by the non-resident customers does not meet the standard of foreseeable relevance.

5.3 Contracting States may agree to an alternative formulation of the standard of foreseeable relevance that is consistent with the scope of the Article and is therefore understood to require an effective exchange of information (*e.g.* by replacing, "is foreseeably relevant" with "is necessary", "is relevant" or "may be relevant"). The scope of exchange of information covers all tax matters without prejudice to the general rules and legal provisions governing the rights of defendants and witnesses in judicial proceedings. Exchange of information for criminal tax matters can also be based on bilateral or multilateral treaties on mutual legal assistance (to the extent they also apply to tax crimes). In order to keep the exchange of information within the framework of the Convention, a limitation to the exchange of information is set so that information should be given only insofar as the taxation under the domestic taxation laws concerned is not contrary to the Convention.

5.4 The information covered by paragraph 1 is not limited to taxpayer-specific information. The competent authorities may also exchange other sensitive information related to tax administration and compliance improvement, for example risk analysis techniques or tax avoidance or evasion schemes.

5.5 The possibilities of assistance provided by the Article do not limit, nor are they limited by, those contained in existing international agreements or other arrangements between the Contracting States which relate to co-operation in tax matters. Since the exchange of information concerning the application of custom duties has a legal basis in other international instruments, the provisions of these more specialised instruments will generally prevail and the exchange of information concerning custom duties will not, in practice, be governed by the Article.

6. The following examples seek to clarify the principles dealt with in paragraphs 5, 5.1 and 5.2 above. In the examples mentioned in paragraphs 7 and 8 information can be exchanged under paragraph 1 of Article 26. In the examples mentioned in paragraph 8.1, and assuming no further information is provided, the Contracting States are not obligated to provide information in response to a request for information. The examples are for illustrative purposes only. They should be read in the light of the overarching purpose of Article 26 not to restrict the scope of exchange of information but to allow information exchange "to the widest possible extent".

7. Application of the Convention

a) When applying Article 12, State A where the beneficiary is resident asks State B where the payer is resident, for information concerning the amount of royalty transmitted.

b) Conversely, in order to grant the exemption provided for in Article 12, State B asks State A whether the recipient of the amounts paid is in fact a resident of the last-mentioned State and the beneficial owner of the royalties.

c) Similarly, information may be needed with a view to the proper allocation of taxable profits between associated companies in different States or the adjustment of the profits shown in the accounts of a permanent establishment in one State and in the accounts of the head office in the other State (Articles 7, 9, 23 A and 23 B).

d) Information may be needed for the purposes of applying Article 25.

e) When applying Articles 15 and 23 A, State A, where the employee is resident, informs State B, where the employment is exercised for more than 183 days, of the amount exempted from taxation in State A.

8. Implementation of the domestic laws

a) A company in State A supplies goods to an independent company in State B. State A wishes to know from State B what price the company in State B paid for the goods with a view to a correct application of the provisions of its domestic laws.

b) A company in State A sells goods through a company in State C (possibly a lowtax country) to a company in State B. The companies may or may not be associated. There is no convention between State A and State C, nor between State B and State C. Under the convention between A and B, State A, with a view to ensuring the correct application of the provisions of its domestic laws to the profits made by the company situated in its territory, asks State B what price the company in State B paid for the goods.

c) State A, for the purpose of taxing a company situated in its territory, asks State B, under the convention between A and B, for information about the prices charged by a company in State B, or a group of companies in State B with which the company in State A has no business contacts in order to enable it to check the prices charged by the company in State A by direct comparison (*e.g.* prices charged by a company or a group of companies in a dominant position). It should be borne in mind that the exchange of information in this case might be a difficult and delicate matter owing in particular to the provisions of subparagraph *c)* of paragraph 3 relating to business and other secrets.

d) State A, for the purpose of verifying VAT input tax credits claimed by a company situated in its territory for services performed by a company resident in State B, requests confirmation that the cost of services was properly entered into the books and records of the company in State B.

e) The tax authorities of State A conduct a tax investigation into the affairs of Mr. X. Based on this investigation the tax authorities have indications that Mr. X holds one or several undeclared bank accounts with Bank B in State B. However, State A has experienced that, in order to avoid detection, it is not unlikely that the bank accounts may be held in the name of relatives of the beneficial owner. State A therefore requests information on all accounts with Bank B of which Mr. X is the beneficial owner and all accounts held in the names of his spouse E and his children K and L.

f) State A has obtained information on all transactions involving foreign credit cards carried out in its territory in a certain year. State A has processed the data and launched an investigation that identified all credit card numbers where the frequency and pattern of transactions and the type of use over the course of that year suggest that the cardholders were tax residents of State A. State A cannot obtain the names by using regular sources of information available under its internal taxation procedure, as the pertinent information is not in the possession or control of persons within its jurisdiction. The credit card numbers identify an issuer of such cards to be Bank B in State B. Based on an open inquiry or investigation, State A sends a request for information to State B, asking for the name, address and date of birth of the holders of the particular cards identified during its investigation and any other person that has signatory authority over those cards. State A supplies the relevant individual credit card numbers and further provides the above information to demonstrate the foreseeable relevance of the requested information to its investigation and more generally to the administration and enforcement of its tax law.

g) Company A, resident of State A, is owned by foreign unlisted Company B, resident of State B. The tax authorities of State A suspect that managers X, Y and Z of Company A directly or indirectly own Company B. If that were the case, the dividends received by Company B from Company A would be taxable in their hands as resident shareholders under State A's controlled foreign company rules. The suspicion is based on information provided to State A's tax authorities by a former employee of Company A.When confronted with the allegations, the three managers of Company A deny having any ownership interest in Company B. The State A tax authorities have exhausted all domestic means of obtaining ownership information on Company B. State A now requests from State B information on whether X,Y and Z are shareholders of Company B. Furthermore, considering that ownership in such cases is often held through, for example, shell companies and nominee shareholders it requests information from State B on whether X, Y and Z indirectly hold an ownership interest in Company B. If State B is unable to determine whether X, Y or Z holds such an indirect interest, information is requested on the shareholder(s) so that it can continue its investigations. For cases where State B becomes aware of facts that call into question whether part of the shareholder information is

foreseeably relevant, the competent authorities should consult and State B may ask State A to clarify foreseeable relevance in light of those facts, as discussed in paragraph 5.

h) Financial service provider B is established in State B. The tax authorities of State A have discovered that B is marketing a financial product to State A residents using misleading information suggesting that the product eliminates the State A income tax liability on the income accumulated within the product. The product requires that an account be opened with B through which the investment is made. State A's tax authorities have issued a taxpayer alert, warning all taxpayers about the product and clarifying that it does not achieve the suggested tax effect and that income generated by the product must be reported. Nevertheless, B continues to market the product on its website, and State A has evidence that it also markets the product through a network of advisors. State A has already discovered several resident taxpayers that have invested in the product, all of whom had failed to report the income generated by their investments. State A has exhausted its domestic means of obtaining information on the identity of its residents that have invested in the product. State A requests information from the competent authority of State B on all State A residents that (*i*) have an account with B and (*ii*) have invested in the financial product. In the request, State A provides the above information, including details of the financial product and the status of its investigation.

8.1 Situations where Contracting States are not obligated to provide information in response to a request for information, assuming no further information is provided

a) Bank B is a bank established in State B. State A taxes its residents on the basis of their worldwide income. The competent authority of State A requests that the competent authority of State B provide the names, date and place of birth, and account balances (including information on any financial assets held in such accounts) of residents of State A that have an account with, hold signatory authority over, or a beneficial interest in an account with Bank B in State B. The request states that Bank B is known to have a large group of foreign account holders but does not contain any additional information.

b) Company B is a company established in State B. State A requests the names of all shareholders in Company B resident of State A and information on all dividend payments made to such shareholders. The requesting State A points out that Company B has significant business activity in State A and is therefore likely to have shareholders resident of State A. The request further states that it is well known that taxpayers often fail to disclose foreign source income or assets.

9. The rule laid down in paragraph 1 allows information to be exchanged in three different ways:

a) on request, with a special case in mind, it being understood that the regular sources of information available under the internal taxation procedure should be relied upon in the first place before a request for information is made to the other State;

b) automatically, for example when information about one or various categories of income having their source in one Contracting State and received in the other Contracting State is transmitted systematically to the other State; see the Recommendations of the OECD Council C(97)29/FINAL, dated 13 March 1997 (*Recommendation on the use of Tax Identification Numbers in an international context*) and C(2001)28/FINAL, dated 22 March 2001 (*Recommendation on the use of the OECD Model Memorandum of Understanding on Automatic Exchange of Information for Tax Purposes*);

c) spontaneously, for example in the case of a State having acquired through certain investigations, information which it supposes to be of interest to the other State.

9.1 These three forms of exchange (on request, automatic and spontaneous) may also be combined. It should also be stressed that the Article does not restrict the possibilities of exchanging information to these methods and that the Contracting States may use other techniques to obtain information which may be relevant to both Contracting States such as simultaneous examinations, tax examinations abroad and industry-wide exchange of information. These techniques are fully described in the publication *Tax Information Exchange between OECD Member Countries: A Survey of Current Practices*1 and can be summarised as follows:

– a simultaneous examination is an arrangement between two or more parties to examine simultaneously each in its own territory, the tax affairs of (a) taxpayer(s) in which they have a common or related interest, with a view of exchanging any relevant information which they so obtain (see the OECD Council Recommendation C(92)81, dated 23 July 1992, on an OECD Model agreement for the undertaking of simultaneous examinations);

– a tax examination abroad allows for the possibility to obtain information through the presence of representatives of the competent authority of the requesting Contracting State. To the extent allowed by its domestic law, a Contracting State may permit authorised representatives of the other Contracting State to enter the first Contracting State to interview individuals or examine a person's books and records — or to be present at such interviews or examinations carried out by the tax authorities of the first Contracting State—in accordance with procedures mutually agreed upon by the competent authorities. Such a request might arise, for example, where the taxpayer in a Contracting State is permitted to keep records in the other Contracting State. This type of assistance is granted on a reciprocal basis. Countries' laws and practices differ as to the scope of rights granted to foreign tax officials. For instance, there are States where a foreign tax official will be prevented from any active participation in an investigation or examination on the territory of a country; there are also States where such participation is only possible with the taxpayer's consent. The Joint Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters specifically addresses tax examinations abroad in its Article 9;

– an industry-wide exchange of information is the exchange of tax information especially concerning a whole economic sector (*e.g.* the oil or pharmaceutical industry, the banking sector, etc.) and not taxpayers in particular.

10. The manner in which the exchange of information agreed to in the Convention will finally be effected can be decided upon by the competent authorities of the Contracting States. For example, Contracting States may wish to use electronic or other communication and information technologies, including appropriate security systems, to improve the timeliness and quality of exchanges of information. Contracting States which are required, according to their law, to observe data protection laws, may wish to include provisions in their bilateral conventions concerning the protection of personal data exchanged. Data protection concerns the rights and fundamental freedoms of an individual, and in particular, the right to privacy, with regard to automatic processing of personal data. See, for example, the *Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* of 28 January 1981.

10.1 Before 2000, the paragraph only authorised the exchange of information, and the use of the information exchanged, in relation to the taxes covered by the Convention under the general rules of Article 2. As drafted, the paragraph did not oblige the requested State to comply with a request for information concerning the imposition of a sales tax as such a tax was not covered by the Convention. The paragraph was then amended so as to apply to the exchange of information concerning any tax imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, and to allow the use of the information exchanged for purposes of the application of all such taxes. Some Contracting States may not, however, be in a position to exchange information, or to use the information obtained from a treaty partner, in relation to taxes that are not covered by the Convention under the general rules of Article 2. Such States are free to restrict the scope of paragraph 1 of the Article to the taxes covered by the Convention.

10.2 In some cases, a Contracting State may need to receive information in a particular form to satisfy its evidentiary or other legal requirements. Such forms may include depositions of witnesses and authenticated copies of original records. Contracting States should endeavour as far as possible to accommodate such requests. Under paragraph 3, the requested State may decline to provide the information in the specific form requested if, for instance, the requested form is not known or permitted under its law or administrative practice. A refusal to provide the information in the form requested does not affect the obligation to provide the information.

10.3 Nothing in the Convention prevents the application of the provisions of the Article to the exchange of information that existed prior to the entry into force of the Convention, as long as the assistance with respect to this information is provided after the Convention has entered into force and the provisions of the Article have become effective. Contracting States may find it useful, however, to clarify the extent to which the provisions of the Article are applicable to such information, in particular when the provisions of that convention will have effect with respect to taxes arising or levied from a certain time.

10.4 Contracting States may wish to improve the speediness and timeliness of exchange of information under this Article by agreeing on time limits for the provision of information. Contracting States may do so by adding the following language to the Article:

6. The competent authorities of the Contracting States may agree on time limits for the provision of information under this Article. In the absence of such an agreement, the information shall be supplied as quickly as possible and, except where the delay is due to legal impediments, within the following time limits:

a) Where the tax authorities of the requested Contracting State are already in possession of the requested information, such information shall be supplied to the competent authority of the other Contracting State within two months of the receipt of the information request;

b) Where the tax authorities of the requested Contracting State are not already in the possession of the requested information, such information shall be supplied to the competent authority of the other Contracting State within six months of the receipt of the information request.

Provided that the other conditions of this Article are met, information shall be considered to have been exchanged in accordance with the provisions of this Article even if it is supplied after these time limits.

10.5 The provisions in subparagraphs *a*) and *b*) of optional paragraph 6, referenced in paragraph 10.4, set a default standard for time limits that would apply where the competent authorities have not made a different agreement on longer or shorter time limits. The default standard time limits are two months from the receipt of the information request if the requested information is already in the possession of the tax authorities of the requested Contracting State and six months in all other cases. Notwithstanding the default standard time limits or time limits otherwise agreed, competent authorities may come to different agreements on a case-by-case basis, for example, when they both agree more time is appropriate. This may arise where the request is complex in nature. In such a case, the competent authority of a requesting Contracting State should not unreasonably deny a request by the competent authority of a requested Contracting State for more time. If a requested Contracting State is unable to supply the requested information within the prescribed time limit because of legal impediments (for example, because of ongoing litigation regarding a taxpayer's challenge to the validity of the request or ongoing litigation regarding a domestic notification procedure of the type described in paragraph 14.1), it would not be in violation of the time limits.

10.6 The last sentence in optional paragraph 6, referenced in paragraph 10.4, which provides "provided that the other conditions of this Article are met, information shall be considered to have been exchanged in accordance with the provisions of this Article even if it is supplied after these time limits" makes it clear that no objection to the use or admissibility of information exchanged under this Article can be based on the fact that the information was exchanged after the time limits agreed to by the competent authorities or the default time limits provided for in the paragraph.

Paragraph 2

11. Reciprocal assistance between tax administrations is feasible only if each administration is assured that the other administration will treat with proper confidence the information which it will receive in the course of their co-operation. The confidentiality rules of paragraph 2 apply to all types of information received under paragraph 1, including both information provided in a request and information transmitted in response to a request. Hence, the confidentiality rules cover, for instance, competent authority letters, including the letter requesting information. At the same time, it is understood that the requested State can disclose the minimum information contained in a competent authority letter (but not the letter itself) necessary for the requested State to be able to obtain or provide the requested information to the requesting State, without frustrating the efforts of the requesting State. If, however, court proceedings or the like under the domestic laws of the requested State necessitate the disclosure of the competent authority letter itself, the competent authority of the requested State may disclose such a letter unless the requesting State otherwise specifies. The maintenance of secrecy in the receiving Contracting State is a matter of domestic laws. It is therefore provided in paragraph 2 that information communicated under the provisions of the Convention shall be treated as secret in the receiving State in the same manner as information obtained under the domestic laws of that State. Sanctions for the violation of such secrecy in that State will be governed by the administrative and penal laws of that State. In situations in which the requested State determines that the requesting State does not comply with its duties regarding the confidentiality of the information exchanged under this Article, the requested State may suspend assistance under this Article until such time as proper assurance is given by the requesting State that those duties will indeed be respected. If necessary, the competent authorities may enter into specific arrangements or memoranda of understanding regarding the confidentiality of the information exchanged under this Article.

12. Subject to paragraphs 12.3 and 12.4, the information obtained may be disclosed only to persons and authorities involved in the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes with respect to which information may be exchanged according to the first sentence of paragraph 1, or the oversight of the above. This means that the information may also be communicated to the taxpayer, his proxy or to the witnesses. This also means that information can be disclosed to governmental or judicial authorities charged with deciding whether such information should be released to the taxpayer, his proxy or to the witnesses. The information received by a Contracting State may be used by such persons or authorities only for the purposes mentioned in paragraph 2 Furthermore, information covered by paragraph 1, whether taxpayer-specific or not, should not be disclosed to persons or authorities not mentioned in paragraph 2, regardless of domestic information disclosure laws such as freedom of information or other legislation that allows greater access to governmental documents.

12.1 Information can also be disclosed to oversight bodies. Such oversight bodies include authorities that supervise tax administration and enforcement authorities as part of the general administration of the Government of a Contracting State. In their bilateral negotiations, however, Contracting States may depart from this principle and agree to exclude the disclosure of information to such supervisory bodies.

12.2 The information received by a Contracting State may not be disclosed to a third country unless there is an express provision in the bilateral treaty between the Contracting States allowing such disclosure.

12.3 Information exchanged for tax purposes may be of value to the receiving State for purposes in addition to those referred to in the first and second sentences of paragraph 2 of Article 26. The last sentence of paragraph 2 therefore allows the Contracting States to share information received for tax purposes provided two conditions are met: first, the information may be used for other purposes under the laws of both States and, second, the competent authority of the supplying State authorises such use. It allows the sharing of tax information by the tax authorities of the receiving State with other law enforcement agencies and judicial authorities in that State on certain high priority matters (*e.g.* to combat money laundering, corruption, terrorism financing). When a receiving State desires to use the information for an additional purpose (*i.e.* non-tax purpose), the receiving State should specify to the supplying State the other purpose for which it wishes to use the information and confirm that the receiving State can use the information for such other purpose under its laws. Where the supplying State is in a position to do so, having regard to, amongst others, international agreements or other arrangements between the Contracting States relating to mutual assistance between other law enforcement agencies and judicial authorities, the competent authority of the supplying State would generally be expected to authorise such use for other purposes if the information can be used for similar purposes in the supplying State. Law enforcement agencies and judicial authorities receiving information under the last sentence of paragraph 2 must treat that information as confidential consistent with the principles of paragraph 2.

12.4 It is recognised that Contracting States may wish to achieve the overall objective inherent in the last sentence of paragraph 2 in other ways and they may do so by replacing the last sentence of paragraph 2 with the following text:

The competent authority of the Contracting State that receives information under the provisions of this Article may, with the written consent of the Contracting State that provided the information, also make available that information to be used for other purposes allowed under the provisions of a mutual

legal assistance treaty in force between the Contracting States that allows for the exchange of tax information.

13. As stated in paragraph 12, the information obtained can be communicated to the persons and authorities mentioned and on the basis of the third sentence of paragraph 2 of the Article can be disclosed by them in court sessions held in public or in decisions which reveal the name of the taxpayer. Once information is used in public court proceedings or in court decisions and thus rendered public, it is clear that from that moment such information can be quoted from the court files or decisions for other purposes even as possible evidence. But this does not mean that the persons and authorities mentioned in paragraph 2 are allowed to provide on request additional information received. If either or both of the Contracting States object to the information being made public by courts in this way, or, once the information has been made public in this way, to the information being used for other purposes, because this is not the normal procedure under their domestic laws, they should state this expressly in their convention.

Paragraph 3

14. This paragraph contains certain limitations to the main rule in favour of the requested State. In the first place, the paragraph contains the clarification that a Contracting State is not bound to go beyond its own internal laws and administrative practice in putting information at the disposal of the other Contracting State. However, internal provisions concerning tax secrecy should not be interpreted as constituting an obstacle to the exchange of information under the present Article. As mentioned above, the authorities of the requesting State are obliged to observe secrecy with regard to information received under this Article.

14.1 Some countries' laws include procedures for notifying the person who provided the information and/or the taxpayer that is subject to the enquiry prior to the supply of information. Such notification procedures may be an important aspect of the rights provided under domestic law. They can help prevent mistakes (*e.g.* in cases of mistaken identity) and facilitate exchange (by allowing taxpayers who are notified to co-operate voluntarily with the tax authorities in the requesting State). Notification procedures should not, however, be applied in a manner that, in the particular circumstances of the request, would frustrate the efforts of the requesting State. In other words, they should not prevent or unduly delay effective exchange of information. For instance, notification procedures should permit exceptions from prior notification, *e.g.* in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the requesting State. A Contracting State that under its domestic law is required to notify the person who provided the information and/or the taxpayer that an exchange of information is proposed should inform its treaty partners in writing that it has this requirement and what the consequences are for its obligations in relation to mutual assistance. Such information should be provided to the other Contracting State when a convention is concluded and thereafter whenever the relevant rules are modified.

15. Furthermore, the requested State does not need to go so far as to carry out administrative measures that are not permitted under the laws or practice of the requesting State or to supply items of information that are not obtainable under the laws or in the normal course of administration of the requesting State. It follows that a Contracting State cannot take advantage of the information system of the other Contracting State if it is wider than its own system. Thus, a State may refuse to provide information where the requesting State would be precluded by law from obtaining or providing the information or where the requesting State's administrative practices (*e.g.* failure to provide sufficient administrative resources)

result in a lack of reciprocity. However, it is recognised that too rigorous an application of the principle of reciprocity could frustrate effective exchange of information and that reciprocity should be interpreted in a broad and pragmatic manner. Different countries will necessarily have different mechanisms for obtaining and providing information. Variations in practices and procedures should not be used as a basis for denying a request unless the effect of these variations would be to limit in a significant way the requesting State's overall ability to obtain and provide the information if the requesting State itself received a legitimate request from the requested State. It is worth noting that if a Contracting State applies, under paragraph 5, measures not normally foreseen in its domestic law or practice, such as to access and exchange bank information, that State is equally entitled to request similar information from the other Contracting State. This would be fully in line with the principle of reciprocity which underlies subparagraphs *a*) and *b*) of paragraph 3.

15.1 The principle of reciprocity has no application where the legal system or administrative practice of only one country provides for a specific procedure. For instance, a country requested to provide information could not point to the absence of a ruling regime in the country requesting information and decline to provide information on a ruling it has granted, based on a reciprocity argument. Of course, where the requested information itself is not obtainable under the laws or in the normal course of the administrative practice of the requesting State, a requested State may decline such a request.

15.2 Most countries recognise under their domestic laws that information cannot be obtained from a person to the extent that such person can claim the privilege against self-incrimination. A requested State may, therefore, decline to provide information if the requesting State would have been precluded by its own self-incrimination rules from obtaining the information under similar circumstances. In practice, however, the privilege against self-incrimination should have little, if any, application in connection with most information requests. The privilege against self-incrimination is personal and cannot be claimed by an individual who himself is not at risk of criminal prosecution. The overwhelming majority of information requests seek to obtain information from third parties such as banks, intermediaries or the other party to a contract and not from the individual under investigation. Furthermore, the privilege against self-incrimination generally does not attach to persons other than natural persons.

16. Information is deemed to be obtainable in the normal course of administration if it is in the possession of the tax authorities or can be obtained by them in the normal procedure of tax determination, which may include special investigations or special examination of the business accounts kept by the taxpayer or other persons, provided that the tax authorities would make similar investigations or examinations for their own purposes. The paragraph assumes, of course, that tax authorities have the powers and resources necessary to facilitate effective information exchange. For instance, assume that a Contracting State requests information in connection with an investigation into the tax affairs of a particular taxpayer and specifies in the request that the information might be held by one of a few service providers identified in the request and established in the other Contracting State. In this case, the requested State would be expected to be able to obtain and provide such information to the extent that such information is held by one of the service providers identified in the request. In responding to a request the requested State should be guided by the overarching purpose of Article 26 which is to permit information exchange "to the widest possible extent" and may consider the importance of the requested information to the requesting State in relation to the administrative burden for the requested State.

16.1 Subparagraphs *a*) and *b*) of paragraph 3 do not permit the requested State to decline a request where paragraph 4 or 5 applies. Paragraph 5 would apply, for instance, in situations in which the requested

State's inability to obtain the information was specifically related to the fact that the requested information was believed to be held by a bank or other financial institution. Thus, the application of paragraph 5 includes situations in which the tax authorities' information gathering powers with respect to information held by banks and other financial institutions are subject to different requirements than those that are generally applicable with respect to information held by persons other than banks or other financial institutions. This would, for example, be the case where the tax authorities can only exercise their information gathering powers with respect to information held by banks and other financial institutions in instances where specific information on the taxpayer under examination or investigation is available. This would also be the case where, for example, the use of information gathering measures with respect to information held by banks and other financial institutions requires a higher probability that the information requested is held by the person believed to be in possession of the requested information than the degree of probability required for the use of information gathering measures with respect to information believed to be held by persons other than banks or financial institutions.

17. The requested State is at liberty to refuse to give information in the cases referred to in the paragraphs above. However if it does give the requested information, it remains within the framework of the agreement on the exchange of information which is laid down in the Convention; consequently it cannot be objected that this State has failed to observe the obligation to secrecy.

18. If the structure of the information systems of two Contracting States is very different, the conditions under subparagraphs *a)* and *b)* of paragraph 3 will lead to the result that the Contracting States exchange very little information or perhaps none at all. In such a case, the Contracting States may find it appropriate to broaden the scope of the exchange of information.

18.1 Unless otherwise agreed to by the Contracting States, it can be assumed that the requested information could be obtained by the requesting State in a similar situation if that State has not indicated to the contrary.

19. In addition to the limitations referred to above, subparagraph *c)* of paragraph 3 contains a reservation concerning the disclosure of certain secret information. Secrets mentioned in this subparagraph should not be taken in too wide a sense. Before invoking this provision, a Contracting State should carefully weigh if the interests of the taxpayer really justify its application. Otherwise it is clear that too wide an interpretation would in many cases render ineffective the exchange of information provided for in the Convention. The observations made in paragraph 17 above apply here as well. The requested State in protecting the interests of its taxpayers is given a certain discretion to refuse the requested information, but if it does supply the information deliberately the taxpayer cannot allege an infraction of the rules of secrecy.

19.1 In its deliberations regarding the application of secrecy rules, the Contracting State should also take into account the confidentiality rules of paragraph 2 of the Article. The domestic laws and practices of the requesting State together with the obligations imposed under paragraph 2, may ensure that the information cannot be used for the types of unauthorised purposes against which the trade or other secrecy rules are intended to protect. Thus, a Contracting State may decide to supply the information where it finds that there is no reasonable basis for assuming that a taxpayer involved may suffer any adverse consequences incompatible with information exchange.

19.2 In most cases of information exchange no issue of trade, business or other secret will arise. A trade or business secret is generally understood to mean facts and circumstances that are of considerable economic

importance and that can be exploited practically and the unauthorised use of which may lead to serious damage (*e.g.* may lead to severe financial hardship). The determination, assessment or collection of taxes as such could not be considered to result in serious damage. Financial information, including books and records, does not by its nature constitute a trade, business or other secret. In certain limited cases, however, the disclosure of financial information might reveal a trade, business or other secret. For instance, a request for information on certain purchase records may raise such an issue if the disclosure of such information revealed the proprietary formula used in the manufacture of a product. The protection of such information may also extend to information in the possession of third persons. For instance, a bank might hold a pending patent application for safe keeping or a secret trade process or formula might be described in a loan application or in a contract held by a bank. In such circumstances, details of the trade, business or other secret should be excised from the documents and the remaining financial information exchanged accordingly.

19.3 A requested State may decline to disclose information relating to confidential communications between attorneys, solicitors or other admitted legal representatives in their role as such and their clients to the extent that the communications are protected from disclosure under domestic law. However, the scope of protection afforded to such confidential communications should be narrowly defined. Such protection does not attach to documents or records delivered to an attorney, solicitor or other admitted legal representative in an attempt to protect such documents or records from disclosure required by law. Also, information on the identity of a person such as a director or beneficial owner of a company is typically not protected as a confidential communication. Whilst the scope of protection afforded to confidential communications might differ among states, it should not be overly broad so as to hamper effective exchange of information. Communications between attorneys, solicitors or other admitted legal representatives and their clients are only confidential if, and to the extent that, such representatives act in their capacity as attorneys, solicitors or other admitted legal representatives and not in a different capacity, such as nominee shareholders, trustees, settlors, company directors or under a power of attorney to represent a company in its business affairs. An assertion that information is protected as a confidential communication between an attorney, solicitor or other admitted legal representative and its client should be adjudicated exclusively in the Contracting State under the laws of which it arises. Thus, it is not intended that the courts of the requested State should adjudicate claims based on the laws of the requesting State.

19.4 Contracting States wishing to refer expressly to the protection afforded to confidential communications between a client and an attorney, solicitor or other admitted legal representative may do so by adding the following text at the end of paragraph 3:

d) to obtain or provide information which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:

(i) produced for the purposes of seeking or providing legal advice or

(ii) produced for the purposes of use in existing or contemplated legal proceedings.

19.5 Paragraph 3 also includes a limitation with regard to information which concerns the vital interests of the State itself. To this end, it is stipulated that Contracting States do not have to supply information the disclosure of which would be contrary to public policy (*ordre public*). However, this limitation should only become relevant in extreme cases. For instance, such a case could arise if a tax investigation in the requesting State were motivated by political, racial, or religious persecution. The limitation may also be

invoked where the information constitutes a state secret, for instance sensitive information held by secret services the disclosure of which would be contrary to the vital interests of the requested State. Thus, issues of public policy (*ordre public*) rarely arise in the context of information exchange between treaty partners.

Paragraph 4

19.6 Paragraph 4 was added in 2005 to deal explicitly with the obligation to exchange information in situations where the requested information is not needed by the requested State for domestic tax purposes. Prior to the addition of paragraph 4 this obligation was not expressly stated in the Article, but 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 levying their domestic taxes even though they do not themselves need the information for these purposes. This principle is also stated in the report *Improving Access to Bank Information for Tax Purposes*.#

19.7 According to paragraph 4, Contracting States must use their information gathering measures, even though invoked solely to provide information to the other Contracting State and irrespective of whether the information could still be gathered or used for domestic tax purposes in the requested Contracting State. Thus, for instance, any restrictions on the ability of a requested Contracting State to obtain information from a person for domestic tax purposes at the time of a request (for example, because of the expiration of a statute of limitations under the requested State's domestic law or the prior completion of an audit) must not restrict its ability to use its information gathering measures for information exchange purposes. The term "information gathering measures" means laws and administrative or judicial procedures that enable a Contracting State to obtain and provide the requested information. Paragraph 4 does not oblige a requested Contracting State to provide information in circumstances where it has attempted to obtain the requested information but finds that the information no longer exists following the expiration of a domestic record retention period. However, where the requested information is still available notwithstanding the expiration of such retention period, the requested State cannot decline to exchange the information available. Contracting States should ensure that reliable accounting records are kept for five years or more.

19.8 The second sentence of paragraph 4 makes clear that the obligation contained in paragraph 4 is subject to the limitations of paragraph 3 but also provides that such limitations cannot be construed to form the basis for declining to supply information where a country's laws or practices include a domestic tax interest requirement. Thus, whilst a requested State cannot invoke paragraph 3 and argue that under its domestic laws or practices it only supplies information in which it has an interest for its own tax purposes, it may, for instance, decline to supply the information to the extent that the provision of the information would disclose a trade secret.

19.9 For many countries the combination of paragraph 4 and their domestic law provide a sufficient basis for using their information gathering measures to obtain the requested information even in the absence of a domestic tax interest in the information. Other countries, however, may wish to clarify expressly in the convention that Contracting States must ensure that their competent authorities have the necessary powers to do so. Contracting States wishing to clarify this point may replace paragraph 4 with the following text:

OECD, Paris, 2000 (at paragraph 21b)

4. In order to effectuate the exchange of information as provided in paragraph 1, each Contracting State shall take the necessary measures, including legislation, rule-making, or administrative arrangements, to ensure that its competent authority has sufficient powers under its domestic law to obtain information for the exchange of information regardless of whether that Contracting State may need such information for its own tax purposes.

Paragraph 5

19.10 Paragraph 1 imposes a positive obligation on a Contracting State to exchange all types of information. Paragraph 5 is intended to ensure that the limitations of paragraph 3 cannot be used to prevent the exchange of information held by banks, other financial institutions, nominees, agents and fiduciaries as well as ownership information. Whilst paragraph 5, which was added in 2005, represents a change in the structure of the Article, it should not be interpreted as suggesting that the previous version of the Article did not authorise the exchange of such information. The vast majority of OECD member countries already exchanged such information under the previous version of the Article and the addition of paragraph 5 merely reflects current practice.

19.11 Paragraph 5 stipulates that a Contracting State shall not decline to supply information to a treaty partner solely because the information is held by a bank or other financial institution. Thus, paragraph 5 overrides paragraph 3 to the extent that paragraph 3 would otherwise permit a requested Contracting State to decline to supply information on grounds of bank secrecy. The addition of this paragraph to the Article reflects the international trend in this area as reflected in the *Model Agreement on Exchange of Information on Tax Matters* and as described in the report, *Improving Access to Bank Information for Tax Purposes.*# In accordance with that report, access to information held by banks or other financial institutions may be by direct means or indirectly through a judicial or administrative process. The procedure for indirect access should not be so burdensome and time-consuming as to act as an impediment to access to bank information.

19.12 Paragraph 5 also provides that a Contracting State shall not decline to supply information solely because the information is held by persons acting in an agency or fiduciary capacity. For instance, if a Contracting State had a law under which all information held by a fiduciary was treated as a "professional secret" merely because it was held by a fiduciary, such State could not use such law as a basis for declining to provide the information to the other Contracting State. A person is generally said to act in a "fiduciary capacity" when the business which the person transacts, or the money or property which the person handles, is not its own or for its own benefit, but for the benefit of another person as to whom the fiduciary stands in a relation implying and necessitating confidence and trust on the one part and good faith on the other part, such as a trustee. The term "agency" is very broad and includes all forms of corporate service providers (*e.g.* company formation agents, trust companies, registered agents, lawyers).

19.13 Finally, paragraph 5 states that a Contracting State shall not decline to supply information solely because it relates to an ownership interest in a person, including companies and partnerships, foundations or similar organisational structures. Information requests cannot be declined merely because domestic laws or practices may treat ownership information as a trade or other secret.

OECD, Paris, 2000

19.14 Paragraph 5 does not preclude a Contracting State from invoking paragraph 3 to refuse to supply information held by a bank, financial institution, a person acting in an agency or fiduciary capacity or information relating to ownership interests. However, such refusal must be based on reasons unrelated to the person's status as a bank, financial institution, agent, fiduciary or nominee, or the fact that the information relates to ownership interests. For instance, a legal representative acting for a client may be acting in an agency capacity but for any information protected as a confidential communication between attorneys, solicitors or other admitted legal representatives and their clients, paragraph 3 continues to provide a possible basis for declining to supply the information.

19.15 The following examples illustrate the application of paragraph 5:

a) Company X owns a majority of the stock in a subsidiary company Y, and both companies are incorporated under the laws of State A. State B is conducting a tax examination of business operations of companyY in State B. In the course of this examination the question of both direct and indirect ownership in company Y becomes relevant and State B makes a request to State A for ownership information of any person in company Y's chain of ownership. In its reply State A should provide to State B ownership information for both company X and Y.

b) An individual subject to tax in State A maintains a bank account with Bank B in State B. State A is examining the income tax return of the individual and makes a request to State B for all bank account income and asset information held by Bank B in order to determine whether there were deposits of untaxed earned income. State B should provide the requested bank information to State A.

ANNEXURE-C
MODEL TIEA BY OECD

INTRODUCTION

1. The purpose of this Agreement is to promote international co-operation in tax matters through exchange of information.

2. The Agreement was developed by the OECD Global Forum Working Group on Effective Exchange of Information ("the Working Group"). The Working Group consisted of representatives from OECD Member countries as well as delegates from Aruba, Bermuda, Bahrain, Cayman Islands, Cyprus, Isle of Man, Malta, Mauritius, the Netherlands Antilles, the Seychelles and San Marino.

3. The Agreement grew out of the work undertaken by the OECD to address harmful tax practices. See the 1998 OECD Report "Harmful Tax Competition: An Emerging Global Issue" (the "1998 Report"). The 1998 Report identified "the lack of effective exchange of information" as one of the key criteria in determining harmful tax practices. The mandate of the Working Group was to develop a legal instrument that could be used to establish effective exchange of information. The Agreement represents the standard of effective exchange of information for the purposes of the OECD's initiative on harmful tax practices.

4. This Agreement is not a binding instrument but contains two models for bilateral agreements drawn up in the light of the commitments undertaken by the OECD and the committed jurisdictions. In this context, it is important that financial centres throughout the world meet the standards of tax information exchange set out in this document. As many economies as possible should be encouraged to co-operate in this important endeavour. It is not in the interest of participating economies that the implementation of the standard contained in the Agreement should lead to the migration of business to economies that do not cooperate in the exchange of information. To avoid this result requires measures to defend the integrity of tax systems against the impact of a lack of co-operation in tax information exchange matters. The OECD members and committed jurisdictions have to engage in an ongoing dialogue to work towards implementation of the standard. An adequate framework will be jointly established by the OECD and the committed jurisdictions for this purpose particularly since such a framework would help to achieve a level playing field where no party is unfairly disadvantaged.

5. The Agreement is presented as both a multilateral instrument and a model for bilateral treaties or agreements. The multilateral instrument is not a "multilateral" agreement in the traditional sense. Instead, it provides the basis for an integrated bundle of bilateral treaties. A Party to the multilateral Agreement would only be bound by the Agreement vis- à-vis the specific parties with which it agrees to be bound. Thus, a party wishing to be bound by the multilateral Agreement must specify in its instrument of ratification, approval or acceptance the party or parties vis-à-vis which it wishes to be so bound. The Agreement then enters into force, and creates rights and obligations, only as between those parties that have mutually identified each other in their instruments of ratification, approval or acceptance that have been deposited with the depositary of the Agreement. The bilateral version is intended to serve as a model

for bilateral exchange of information agreements. As such, modifications to the text may be agreed in bilateral agreements to implement the standard set in the model.

6. As mentioned above, the Agreement is intended to establish the standard of what constitutes effective exchange of information for the purposes of the OECD's initiative on harmful tax practices. However, the purpose of the Agreement is not to prescribe a specific format for how this standard should be achieved. Thus, the Agreement in either of its forms is only one of several ways in which the standard can be implemented. Other instruments, including double taxation agreements, may also be used provided both parties agree to do so, given that other instruments are usually wider in scope.

7. For each Article in the Agreement there is a detailed commentary intended to illustrate or interpret its provisions. The relevance of the Commentary for the interpretation of the Agreement is determined by principles of international law. In the bilateral context, parties wishing to ensure that the Commentary is an authoritative interpretation might insert a specific reference to the Commentary in the text of the exchange instrument, for instance in the provision equivalent to Article 4, paragraph 2.

II. TEXT OF THE AGREEMENT

The government of _____ and the government of _____, desiring to facilitate the exchange of information with respect to taxes have agreed as follows:

Article 1 : Object and Scope of the Agreement

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

Article 2 : Jurisdiction

A Requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

Article 3 : Taxes Covered

1. The taxes which are the subject of this Agreement are: (a) in country A, _____; (b) in country B, _____;

2. This Agreement shall also apply to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. This Agreement shall also apply to any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the competent authorities of the Contracting Parties so agree. Furthermore, the taxes covered may be expanded or modified by mutual agreement of the Contracting Parties in the form of an exchange of letters. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

Article 4 : Definitions

1. For the purposes of this Agreement, unless otherwise defined:

   a) the term "Contracting Party" means country A or country B as the context requires;

   b) the term "competent authority" means

      i) in the case of Country A, _____;

      ii) in the case of Country B, _____;

   c) the term "person" includes an individual, a company and any other body of persons;

   d) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

   e) the term "publicly traded company" means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold "by the public" if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;

   f) the term "principal class of shares" means the class or classes of shares representing a majority of the voting power and value of the company;

   g) the term "recognised stock exchange" means any stock exchange agreed upon by the competent authorities of the Contracting Parties;

   h) the term "collective investment fund or scheme" means any pooled investment vehicle, irrespective of legal form. The term "public collective investment fund or scheme" means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed "by the public" if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;

   i) the term "tax" means any tax to which the Agreement applies;

   j) the term "applicant Party" means the Contracting Party requesting information;

   k) the term "requested Party" means the Contracting Party requested to provide information;

   l) the term "information gathering measures" means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;

   m) the term "information" means any fact, statement or record in any form whatever;

   n) the term "depositary" means the Secretary General of the Organisation for Economic Co-operation and Development; This paragraph would not be necessary

   o) the term "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party;

   p) the term " criminal laws" means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

Article 5 : Exchange of Information Upon Request

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the applicant Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of an applicant Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Contracting Party shall ensure that its competent authorities for the purposes specified in Article 1 of the Agreement, have the authority to obtain and provide upon request:

(a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;

(b) information regarding the ownership of companies, partnerships, trusts, foundations, "Anstalten" and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, this Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. The competent authority of the applicant Party shall provide the following information to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:

(a) the identity of the person under examination or investigation;

(b) a statement of the information sought including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;

(c) the tax purpose for which the information is sought;

(d) grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;

(e) to the extent known, the name and address of any person believed to be in possession of the requested information;

(f) a statement that the request is in conformity with the law and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the information under the laws of the applicant Party or in the normal course of administrative practice and that it is in conformity with this Agreement;

(g) a statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

6. The competent authority of the requested Party shall forward the requested information as promptly as possible to the applicant Party. To ensure a prompt response, the competent authority of the requested Party shall:

(a) Confirm receipt of a request in writing to the competent authority of the applicant Party and shall notify the competent authority of the applicant Party of deficiencies in the request, if any, within 60 days of the receipt of the request.

(b) If the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

Article 6 : Tax Examinations Abroad

1. A Contracting Party may allow representatives of the competent authority of the other Contracting Party to enter the territory of the first-mentioned Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the first-mentioned Party of the time and place of the meeting with the individuals concerned.

2. At the request of the competent authority of one Contracting Party, the competent authority of the other Contracting Party may allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.

3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

Article 7 : Possibility of Declining a Request

1. The requested Party shall not be required to obtain or provide information that the applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.

2. The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or

trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.

3. The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:

(a) produced for the purposes of seeking or providing legal advice or

(b) produced for the purposes of use in existing or contemplated legal proceedings.

4. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (ordre public).

5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

6. The requested Party may decline a request for information if the information is requested by the applicant Party to administer or enforce a provision of the tax law of the applicant Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the applicant Party in the same circumstances.

Article 8 : Confidentiality

Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party.

Article 9 : Costs

Incidence of costs incurred in providing assistance shall be agreed by the Contracting Parties.

Article 10 : Implementation Legislation

The Contracting Parties shall enact any legislation necessary to comply with, and give effect to, the terms of the Agreement.

Article 11

This article may not be required.

Article 12

This article may not be required

Article 13 (Mutual Agreement Procedure)

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of the Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.

2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5 and 6.

3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.

4. The Contracting Parties may also agree on other forms of dispute resolution.

Article 14 [Depositary's functions]

This article may not be required

Article 15 [Entry into Force]

1. This Agreement is subject to ratification, acceptance or approval by the Contracting Parties, in accordance with their respective laws. Instruments of ratification, acceptance or approval shall be exchanged as soon as possible.

2. This Agreement shall enter into force on 1 January 2004 with respect to exchange of information for criminal tax matters. The Agreement shall enter into force on 1 January 2006 with respect to all other matters covered in Article 1.

3. The provisions of this Agreement shall have effect:

- with respect to criminal tax matters for taxable periods beginning on or after 1 January 2004 or, where there is no taxable period, for all charges to tax arising on or after 1 January 2004;
- with respect to all other matters described in Article 1 for all taxable periods beginning on or after January 1 2006 or, where there is no taxable period, for all charges to tax arising on or after 1 January 2006.

Article 16 [Termination]

1. Either Contracting Party may terminate the Agreement by serving a notice of termination either through diplomatic channels or by letter to the competent authority of the other Contracting Party.

2. Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of notice of termination by the other Contracting Party.

3. A Contracting Party that terminates the Agreement shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

In witness whereof, the undersigned, being duly authorised thereto, have signed the Agreement.

ANNEXURE-D

TEXT OF MULTILATERAL CONVENTION AND ITS COMMENTARY

Convention on Mutual Administrative Assistance in Tax Matters

Text amended by the provisions of the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters, which entered into force on 1st June 2011.

Preamble

The member States of the Council of Europe and the member countries of the Organisation for Economic Co-operation and Development (OECD), signatories of this Convention,

Considering that the development of international movement of persons, capital, goods and services – although highly beneficial in itself – has increased the possibilities of tax avoidance and evasion and therefore requires increasing co-operation among tax authorities;

Welcoming the various efforts made in recent years to combat tax avoidance and tax evasion on an international level, whether bilaterally or multilaterally;

Considering that a co-ordinated effort between States is necessary in order to foster all forms of administrative assistance in matters concerning taxes of any kind whilst at the same time ensuring adequate protection of the rights of taxpayers;

Recognising that international co-operation can play an important part in facilitating the proper determination of tax liabilities and in helping the taxpayer to secure his rights;

Considering that fundamental principles entitling every person to have his rights and obligations determined in accordance with a proper legal procedure should be recognised as applying to tax matters in all States and that States should endeavour to protect the legitimate interests of taxpayers, including appropriate protection against discrimination and double taxation;

Convinced therefore that States should carry out measures or supply information, having regard to the necessity of protecting the confidentiality of information, and taking account of international instruments for the protection of privacy and flows of personal data;

Considering that a new co-operative environment has emerged and that it is desirable that a multilateral instrument is made available to allow the widest number of States to obtain the benefits of the new co-operative environment and at the same time implement the highest international standards of co-operation in the tax field;

Desiring to conclude a convention on mutual administrative assistance in tax matters,

Have agreed as follows:

CHAPTER I – SCOPE OF THE CONVENTION

Article 1 – Object of the Convention and persons covered

1. The Parties shall, subject to the provisions of Chapter IV, provide administrative assistance to each other in tax matters. Such assistance may involve, where appropriate, measures taken by judicial bodies.

2. Such administrative assistance shall comprise:

   a) exchange of information, including simultaneous tax examinations and participation in tax examinations abroad;

   b) assistance in recovery, including measures of conservancy; and

   c) service of documents.

3. A Party shall provide administrative assistance whether the person affected is a resident or national of a Party or of any other State.

Article 2 – Taxes covered

1. This Convention shall apply:

   a) to the following taxes:

      i) taxes on income or profits,

      ii) taxes on capital gains which are imposed separately from the tax on income or profits,

      iii) taxes on net wealth, imposed on behalf of a Party; and

   b) to the following taxes:

      i) taxes on income, profits, capital gains or net wealth which are imposed on behalf of political subdivisions or local authorities of a Party,

      ii) compulsory social security contributions payable to general government or to social security institutions established under public law, and

      iii) taxes in other categories, except customs duties, imposed on behalf of a Party, namely:

         A. estate, inheritance or gift taxes,

         B. taxes on immovable property,

         C. general consumption taxes, such as value added or sales taxes,

         D. specific taxes on goods and services such as excise taxes,

         E. taxes on the use or ownership of motor vehicles,

         F. taxes on the use or ownership of movable property other than motor vehicles,

         G. any other taxes;

      iv) taxes in categories referred to in sub-paragraph iii. above which are imposed on behalf of political subdivisions or local authorities of a Party.

2. The existing taxes to which the Convention shall apply are listed in Annex A in the categories referred to in paragraph 1.

3. The Parties shall notify the Secretary General of the Council of Europe or the Secretary General of OECD (hereinafter referred to as the "Depositaries") of any change to be made to Annex A as a result of a modification of the list mentioned in paragraph 2. Such change shall take effect on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Depositary.

4. The Convention shall also apply, as from their adoption, to any identical or substantially similar taxes which are imposed in a Contracting State after the entry into force of the Convention in respect of that Party in addition to or in place of the existing taxes listed in Annex A and, in that event, the Party concerned shall notify one of the Depositaries of the adoption of the tax in question.

CHAPTER II – GENERAL DEFINITIONS

Article 3 – Definitions

1. For the purposes of this Convention, unless the context otherwise requires:

   a) the terms "applicant State" and "requested State" mean respectively any Party applying for administrative assistance in tax matters and any Party requested to provide such assistance;

   b) the term "tax" means any tax or social security contribution to which the Convention applies pursuant to Article 2;

   c) the term "tax claim" means any amount of tax, as well as interest thereon, related administrative fines and costs incidental to recovery, which are owed and not yet paid;

   d) the term "competent authority" means the persons and authorities listed in Annex B;

   e) the term "nationals" in relation to a Party means:

      i) all individuals possessing the nationality of that Party, and

      ii) all legal persons, partnerships, associations and other entities deriving their status as such from the laws in force in that Party.

   For each Party that has made a declaration for that purpose, the terms used above will be understood as defined in Annex C.

2. As regards the application of the Convention by a Party, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that Party concerning the taxes covered by the Convention.

3. The Parties shall notify one of the Depositaries of any change to be made to Annexes B and C. Such change shall take effect on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Depositary in question.

CHAPTER III – FORMS OF ASSISTANCE

SECTION I – EXCHANGE OF INFORMATION

Article 4 – General provision

1. The Parties shall exchange any information, in particular as provided in this section, that is foreseeably relevant for the administration or enforcement of their domestic laws concerning the taxes covered by this Convention.

2. Deleted.

3. Any Party may, by a declaration addressed to one of the Depositaries, indicate that, according to its internal legislation, its authorities may inform its resident or national before transmitting information concerning him, in conformity with Articles 5 and 7.

Article 5 – Exchange of information on request

1. At the request of the applicant State, the requested State shall provide the applicant State with any information referred to in Article 4 which concerns particular persons or transactions.

2. If the information available in the tax files of the requested State is not sufficient to enable it to comply with the request for information, that State shall take all relevant measures to provide the applicant State with the information requested.

Article 6 – Automatic exchange of information

With respect to categories of cases and in accordance with procedures which they shall determine by mutual agreement, two or more Parties shall automatically exchange the information referred to in Article 4.

Article 7 – Spontaneous exchange of information

1. A Party shall, without prior request, forward to another Party information of which it has knowledge in the following circumstances:

a) the first-mentioned Party has grounds for supposing that there may be a loss of tax in the other Party;

b) a person liable to tax obtains a reduction in or an exemption from tax in the first-mentioned Party which would give rise to an increase in tax or to liability to tax in the other Party;

c) business dealings between a person liable to tax in a Party and a person liable to tax in another Party are conducted through one or more countries in such a way that a saving in tax may result in one or the other Party or in both;

d) a Party has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises;

e) information forwarded to the first-mentioned Party by the other Party has enabled information to be obtained which may be relevant in assessing liability to tax in the latter Party.

2. Each Party shall take such measures and implement such procedures as are necessary to ensure that information described in paragraph 1 will be made available for transmission to another Party.

Article 8 – Simultaneous tax examinations

1. At the request of one of them, two or more Parties shall consult together for the purposes of determining cases and procedures for simultaneous tax examinations. Each Party involved shall decide whether or not it wishes to participate in a particular simultaneous tax examination.

2. For the purposes of this Convention, a simultaneous tax examination means an arrangement between two or more Parties to examine simultaneously, each in its own territory, the tax affairs of a person or persons in which they have a common or related interest, with a view to exchanging any relevant information which they so obtain.

Article 9 – Tax examinations abroad

1. At the request of the competent authority of the applicant State, the competent authority of the requested State may allow representatives of the competent authority of the applicant State to be present at the appropriate part of a tax examination in the requested State.

2. If the request is acceded to, the competent authority of the requested State shall, as soon as possible, notify the competent authority of the applicant State about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the requested State for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the requested State.

3. A Party may inform one of the Depositaries of its intention not to accept, as a general rule, such requests as are referred to in paragraph 1. Such a declaration may be made or withdrawn at any time.

Article 10 – Conflicting information

If a Party receives from another Party information about a person's tax affairs which appears to it to conflict with information in its possession, it shall so advise the Party which has provided the information.

SECTION II - ASSISTANCE IN RECOVERY

Article 11 – Recovery of tax claims

1. At the request of the applicant State, the requested State shall, subject to the provisions of Articles 14 and 15, take the necessary steps to recover tax claims of the first-mentioned State as if they were its own tax claims.

2. The provision of paragraph 1 shall apply only to tax claims which form the subject of an instrument permitting their enforcement in the applicant State and, unless otherwise agreed between the Parties concerned, which are not contested.

However, where the claim is against a person who is not a resident of the applicant State, paragraph 1 shall only apply, unless otherwise agreed between the Parties concerned, where the claim may no longer be contested.

3. The obligation to provide assistance in the recovery of tax claims concerning a deceased person or his estate, is limited to the value of the estate or of the property acquired by each beneficiary of the estate, according to whether the claim is to be recovered from the estate or from the beneficiaries thereof.

Article 12 – Measures of conservancy

At the request of the applicant State, the requested State shall, with a view to the recovery of an amount of tax, take measures of conservancy even if the claim is contested or is not yet the subject of an instrument permitting enforcement.

Article 13 – Documents accompanying the request

1. The request for administrative assistance under this section shall be accompanied by:

   a) a declaration that the tax claim concerns a tax covered by the Convention and, in the case of recovery that, subject to paragraph 2 of Article 11, the tax claim is not or may not be contested,

   b) an official copy of the instrument permitting enforcement in the applicant State, and

   c) any other document required for recovery or measures of conservancy.

2. The instrument permitting enforcement in the applicant State shall, where appropriate and in accordance with the provisions in force in the requested State, be accepted, recognised, supplemented or replaced as soon as possible after the date of the receipt of the request for assistance, by an instrument permitting enforcement in the latter State.

Article 14 – Time limits

1. Questions concerning any period beyond which a tax claim cannot be enforced shall be governed by the law of the applicant State. The request for assistance shall give particulars concerning that period.

2. Acts of recovery carried out by the requested State in pursuance of a request for assistance, which, according to the laws of that State, would have the effect of suspending or interrupting the period mentioned in paragraph 1, shall also have this effect under the laws of the applicant State. The requested State shall inform the applicant State about such acts.

3. In any case, the requested State is not obliged to comply with a request for assistance which is submitted after a period of 15 years from the date of the original instrument permitting enforcement.

Article 15 – Priority

The tax claim in the recovery of which assistance is provided shall not have in the requested State any priority specially accorded to the tax claims of that State even if the recovery procedure used is the one applicable to its own tax claims.

Article 16 – Deferral of payment

The requested State may allow deferral of payment or payment by instalments if its laws or administrative practice permit it to do so in similar circumstances, but shall first inform the applicant State.

SECTION III – SERVICE OF DOCUMENTS

Article 17 – Service of documents

1. At the request of the applicant State, the requested State shall serve upon the addressee documents, including those relating to judicial decisions, which emanate from the applicant State and which relate to a tax covered by this Convention.

2. The requested State shall effect service of documents:

a) by a method prescribed by its domestic laws for the service of documents of a substantially similar nature;

b) to the extent possible, by a particular method requested by the applicant State or the closest to such method available under its own laws.

3. A Party may effect service of documents directly through the post on a person within the territory of another Party.

4. Nothing in the Convention shall be construed as invalidating any service of documents by a Party in accordance with its laws.

5. When a document is served in accordance with this article, it need not be accompanied by a translation. However, where it is satisfied that the addressee cannot understand the language of the document, the requested State shall arrange to have it translated into or a summary drafted in its or one of its official languages. Alternatively, it may ask the applicant State to have the document either translated into or accompanied by a summary in one of the official languages of the requested State, the Council of Europe or the OECD.

CHAPTER IV – PROVISIONS RELATING TO ALL FORMS OF ASSISTANCE

Article 18 – Information to be provided by the applicant State

1. A request for assistance shall indicate where appropriate:

a) the authority or agency which initiated the request made by the competent authority;

b) the name, address, or any other particulars assisting in the identification of the person in respect of whom the request is made;

c) in the case of a request for information, the form in which the applicant State wishes the information to be supplied in order to meet its needs;

d) in the case of a request for assistance in recovery or measures of conservancy, the nature of the tax claim, the components of the tax claim and the assets from which the tax claim may be recovered;

e) in the case of a request for service of documents, the nature and the subject of the document to be served;

f) whether it is in conformity with the law and administrative practice of the applicant State and whether it is justified in the light of the requirements of Article 21.2.g.

2. As soon as any other information relevant to the request for assistance comes to its knowledge, the applicant State shall forward it to the requested State.

Article 19 - Deleted

Article 20 – Response to the request for assistance

1. If the request for assistance is complied with, the requested State shall inform the applicant State of the action taken and of the result of the assistance as soon as possible.

2. If the request is declined, the requested State shall inform the applicant State of that decision and the reason for it as soon as possible.

3. If, with respect to a request for information, the applicant State has specified the form in which it wishes the information to be supplied and the requested State is in a position to do so, the requested State shall supply it in the form requested.

Article 21 – Protection of persons and limits to the obligation to provide assistance

1. Nothing in this Convention shall affect the rights and safeguards secured to persons by the laws or administrative practice of the requested State.

2. Except in the case of Article 14, the provisions of this Convention shall not be construed so as to impose on the requested State the obligation:

a) to carry out measures at variance with its own laws or administrative practice or the laws or administrative practice of the applicant State;

b) to carry out measures which would be contrary to public policy (*ordre public*);

c) to supply information which is not obtainable under its own laws or its administrative practice or under the laws of the applicant State or its administrative practice;

d) to supply information which would disclose any trade, business, industrial, commercial or professional secret, or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*);

e) to provide administrative assistance if and insofar as it considers the taxation in the applicant State to be contrary to generally accepted taxation principles or to the provisions of a convention for the avoidance of double taxation, or of any other convention which the requested State has concluded with the applicant State;

f) to provide administrative assistance for the purpose of administering or enforcing a provision of the tax law of the applicant State, or any requirement connected therewith, which discriminates against a national of the requested State as compared with a national of the applicant State in the same circumstances;

g) to provide administrative assistance if the applicant State has not pursued all reasonable measures available under its laws or administrative practice, except where recourse to such measures would give rise to disproportionate difficulty;

h) to provide assistance in recovery in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the applicant State.

3. If information is requested by the applicant State in accordance with this Convention, the requested State shall use its information gathering measures to obtain the requested information, even though the requested State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations contained in this Convention, but in no case shall such limitations, including in particular those of paragraphs 1 and 2, be construed to permit a requested State to decline to supply information solely because it has no domestic interest in such information.

4. In no case shall the provisions of this Convention, including in particular those of paragraphs 1 and 2, be construed to permit a requested State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 22 – Secrecy

1. Any information obtained by a Party under this Convention shall be treated as secret and protected in the same manner as information obtained under the domestic law of that Party and, to the extent needed to ensure the necessary level of protection of personal data, in accordance with the safeguards which may be specified by the supplying Party as required under its domestic law.

2. Such information shall in any case be disclosed only to persons or authorities (including courts and administrative or supervisory bodies) concerned with the assessment, collection or recovery of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, taxes of that Party, or the oversight of the above. Only the persons or authorities mentioned above may use the information and then only for such purposes. They may, notwithstanding the provisions of paragraph 1, disclose it in public court proceedings or in judicial decisions relating to such taxes.

3. If a Party has made a reservation provided for in sub-paragraph a. of paragraph 1 of Article 30, any other Party obtaining information from that Party shall not use it for the purpose of a tax in a category subject to the reservation. Similarly, the Party making such a reservation shall not use information obtained under this Convention for the purpose of a tax in a category subject to the reservation.

4. Notwithstanding the provisions of paragraphs 1, 2 and 3, information received by a Party may be used for other purposes when such information may be used for such other purposes under the laws of the supplying Party and the competent authority of that Party authorises such use. Information provided by a Party to another Party may be transmitted by the latter to a third Party, subject to prior authorisation by the competent authority of the first-mentioned Party.

Article 23 – Proceedings

1. Proceedings relating to measures taken under this Convention by the requested State shall be brought only before the appropriate body of that State.

2. Proceedings relating to measures taken under this Convention by the applicant State, in particular those which, in the field of recovery, concern the existence or the amount of the tax claim or the instrument permitting its enforcement, shall be brought only before the appropriate body of that State. If such proceedings are brought, the applicant State shall inform the requested State which shall suspend the procedure pending the decision of the body in question. However, the requested State shall, if asked by the applicant State, take measures of conservancy to safeguard recovery. The requested State can also be informed of such proceedings by any interested person. Upon receipt of such information the requested State shall consult on the matter, if necessary, with the applicant State.

3. As soon as a final decision in the proceedings has been given, the requested State or the applicant State, as the case may be, shall notify the other State of the decision and the implications which it has for the request for assistance.

CHAPTER V – SPECIAL PROVISIONS

Article 24 – Implementation of the Convention

1. The Parties shall communicate with each other for the implementation of this Convention through their respective competent authorities. The competent authorities may communicate directly for this purpose and may authorise subordinate authorities to act on their behalf. The competent authorities of two or more Parties may mutually agree on the mode of application of the Convention among themselves.

2. Where the requested State considers that the application of this Convention in a particular case would have serious and undesirable consequences, the competent authorities of the requested and of the applicant State shall consult each other and endeavour to resolve the situation by mutual agreement.

3. A co-ordinating body composed of representatives of the competent authorities of the Parties shall monitor the implementation and development of this Convention, under the aegis of the OECD. To that end, the co-ordinating body shall recommend any action likely to further the general aims of the Convention. In particular it shall act as a forum for the study of new methods and procedures to increase international co-operation in tax matters and, where appropriate, it may recommend revisions or amendments to the Convention. States which have signed but not yet ratified, accepted or approved the Convention are entitled to be represented at the meetings of the co-ordinating body as observers.

4. A Party may ask the co-ordinating body to furnish opinions on the interpretation of the provisions of the Convention.

5. Where difficulties or doubts arise between two or more Parties regarding the implementation or interpretation of the Convention, the competent authorities of those Parties shall endeavour to resolve the matter by mutual agreement. The agreement shall be communicated to the co-ordinating body.

6. The Secretary General of OECD shall inform the Parties, and the Signatory States which have not yet ratified, accepted or approved the Convention, of opinions furnished by the co-ordinating body according to the provisions of paragraph 4 above and of mutual agreements reached under paragraph 5 above.

Article 25 – Language

Requests for assistance and answers thereto shall be drawn up in one of the official languages of the OECD and of the Council of Europe or in any other language agreed bilaterally between the Contracting States concerned.

Article 26 – Costs

Unless otherwise agreed bilaterally by the Parties concerned:

a) ordinary costs incurred in providing assistance shall be borne by the requested State;

b) extraordinary costs incurred in providing assistance shall be borne by the applicant State.

CHAPTER VI – FINAL PROVISIONS

Article 27 – Other international agreements or arrangements

1. The possibilities of assistance provided by this Convention do not limit, nor are they limited by, those contained in existing or future international agreements or other arrangements between the Parties concerned or other instruments which relate to co-operation in tax matters.

2. Notwithstanding paragraph 1, those Parties which are member States of the European Union can apply, in their mutual relations, the possibilities of assistance provided for by the Convention in so far as they allow a wider co-operation than the possibilities offered by the applicable European Union rules.

Article 28 – Signature and entry into force of the Convention

1. This Convention shall be open for signature by the member States of the Council of Europe and the member countries of OECD. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with one of the Depositaries.

2. This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five States have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 1.

3. In respect of any member State of the Council of Europe or any member country of OECD which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

4. Any member State of the Council of Europe or any member country of OECD which becomes a Party to the Convention after the entry into force of the Protocol amending this Convention, opened for signature on 27th May 2010 (the "2010 Protocol"), shall be a Party to the Convention as amended by that Protocol, unless they express a different intention in a written communication to one of the Depositaries.

5. After the entry into force of the 2010 Protocol, any State which is not a member of the Council of Europe or of the OECD may request to be invited to sign and ratify this Convention as amended by the 2010 Protocol. Any request to this effect shall be addressed to one of the Depositaries, who shall transmit it to the Parties. The Depositary shall also inform the Committee of Ministers of the Council of Europe and the OECD Council. The decision to invite States which so request to become Party to this Convention shall be taken by consensus by the Parties to the Convention through the co-ordinating body. In respect of any State ratifying the Convention as amended by the 2010 Protocol in accordance with this paragraph, this Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of ratification with one of the Depositaries.

6. The provisions of this Convention, as amended by the 2010 Protocol, shall have effect for administrative assistance related to taxable periods beginning on or after 1 January of the year following the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party, or where there is no taxable period, for administrative assistance related to charges to tax arising on or after 1 January of the year following the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party. Any two or more Parties may mutually agree that the Convention, as amended by the 2010 Protocol, shall have effect for administrative assistance related to earlier taxable periods or charges to tax.

7. Notwithstanding paragraph 6, for tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party, the provisions of this Convention, as amended by the 2010 Protocol, shall have effect from the date of entry into force in respect of a Party in relation to earlier taxable periods or charges to tax.

Article 29 – Territorial application of the Convention

1. Each State may, at the time of signature, or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Convention shall apply.

2. Any State may, at any later date, by a declaration addressed to one of the Depositaries, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Depositary.

3. Any declaration made under either of the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to one of the Depositaries. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Depositary.

Article 30 – Reservations

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval or at any later date, declare that it reserves the right:

a) not to provide any form of assistance in relation to the taxes of other Parties in any of the categories listed in sub-paragraph b. of paragraph 1 of Article 2, provided that it has not included any domestic tax in that category under Annex A of the Convention;

b) not to provide assistance in the recovery of any tax claim, or in the recovery of an administrative fine, for all taxes or only for taxes in one or more of the categories listed in paragraph 1 of Article 2;

c) not to provide assistance in respect of any tax claim, which is in existence at the date of entry into force of the Convention in respect of that State or, where a reservation has previously been made under sub-paragraph a. or b. above, at the date of withdrawal of such a reservation in relation to taxes in the category in question;

d) not to provide assistance in the service of documents for all taxes or only for taxes in one or more of the categories listed in paragraph 1 of Article 2;

e) not to permit the service of documents through the post as provided for in paragraph 3 of Article 17;

f) to apply paragraph 7 of Article 28 exclusively for administrative assistance related to taxable periods beginning on or after 1 January of the third year preceding the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party, or where there is no taxable period, for administrative assistance related to charges to tax arising on or after 1 January of the third year preceding the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party.

2. No other reservation may be made.

3. After the entry into force of the Convention in respect of a Party, that Party may make one or more of the reservations listed in paragraph 1 which it did not make at the time of ratification, acceptance or approval. Such reservations shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of the reservation by one of the Depositaries.

4. Any Party which has made a reservation under paragraphs 1 and 3 may wholly or partly withdraw it by means of a notification addressed to one of the Depositaries. The withdrawal shall take effect on the date of receipt of such notification by the Depositary in question.

5. A Party which has made a reservation in respect of a provision of this Convention may not require the application of that provision by any other Party; it may, however, if its reservation is partial, require the application of that provision insofar as it has itself accepted it.

Article 31 – Denunciation

1. Any Party may, at any time, denounce this Convention by means of a notification addressed to one of the Depositaries.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Depositary.

3. Any Party which denounces the Convention shall remain bound by the provisions of Article 22 for as long as it retains in its possession any documents or information obtained under the Convention.

Article 32 – Depositaries and their functions

1. The Depositary with whom an act, notification or communication has been accomplished, shall notify the member States of the Council of Europe and the member countries of OECD and any Party to this Convention of:

a) any signature;

b) the deposit of any instrument of ratification, acceptance or approval;

c) any date of entry into force of this Convention in accordance with the provisions of Articles 28 and 29;

d) any declaration made in pursuance of the provisions of paragraph 3 of Article 4 or paragraph 3 of Article 9 and the withdrawal of any such declaration;

e) any reservation made in pursuance of the provisions of Article 30 and the withdrawal of any reservation effected in pursuance of the provisions of paragraph 4 of Article 30;

f) any notification received in pursuance of the provisions of paragraph 3 or 4 of Article 2, paragraph 3 of Article 3, Article 29 or paragraph 1 of Article 31;

g) any other act, notification or communication relating to this Convention.

2. The Depositary receiving a communication or making a notification in pursuance of the provisions of paragraph 1 shall inform immediately the other Depositary thereof.

In witness whereof the undersigned, being duly authorised thereto, have signed the Convention.

Established by the Depositaries the 1st day of June 2011 pursuant to Article X.4 of the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters, in English and French, both texts being equally authentic, in two copies of which one shall be deposited in the archives of each Depositary. The Depositaries shall transmit a certified copy to each Party to the Convention as amended by the Protocol and to each State entitled to become a party.

TEXT OF THE REVISED EXPLANATORY REPORT TO THE CONVENTION ON MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS AS AMENDED BY PROTOCOL

The Convention on Mutual Administrative Assistance in Tax Matters is the result of work carried out jointly by the Council of Europe and by the Organisation for Economic Co-operation and Development (OECD).

It was drawn up within the Council of Europe by a committee of experts under the authority of the European Committee on Legal Co-operation (CDCJ), on the basis of a first draft prepared by OECD's Committee on Fiscal Affairs. Experts from member countries of OECD which are not members of the Council of Europe participated as observers.

The Convention was opened for signature by the member States of the Council of Europe and member countries of the Organisation for Economic Co-operation and Development on 25 January 1988 (the 1988 Convention).

The 1988 Convention was revised in 2010 primarily to align it to the internationally agreed standard on transparency and exchange of information and to open it up to States which are not members of the OECD or of the Council of Europe. The internationally agreed standard, which was developed by OECD and non-OECD countries working together in the OECD's Global Forum on Transparency and Exchange of Information, is included in Article 26 of the 2008 OECD Model Tax Convention, and has been endorsed by the G7/G8, the G20 and the United Nations.

The text of the Explanatory Report, prepared by the committee of experts and transmitted to the Committee of Ministers of the Council of Europe and the Council of OECD and approved by OECD's Committee on Fiscal Affairs, does not constitute an instrument providing an authoritative interpretation of the text of the Convention, although it may facilitate the understanding of the Convention's provisions.

The text of the Explanatory Report was amended in 2010 primarily on the basis of the Commentary on Article 26 of the OECD Model Tax Convention. It is understood that the provisions of the Convention, as amended by the 2010 Protocol, which follow the corresponding provisions of the 2008 OECD Model Tax Convention, shall generally be given the same interpretation as that expressed in the OECD Commentary thereon.

INTRODUCTION

1. The object of this Convention is to promote international co-operation for a better operation of national tax laws, while respecting the fundamental rights of taxpayers.

2. A measure of co-operation already exists by virtue of various instruments, some bilateral, others multilateral, and the usefulness of these is well recognised. However, commercial and economic relationships are now so greatly concentrated and diverse that it has been felt necessary to prepare a new instrument both general in scope - that is to say providing for the various possible forms of assistance and covering a broad range of taxes - and multilateral, allowing more effective international co-operation between a large number of States, through the uniform application and interpretation of its provisions.

3. This instrument is framed so as to provide for all possible forms of administrative co-operation between States in the assessment and collection of taxes, in particular with a view to combating tax avoidance and evasion. This co-operation ranges from exchange of information to the recovery of foreign tax claims.

4. The Convention is open to the signature of member States of each of the two international organisations which have participated in its drafting; namely the Council of Europe and OECD. Co-operation between these States is greatly facilitated by the fact that they have legal systems based on similar general principles of justice and law as well as economies that are interrelated.

5. The Convention as revised by the 2010 Protocol is also open to the signature of States outside the Council of Europe or OECD.

6. In this context, the Convention attempts to reconcile the respective legitimate interests of those involved: in particular, the requirements of mutual international assistance in tax assessment and enforcement, respect for special features of national legal systems, the confidential nature of information exchanged between national authorities and the fundamental rights of taxpayers.

7. Taxpayers have especially the right to respect for their privacy and the right to a proper procedure in the determination of their rights and obligations in tax matters, including appropriate protection against discrimination and double taxation.

8. In applying the Convention, tax authorities will be bound to operate within the framework of national laws. The Convention specifically ensures that taxpayers' rights under national laws are fully safeguarded. However, national laws should not be applied in a manner that undermines the object and purpose of the Convention. In other words, the Parties are expected not to unduly prevent or delay effective administrative assistance.

COMMENTARY ON THE PROVISIONS OF THE CONVENTION

CHAPTER I – SCOPE OF THE CONVENTION

Article 1 - Object of the Convention and persons covered

Paragraph 1

9. Article 1 defines the object of the Convention, which is administrative assistance between States in tax matters. Such assistance comprises all mutual assistance activities in tax matters which can be carried out by the public authorities, including the judicial authorities.

10. The present Convention accordingly covers administrative assistance in all tax matters without prejudice to the general rules and legal provisions governing the rights of defendants and witnesses in judicial proceedings. Exchange of information for criminal tax matters can also be based on bilateral or multilateral treaties on mutual legal assistance (to the extent they also apply to tax crimes), as well as on domestic legislation for the granting of such assistance.

11. The Provision of assistance under the Convention is, however, subject to general limitations contained in Chapter IV where taxpayers' rights are safeguarded and where some possibilities of declining requests and limits to the obligation to provide assistance are stated. Moreover, the legal principle of reciprocity is another element of balance in the implementation of the Convention, since a State cannot ask for a form of assistance that it is not ready to grant to other States. The same principle of reciprocity is also a factor in the development of mutual assistance, because a State which wishes to draw more benefits from the Convention will be encouraged to offer more extensive assistance to other States.

Paragraph 2

12. Paragraph 2 lists different forms of administrative assistance which the Parties may provide for each

other, namely: exchange of information, including simultaneous tax examinations and tax examinations abroad, assistance in recovery, including measures of conservancy and service of documents.

13. Considered as a whole, these three forms of assistance cover all the significant types of measures which it is envisaged could be taken by the tax administration of one Party in co-operation in the carrying out of the duties of the tax administration of another Party. Should new forms of co-operation be found in the future, it is considered that they should be the subject of a separate convention or a protocol to this Convention. Within the framework of the three forms of assistance mentioned in the paragraph, Parties are free to make use of whatever techniques they feel appropriate for the implementation of the Convention, as described in Chapter III: these measures will be covered by the commitment stated in paragraph 1 of the article.

14. The measures taken may relate to the various stages of the process of taxation: assessment, examination, collection, recovery and enforcement of a tax covered by the Convention. Thus, the commitment to provide administrative assistance in tax matters may lead one tax administration to take action on behalf of another State at any of these stages of taxation, not only to combat tax evasion but also to ensure the better implementation of tax legislation (including that of granting tax relief and to simplify administrative procedures).

15. In practice, a tax administration will, in most cases, take action only when a request is made by the tax administration of another Party. However, and essentially in the case of exchange of information, assistance can be provided spontaneously or can be prearranged so that, in certain recognised situations, assistance is provided automatically.

16. Not all States may be in a position to provide all forms of assistance to other Parties. Constitutional and other reasons may, for instance, prevent a State from being able to provide some of the forms of assistance listed in paragraph 2. That State will then have to enter a reservation on the Convention.

17. Indications of the nature and scope of each of these forms of assistance are given in the relevant commentaries on Articles 4 to 17.

Paragraph 3

18. Paragraph 3 deals with the personal scope of the Convention and makes it clear that administrative assistance between Parties is not restricted by the residence or the nationality of the taxpayer or of the other persons involved. A similar provision, often expressed in different language, is to be found in many double taxation conventions.

19. If the tax administration of State A requires some assistance in tax matters from State B, it is obviously because it has to assess or reassess, or to collect or recover, a tax due in State A from a person who may, or may not be, a resident or a national of State A. If that person is not subject to tax in State A, there is no ground for any assistance in tax matters.

20. On its side, the tax administration of State B will provide assistance to State A by making use of the powers it possesses under its taxation laws to obtain information, to examine taxpayers' accounts, to recover money and, more generally, to enforce those laws.

21. The provisions of paragraph 3 are designed to make it clear that a person who is liable to tax in a State cannot prevent that State from requesting assistance from another Contracting State on the grounds that he is not a national, or a resident, of one or other of the two States. He is not prevented by this, however, from contesting a tax claim or enforcement or recovery measures as provided by Article 23.

22. The following examples show some of the implications of paragraph 3, on the assumption that the whole Convention applies to States A, B and C but that States D and E are not Parties to the Convention

1. A company in State D has three branches, one in State A, one in State B, and one in State E. The three branches have the same commercial activity but the branch in State E covers the market of State C through an independent third party. States A, B and C can exchange information on prices paid to the company by branches in A and B and to the branch in E by the independent third party in C. They can plan a simultaneous tax examination (see Article 8) of the branches in A and B and of the independent third party in C and, if they agree to do so, they can have foreign tax inspectors of the partners' countries taking part in these examinations.

2. Some services are rendered to the branch in A directly by the company in D while the same services are rendered to the branch in B by that in E. States A and B can exchange information on the nature and the value of the services so rendered.

3. The company has a bank account in C. State A knows that unrecorded discounts are refunded through this bank account. State B knows that the resident executives of the company receive additional salaries paid abroad through this bank. Both States A and B can ask State C for confirmation of the facts and the exact amounts paid through the bank.

4. The company has immovable property in State A which is not part of the business property of the branch in A. It fails to pay the capital gains tax due on the sale of that property. State A can request the assistance of State C in the recovery of its tax claim out of the deposits in the bank, subject of course to Article 21.

23. Similar examples could be given for an individual, being a national of State E and a resident of State D, who derives taxable income of various kinds from sources in States A and B and owns immovable property in State C where he keeps a bank account.

24. It would be wrong to assume, however, from these examples, that individuals, companies and other entities have no protection against administrative assistance in tax matters. Such an interpretation would be incorrect, since tax administrations can only take those measures consistent with their domestic laws and with all the guarantees to the taxpayers attached to those measures. As discussed in paragraph 8 above, the domestic laws and administrative practices of the requested State should not be applied in a manner that undermines the object and purpose of the Convention. In other words, the Parties are expected not to unduly prevent or delay effective administrative assistance. Thus the effect of strengthening co-operation between Parties is not to extend the existing domestic powers of their tax administrations but to improve them by widening the territorial area in which they can be effective.

Article 2 – Taxes covered

25. This multilateral Convention is intended to have very wide scope. It covers all forms of compulsory payments to general government (that is to say to central government, political sub-divisions thereof or local authorities and to social security agencies) with the sole exception of those customs duties and all other import-export duties and taxes which are covered by the International Convention on Mutual Administrative Assistance for the prevention, investigation and repression of customs offences, prepared under the auspices of the Customs Co-operation Council (now the "World Customs Organization"). Apart from customs duties, it may thus apply to all the levies listed in the annual OECD Publication "Revenue Statistics", which provides comparative data based on the OECD classification of taxes.

26. The Convention also covers compulsory social security contributions paid to social security agencies governed by public law, even if the latter do not, strictly speaking, constitute general government departments. What is important in this case is the nature of the contributions, which is identical to that of compulsory social security contributions paid to general government departments, whereas the structure or the method of operation of the agency managing the service in question is immaterial for the purpose of the instrument. On the other hand, compulsory contributions to private law institutions do not as such fall under this instrument even if the said institutions are under public inspection. The list of levies actually covered is given in Annex A to the Convention.

Paragraph 1

27. Paragraph 1 lists the main categories of taxes covered by the Convention, grouped to take into account the fact that not all countries are able or willing to provide assistance for certain categories of taxes and may enter reservations under Article 30.

28. The taxes to which the Convention shall apply are grouped together in categories which are generally consistent with the OECD classification, which provides a systematic and internationally agreed classification. The classification in Article 2 is also the basis of the system of reservations provided for in Article 30 of the Convention. Nevertheless, in view of the object of the instrument, it has been judged desirable to make certain changes in this classification. For example, taxes imposed on behalf of political sub-divisions of the State or of its local authorities have been taken out of the categories in sub-paragraph b.iii of paragraph 1 and put in an independent category. In addition, given the importance of taxes on the use or ownership of motor vehicles, it has been decided to place these in a special category (category E in sub-paragraph b.iii of paragraph 1), separate from that which groups together similar taxes on other movable property (category F in sub-paragraph b.iii of paragraph 1).

29. A State must indicate in which categories its taxes are to be classified. This must be done at the latest when that State signs the Convention. When a State changes its tax system or otherwise wishes to change the scope of application of the instrument in this respect by including other taxes or withdrawing taxes from the list provided for in Annex A, it will observe the provisions of paragraph 3 or 4 of the article as the case may be.

30. A State's decision to include any of its taxes in one or the other of the categories set out in Article 2 must be taken in the light of the objective characteristics of those taxes and not be arbitrary, as it affects the general working of the Convention, notably the application of the principle of reciprocity, the system of reservations and, ultimately, the rights and interests of the other States and taxpayers in general. It is conceivable therefore, in case of doubt as to the nature of a specific tax and its inclusion or non-inclusion in one or the other of the categories in Article 2, that consultations would take place between States and, where necessary, an opinion would be sought from the co-ordinating body provided for in Article 24.

31. Sub-paragraph a refers to the taxes to which all Parties are committed to apply the Convention, and which consequently cannot be the subject of a reservation under paragraph 1, sub-paragraph a, of Article 30. These are taxes levied at central government level on income or profits, on capital gains or on net wealth. They are among the main taxes in most systems as well as those best suited to international mutual assistance.

32. Sub-paragraph b refers to taxes in respect of which reservations may be entered under paragraph 1, sub-paragraph a, of Article 30, that is to say taxes other than those imposed by central government on income, profits, capital gains or net wealth. It accordingly applies to any other taxes levied at central

government level and to taxes in all categories imposed by levels of government other than central government.

Paragraph 2

33. This paragraph links the Convention to Annex A. Annex A details the taxes which are in force in the Contracting States at the date of signature of the Convention and to which the Contracting States wish the Convention to apply.

34. The taxes of a Contracting State to which the Convention applies appear in Annex A in categories referred to in paragraph 1. These are the taxes in relation to which a Contracting State expects to receive assistance and should not include a tax in respect of which such Contracting State has made a reservation under paragraph 1, sub-paragraph a, of Article 30.

35. Even if a State does not have any tax in a particular category, it is committed to providing administrative assistance in relation to taxes of other States in that category, unless it makes a reservation under paragraph 1, sub-paragraph a, of Article 30.

Paragraph 3

36. This paragraph has a twofold aim. On the one hand, it provides the possibility for each State to modify, after the entry into force of the Convention, the list contained in Annex A either by deleting or by adding taxes provided for in paragraph 1. On the other hand, this paragraph provides for the procedure to be followed in respect of these changes and the time at which they take effect.

Paragraph 4

37. This paragraph is concerned with the case where national legislation is modified in the sense that identical or substantially similar taxes are added to or replace those listed in Annex A. The State concerned is under the obligation, by virtue of paragraph 4, to notify such changes but the Convention will be applicable to these taxes even before notification.

CHAPTER II – GENERAL DEFINITIONS

Article 3 – Definitions

Paragraph 1

38. This article defines a number of terms used frequently in the Convention. The definitions of "applicant State" and "requested State" under a require no further explanation.

39. For the sake of simplicity, the term "tax" is used throughout the Convention to signify all kinds of taxes (including social security payments) covered by the Convention in accordance with Article 2. As some countries have legal definitions of what constitutes a tax, and as such definitions may exclude other dues covered by the Convention, it was thought necessary to make it absolutely clear, by way of a specific definition (see sub-paragraph b) that the term "tax" comprises all payments listed in Annex A.

40. It follows from the definition of the term "tax claim" under c, that the assistance is not to be restricted only to the tax proper, including additions and surcharges, but is also to cover interest on overdue tax and costs incurred in recovery. It is fairly obvious that the assistance should cover additions or surcharges, as these essentially are still taxes, which often have a special purpose and are levied together with another tax, for example, income tax, for the sake of convenience. Whilst interest and costs of recovery are not taxes, there is good reason for including them here, since most countries levy interest on overdue payments and a

tax debtor's obligation to reimburse a government for the expenses it has incurred in recovering the tax owed is also generally accepted practice. It is understood that the term "tax" covers not only the personal obligation of the taxpayer or of the person subjected to social security contributions but also the responsibility of the person (for example, employer or payer) who has neglected to withhold at source the tax and/or the social security contribution and/or to pay them to the administration.

41. When making a request for recovery, the applicant State may state separately the amount of interest due for late payment. Some States consider that assistance in recovery should be limited to the recovery by the requested State only of interest due up to the date of the request. Some other States, on the contrary, consider that assistance in recovery should also apply to interest which becomes due, according to the rules prevailing in the applicant State, up to the date of effective recovery of the tax claim. The Convention does not favour either of the above approaches. Accordingly, it leaves it to the Parties to reach agreement, for example, on a bilateral basis, on the principles governing the calculation of interest to be recovered.

42. The Convention also covers administrative fines. The text of the instrument does not include a definition of administrative fines and the question is governed by domestic law. An administrative fine is generally deemed to be any penalty the legal basis of which is determined by rules other than those of criminal law. These fines may be imposed by the administrative authorities and provision is normally made for appeals against decisions in this matter. It is possible that certain Parties may not wish to provide assistance in respect of such fines. They must in that case enter a reservation on this point.

43. The word "owed" in c is designed to make it clear that assistance cannot be requested where the amount of tax is purely speculative. However, the definition is not intended to require that the amount owed should be the full amount which may be finally due, and assistance in relation to assessments made on the basis of estimates is not precluded by the Convention. To do otherwise would create difficulty for assistance under Article 12 (measures of conservancy). It will, however, be noted under Article 11 that for assistance in recovery the tax claim must be enforceable and not contested in the applicant State, unless otherwise agreed between the States concerned.

44. Nevertheless, problems may arise if States provide assistance prematurely. The position of a taxpayer may be prejudiced and requested States may then be exposed to claims for compensation. For this reason, although the laws of a number of States provide for recovery or conservancy measures to be taken at a very early stage, for example, before the tax has been assessed, this possibility has not been covered in the Convention. On the other hand, some States have provisions for jeopardy assessments and these assessments are covered by the Convention.

45. The "competent authorities" are defined in d by means of a formal criterion: designation by States and inclusion in list B annexed to the Convention. This is because, having regard to the scope of application of the Convention as defined in the instrument (Articles 1 and 4) and the differences between States in the matter of organisation and operation of government departments and the State in general, it is not possible to establish uniform rules in this connection; in some States, for example, the competent authorities will normally be the tax authorities or services, while in other States other bodies may carry out certain tasks in connection with administrative assistance in this area. Any State may freely decide to change its competent authority/authorities. If it does so, it is obliged to do what is necessary so as to avoid the change adversely affecting the other Parties or the general application of the Convention. It should normally notify the change through one of the depositaries, issue directives or instructions for the future conduct of assistance activities in progress and communicate those directives or instructions to the Parties or persons concerned.

46. The term "nationals" is given a definition in e based on the definition in Article 24, paragraph 2, of the OECD Model Tax Convention on double taxation. As regards individuals, they must possess the nationality of a Contracting State which may be defined by that State in a declaration to be included in Annex C. As regards legal persons, partnerships and associations, and other entities, the test is that used in the OECD text: they must derive their status as such from the laws in force in the State concerned.

Paragraph 2

47. This paragraph lays down a general rule of interpretation, giving priority to the specific definitions in the Convention itself, and then to the meaning of the term concerned in the law of the State applying the Convention in the particular case in question, except where the context clearly indicates a different meaning.

Paragraph 3

48. This paragraph provides for the procedure to be followed in relation to changes in Annexes B (competent authorities) and C (definition of the word "national") and specifies the time at which they enter into force. It is derived from paragraph 3 of Article 2.

CHAPTER III – FORMS OF ASSISTANCE

SECTION 1 – EXCHANGE OF INFORMATION

Article 4 – General provision

Paragraph 1

49. This article embodies the general obligation for the Parties to exchange any information that is foreseeably relevant for the administration or enforcement of domestic laws concerning the taxes covered by this Convention. The binding character of this obligation is set out in Article 1. Exchanges of information are the most immediate form of administrative assistance between tax authorities. Such assistance is desirable for ascertaining and discovering facts which may be of interest for the correct implementation of the domestic laws of the Parties. This may not only facilitate the enforcement of tax legislation, but also help the taxpayer to secure his entitlements to tax reliefs (for instance by making it easier for him to establish that he is not resident for tax purposes in a particular State, or that he has paid some foreign tax for which double taxation relief is due).

50. The scope of this article is wide. It should therefore assist Parties in combating international tax avoidance and evasion to the widest possible extent. The standard of "foreseeable relevance" is intended to provide for exchange of information in tax matters to the widest possible extent and, at the same time, to clarify that the Parties are not at liberty to engage in "fishing expeditions" or to request information that is unlikely to be relevant to the tax affairs of a given person or ascertainable group or category of persons (see also paragraph 167).

51. The five main methods of exchanging information are the following:

i. exchange on request, that is to say the furnishing by the requested State of information relating to a particular case to an applicant State which has specifically requested it (see Article 5);

ii. automatic exchange, that is to say the systematic sending of information concerning specified items of income or capital from one Party to another (see Article 6);

iii. spontaneous exchange, that is to say the passing on of information obtained during examination

of a taxpayer's affairs or otherwise, which might be of interest to the receiving State (see Article 7);

iv. simultaneous tax examination, that is to say the furnishing of information obtained in the course of the simultaneous examination in each Party concerned, on the basis of an arrangement between two or more competent authorities, of the tax affairs of a person, or persons in which these States have a common or related interest (see Article 8);

v. tax examination abroad, that is to say the obtaining of information through the presence of representatives of the tax administration of the applicant State at an examination of a tax matter in the requested State (see Article 9).

52. It should be stressed that Article 4 does not restrict the possibilities of exchanging information to the five methods mentioned above. In general, the manner in which exchange of information will in the event be effected can be decided upon by the Parties, acting through their competent authorities. It is not so much the character of the information which determines the classification under the articles in the Convention, but rather the mechanism through which the information is exchanged. In some situations, strict differentiation between the different types of exchange mentioned above may well become blurred, for example, when competent authorities agree to send all information of a particular kind which may be detected in tax audits, or when a competent authority sends bulk information without prior agreement. Arrangements for the automatic exchange of information may, in order to maximise effectiveness and minimise cost, limit the items, the length and the volume of information exchanged so that the difference between exchange on request and automatic exchange based on arrangements tends to be less clear-cut in practice.

53. Simultaneous tax examinations and tax examinations abroad are also mentioned in the commentary on Article 26 of the 2008 OECD Model Tax Convention. These techniques for exchanging information are, however, within the scope of Article 26. Similarly, Parties are not prevented from making use of any other advanced technique for this purpose, when their domestic laws so permit, industry-wide exchange programmes or joint auditing. There is a growing interest in particular in multilateral simultaneous tax examinations given the increasingly multilateral dimension of tax evasion schemes and the need for international co-operation between tax administrations. However, some countries may for a number of reasons be unable, or be able only under certain conditions, to participate in the forms of co-operation described in Articles 8 and 9. States may, by virtue of paragraph 3 of Article 9, notify their intention not to accept, in general, the presence of a foreign representative at a tax examination on their territory.

54. Exchange of information may take place in a variety of ways acceptable to the competent authorities, for instance personal contact, telephone or secure email and exchange of CD Roms (encrypted where appropriate), but when exchange is oral, it is normal to confirm it in writing afterwards. With a view to speeding up the exchange, especially in a field where quick information is necessary, the competent authorities can agree to delegate powers for more direct contacts (for example, by telephone). Furthermore, it is worth mentioning that the Convention covers not only the exchange of taxpayer-specific information, but also allows the competent authorities to exchange other sensitive information related to tax administration and compliance improvement, for example, risk analysis techniques or tax avoidance or evasion schemes.

55. This Convention covers not only assessment but also collection and recovery. Without doubt, correct collection and recovery of tax are the desirable consequences of a correct assessment of the amount owed.

If it proves to be very difficult to recover the tax due in the Party which made the assessment, it may be essential to know whether the taxpayer owns assets abroad on which, with the help of the other Party, the tax claim can be recovered.

Paragraph 2

56. Some systems of national legislation contain provisions requiring the State to inform the person concerned before information is communicated to another State. Paragraph 2 permits each Party to notify one of the depositaries that its authorities may inform the persons concerned before transmitting information to another Party. The person "concerned" is defined by the provisions of national law; it may be a national or resident of the requested State about whom information is to be supplied to another State in order to enable it to verify or establish its own tax claim on the said national or resident; it may also be a firm operated in the requested State by one of its nationals or residents, from which information is to be obtained for communication to another State in order to enable the latter to verify or establish its tax claim on one of its own taxpayers who has a business relationship with the firm operated in the requested State (see also paragraph 180).

Article 5 – Exchange of information on request

Paragraph 1

57. As already mentioned in the commentary on Article 4, information exchanged on request will relate to a particular case indicated by the applicant State. Normally, the applicant State needs additional information to check the information supplied by the taxpayer in his return about income from, or assets in, the requested State. In many cases, the information will be requested because the applicant State suspects that the taxpayer did not give the complete or correct facts.

58. Requests are normally made in writing. However, requests can be expressed orally and confirmed in writing afterwards. In some situations where information is required without delay, for example, in cases involving itinerant activities, a request via ordinary mail is too cumbersome. In such situations the competent authorities may wish to use electronic or other communication and information technologies, including appropriate security systems, to improve the timeliness and quality of exchanges of information. Normally a request will be addressed to the competent authority of the requested State listed in Annex B but especially in the situation described above. In some instances, for example, in cases of exchange of information to combat tax avoidance or evasion in a special area, it has proven useful to authorise a special contact person to act on the competent authority's behalf in the matter (see Article 24). The OECD Manual on the Implementation of Exchange of Information Provisions for Tax Purposes may be helpful in this respect.

59. As set out in the commentary on Article 4, the exchange on request is, with respect to recovery, the most appropriate form of exchange of information. In order to be able to recover tax claims in another Party, it may be useful, especially if the taxpayer is resident in the requested State, to know whether he has assets in that State. A Party may request information irrespective of whether it is in a position to apply for assistance in recovery (for example, because the tax claim concerned is being or may be contested).

Paragraph 2

60. Except in the situations dealt with in Articles 19 and 21, the competent authorities of the requested State will try to find the information requested in domestic tax files, but if the information is not so available, they should utilise all relevant measures authorised for the purpose of that State's tax in order to obtain the information.

61. Information obtained from one Party may be transmitted by the competent authority of another Party to a third Party, subject to prior authorisation by the competent authority of the original supplying State (see Article 22 and paragraph 227 of the commentaries thereon).

Article 6 – Automatic exchange of information

62. Information which is exchanged automatically is typically bulk information comprising many individual cases of the same type, usually consisting of payments from and tax withheld in the supplying State, where such information is available periodically under that State's own system and can be transmitted automatically on a routine basis. By exchanging information in an automatic way, compliance is generally improved and fraud can be detected which otherwise would not have come to light. The aim of the Parties will be to exchange such information in the most efficient way possible having regard to its bulk character.

63. If such an arrangement, and thus the items exchanged, become known to the taxpayers, the standard of compliance may be improved and both the number of cases and the amount of income understated are likely to decrease after some years. However, there may be ways of maximising effectiveness and minimising costs, for instance by limiting automatic exchange to items where compliance is at its lowest by a rotation of items after some years of exchange and the use of standardised forms (see also paragraph 66 below).

64. This form of exchange of information requires a preliminary agreement between the competent authorities on the procedure to be adopted and on the items covered. There may in fact be situations where such exchanges may not be very fruitful between particular countries, for example, because little bulk information is available in one of them or economic relations between the countries are limited, or because it would involve too great a load on the tax administrations concerned.

65. Agreement on the items to be exchanged and the procedure to be adopted is a prerequisite, since, in the first place, it would not be very effective to exchange every item which is capable of being exchanged automatically and, in the second place, it is not always necessary for partners to exchange information on the same items of income or with the same frequency under such an agreement. The amount and character of the items which are fit for automatic exchange will depend on each State's own domestic administrative systems. Such an agreement may be set up by two or more Parties, pursuant to the provisions of paragraph 1 of Article 24. The OECD Model Memorandum of Understanding on Automatic Exchange of Information for Tax Purposes is recommended for these types of agreements.

66. Automatic exchange of information is the most obvious field for the use of standardised forms, though they may also be appropriate for the transmission of requests or answers. In general, the main advantages of standardisation are the avoidance of the need for translation by the use of standard (number) codes by all the countries concerned for the same items of income or capital, the speeding up of the exchange and a reduction in the workload of the competent authorities, since it enables the inclusion of the information received in the recipient's country system and the matching of the information against the income reported by taxpayers. By definition, these advantages are achieved only if a large number of countries participate in a standardising exercise. The OECD Committee on Fiscal Affairs has therefore devised standardized formats for such automatic exchanges based on the latest available technology. The States concerned should as far as possible make use of the OECD Standard Transmission Format or a further updated standard when exchanging information automatically between themselves, as recommended by the OECD Committee on Fiscal Affairs.

Article 7 – Spontaneous exchange of information

Paragraph 1

67. Information is exchanged spontaneously when one of the Parties, having obtained information which it assumes will be of interest to another Party, passes on this information without the latter having asked for it. Information exchanged spontaneously will often be more effective than information exchanged automatically because it mostly concerns particulars detected and selected by a tax official of the sending State during an audit or investigation (see paragraph 70 below). This kind of exchange differs from the other two in that the information is sent without previous request from the other State and without a prior agreement between the competent authorities on items of income and procedures. The OECD Manual on the Implementation of Exchange of Information Provisions for Tax Purposes may be useful in this respect.

68. Paragraph 1 sets out the various instances where a Party shall forward to another Party, without prior request, information of which it has knowledge. A spontaneous exchange of information is usually effective since it concerns particulars detected and selected by tax officials of the sending Party during or after an audit or other type of tax investigation.

69. Spontaneous exchange of information does not normally take place in the field of recovery of taxes. However, it might well be useful to supply information spontaneously as a supplement to information exchanged on request relating to a recovery case.

Paragraph 2

70. As the efficiency of spontaneous exchanges very much depends on the initiative of the supplying State, the competent authorities of the latter should take the necessary steps to ensure that information likely to be of interest to the other State is brought to its own attention. While it is the competent authority that is the responsible body in the exchange of information, full use should be made of the knowledge and resources of the whole tax administration when such assistance is rendered.

71. The work involved in this form of exchange of information and its ultimate utilisation usually requires a certain administrative effort on both sides, without an initial guarantee that the findings are actually going to be relevant for tax purposes. For this reason it is advisable to concentrate on the provision of information which seems promising, for example, because of its general importance or because of the amount of tax involved. Information sent spontaneously should be accompanied by any further documentary evidence which is available and which might assist the other State.

Article 8 – Simultaneous tax examination

72. In cases where international tax avoidance and evasion is suspected, simultaneous tax examinations can be very effective compliance and control tools for tax administrations. If the Parties concerned co-ordinate their tax examinations of the affairs of a person or persons in which they have a common or related interest, they will be able to obtain the greatest benefit from this exchange of information. The purpose of Article 8 is to enable them to do this. Competent Authorities may wish to consider negotiating bilateral or multilateral memoranda of understanding, working arrangements or any other similar instruments, in order to facilitate the efficient conduct of simultaneous tax examinations. The OECD Model Agreement for the Undertaking of Simultaneous Tax Examinations could be used as a basis for developing such instruments.

73. This form of co-operation between tax administrations is likely to prove fruitful, in particular, when dealing with transactions between associated enterprises (and determining arm's-length prices). It can

also help to eliminate economic double taxation and to discover aggressive tax planning arrangements. Simultaneous tax examinations may also reduce the compliance burden for taxpayers by co-ordinating enquiries from different States' tax authorities and avoiding duplication. The OECD Manual on the Implementation of Exchange of Information Provisions for Tax Purposes may be useful in this respect.

Paragraph 1

74. This paragraph requires the Parties to consult together at the request of one of them to determine cases and procedures for simultaneous tax examinations. This consultation involves their respective competent authorities.

75. The applicant competent authority will inform the others of its choice of potential cases. The other competent authorities will decide whether to enter into simultaneous tax examination of those cases and may also nominate other cases for consideration.

76. A simultaneous tax examination will be possible only between competent authorities of Parties which share an interest, or related interests, in the affairs of the relevant person or persons. Even if this condition is fulfilled, one of the competent authorities concerned may consider that the operations involved are not substantial enough to justify the procedure.

77. However, it is to be hoped that the requested competent authority will be ready to take part in an examination if the applicant competent authority can demonstrate that it is a matter of some importance to it and that, as the case may be, the simultaneous examination may produce information useful to the requested competent authority's own investigations (see also paragraph 53).

Paragraph 2

78. This paragraph defines what is meant by a simultaneous tax examination. The subject of the examination is described as "the tax affairs of a person or persons in which they [the Parties] have a common or related interest". These words may be construed widely. They comprise the single person resident in one of the Parties who performs activities in another Party or other Parties as well as related persons resident in two or more Parties; and they may also in suitable cases comprise unrelated persons, resident in different Parties who, although not under common control and/or ownership, nevertheless share close trading or other links.

79. The first case includes individuals resident in the first Party who carry out professional or other activities in the other Parties as well as enterprises resident in one Party which operate through a permanent establishment in the other.

80. The second and third cases apply principally to companies. The second case covers multinational enterprises which carry out intra-group transactions. The third case will comprise enterprises which, although not related, trade together so closely that information about the affairs of one (for example, the prices of goods sold and purchased) would be of use to the authority responsible for the tax affairs of the other.

81. Once agreement has been reached on implementation of a simultaneous tax examination, the tax administration personnel in charge of the case selected will consider with their counterparts from the other Party or Parties involved their examination plans, the periods (for example, tax years) to be covered, possible issues to be developed and target dates. Once agreement has been reached on the general lines to be followed, officials of each State will separately carry out their examination within their own jurisdiction.

82. In the case of related enterprises, the responsibility for co-ordinating the examination and exchanges of information will most usefully rest with the competent authority of the Party in which the parent or base company is located. If a parent company which is involved is resident outside all the participating Parties, the competent authorities of all the Parties involved will together decide which country should act as co-ordinator.

Article 9 – Tax examinations abroad

I. Preliminary remarks

83. Traditionally, exchange of information under double taxation conventions and mutual assistance conventions has been carried out in writing. A written procedure is necessarily time-consuming and may for that reason be less effective than other, less formal procedures. In certain situations, rapid action on the part of the tax administration is required, for example, to combat tax evasion in relation to international hiring out of labour or to itinerant activities. Further, in order to be able to ascertain a clear and complete picture of business and other relations between a resident of a Party who is the subject of a tax examination and his foreign associates, it is often of great value to be able to follow at close proximity an examination initiated in the foreign country. In fact, experience has shown the need to open up the possibility of representatives of the tax authorities being physically present at such tax examinations in another country as are of interest for tax examination in their country. This article provides; for such a possibility.

84. The decision as to whether the foreign representative may be allowed to be present lies exclusively within the hands of the competent authority of the State where the examination is to take place.

85. In some States, the foreign representative's presence would be regarded as an infringement of that country's sovereignty or contrary to its policy or procedure. In other States, such presence is admitted only if the taxpayer does not object to it.

86. On the other hand, other countries consider the presence on their territory of a representative of a foreign authority to be acceptable on the condition that the tax examination is carried out strictly in conformity with their law and practice. Article 9 is drafted with such considerations in mind and is intended to cover the need for such express provisions in international agreements which most states seem to require in order to be able to allow foreign representatives to be present at their tax examinations. Those States which are able to accept that foreign representatives can exercise more extensive authority within their territory than is envisaged by this article are free to do so, possibly subject to agreement under paragraph 1 of Article 24. The OECD Manual on the Implementation of Exchange of Information Provisions for Tax Purposes may be useful in this respect.

II. Commentary on the provisions of Article 9

Paragraph 1

87. Paragraph 1 sets out the formal rules for initiating a request for attendance at a tax audit. Like the ordinary exchange of information procedure which is carried out by correspondence, it stipulates that the request has to be made at the level of the competent authorities. As far as procedures are concerned, the sequence of events is likely to be the following. The applicant State will first ask for the information under Article 5. When it is determined that the information is not already available in the requested State, the latter will inform the applicant State that a special examination is necessary and is being considered. The applicant State will then request, under Article 9, that its representatives be present at the special tax examination.

88. It may be that a request for attendance will be made at the time the request for information is made, in case the information can only be obtained by means of a special investigation. In other cases, information received spontaneously could lead a Party to ask permission to be represented at an investigation under way in another Party.

89. It is understood that this kind of rather far-reaching assistance by a foreign tax authority should not be asked for unless the competent authority of the applicant State is convinced that the examination in the foreign country will contribute to a considerable extent to the solution of a domestic tax case. Furthermore a State should not make a request for attendance in minor cases. This does not, however, necessarily imply that large amounts of tax have to be involved in the individual case. Another justification for a request would be the fact that the matter is of prime importance for the solution of other domestic tax cases or that the foreign examination is to be regarded as part of an examination on a large scale embracing domestic enterprises and residents.

90. It is in the interests of the applicant State to specify, as thoroughly as possible, the motives for the request. The request should include a clear description of the domestic tax case which is the basis for it. This may have been provided already at the time of the initial request for information under Article 5. It should also indicate the special reasons why the physical presence of a representative of the competent authority is important. If the competent authority of the applicant State wishes the examination to be conducted in a specific manner or at a specified time, such wishes should be stated in the request.

91. The representative(s) of the competent authority of the applicant State may be present only for the appropriate part of the tax examination. The authorities of the requested State will ensure that this requirement is fulfilled by virtue of the exclusive authority they exercise in respect of the conduct of the tax examination (see paragraph 2 of this article and the related commentary).

Paragraph 2

92. Paragraph 2 makes it clear that the decision as to whether representatives of the foreign competent authorities should be allowed to be present or not is taken by the competent authority of the requested State. The fact that the requested State has the decisive power in this respect does not, however, in any way restrict the obligation on that state to furnish information which may be asked for under Article 5. It is therefore normal that a State declining a request should indicate the reasons by invoking, for instance, Article 19 or 21, or giving other reasons on which its decision is based.

93. If the request is approved, the competent authority of the requested State is called upon to indicate the time and place of the examination and other particulars considered necessary, such as the authority or official responsible for the examination and any specific conditions stipulated for the conduct of the examination.

94. All decisions on how the examination is to be carried out have to be taken by the authority or the official of the requested State in charge of the examination. There should not be any question of exercise of authority in its strict sense by the foreign official. The examination takes place under the control of the responsible official, who may decide what influence the foreign official may have on the actual conduct of the examination. The foreign official may be able to co-operate actively (for example, suggest questions) or be restricted to a passive role (being present at the examination). The foreign official is in any case bound by secrecy under the provisions of Article 22.

Paragraph 3

95. This paragraph provides that States may make known their intention not to accept, as a general rule, requests made by other States to participate in their tax examinations. The reason for such a rule is twofold: on the one hand, it obviates the need for States not in favour of such participation to refuse systematically requests made by other States in this connection; on the other hand, it makes it possible to avoid the entering of reservations and the rigidity resulting from them. This provision consequently establishes a system whereby a State may notify all Parties that it is in principle not in favour of arrangements for foreign participation in tax examinations, but does not reject all possibility of co-operation in this area. The declaration referred to in paragraph 3 may be made or withdrawn at any time, in a similar manner to reservations.

Article 10 – Conflicting information

96. This article is meant as a kind of feedback provision for the exchange of information articles of Section 1.

97. The situation contemplated here is the following: a Contracting State has received information about a person's tax affairs from another Party under one of the types of exchange mentioned in the section and compares this information with information in its possession. If it appears that the information received is to a large extent in conflict with the information in its possession, this article obliges the receiving State to inform the providing State of its findings, in order to enable the latter State to clear this up with its taxpayer. The two States would normally consult with respect to the outcome of this further contact with the taxpayer concerned.

SECTION II – ASSISTANCE IN RECOVERY

General remarks on the scope of Section II

98. Globalisation not only makes it harder for tax authorities to accurately determine the correct tax liabilities of their taxpayers: it also makes the collection of tax more difficult. Taxpayers may have assets throughout the world but tax authorities generally cannot go beyond their borders to take action to collect taxes. By acceding to the Convention, a State takes upon itself the obligation, within certain limits (see Article 21), to use the powers it has under its domestic law to recover taxes owed to another Party. As indicated in paragraph 1 of Article 11, the requested State will proceed as if the tax claims concerned were its own tax claims, except in relation to time-limits (hereinafter TLs) which are governed solely by the laws of the applicant State (Article 14), and in relation to priority (Article 15).

99. Assistance in recovery may include measures not only against the taxpayer but also against any person who, according to the laws of the applicant State, may be liable for payment of the tax (see also the commentaries on paragraph 3 of Article 1). It is the law of the applicant State which determines who falls within the scope of this provision, and not the law of the requested State. This follows also from paragraph 2 of Article 23, which provides that disputes concerning the existence of the claim shall be brought only before the competent body of the applicant State. The OECD Manual on the Implementation of Assistance in Tax Collection may be useful in this respect.

100. The cases in which persons other than the taxpayer himself may be liable for payment of tax vary greatly. It is therefore useful to give examples of the more frequent cases.

101. The most common situation is that where persons making payments, which have in the hands of the

recipient the character of income, must withhold tax from such payments. Thus, in most countries, employers are obliged to withhold tax from the wages they pay and to hand over the amounts thus withheld to the tax collector as tax due from their employees. Withholding taxes on payments such as dividends, interest and royalties often have the same character.

102. Secondly, the law may hold both parties to certain contracts or transactions liable to payment of a tax which is primarily due from one of them in connection with such contracts or transactions. These cases often occur in the field of indirect taxes, of import and export duties and of gift taxes.

103. Then there are cases in which the liability of one person for payment of taxes owed by other persons is a consequence of a special relationship between these persons. Thus, members of a partnership, for example, are often jointly and severally liable for all debts of the partnership, and so any individual partner may have to pay, *inter alia*, the sales tax owed by the partnership.

104. In addition, there are cases in which persons are held liable for payment of taxes owed by their predecessors. There are states that hold the owner of immovable property liable for taxes related to such property which were owed by his legal predecessor in the years before the transfer.

105. A distinction can be made between the cases referred to in paragraphs 100 to 104 above and cases where the assets are in the possession of a third party. In the former cases, the person who is liable for the payment of tax is personally liable. In the latter cases, however, there may be inconvenience for the third party, but his assets are not affected; it is only the assets of the debtor that are seized. Examples are money or securities deposited with banks.

106. The present Convention covers assistance in recovery in both categories of case, in order to provide for maximum efficiency in the assistance lent by the requested State.

107. The cases in which a person is made liable for the payment of another person's tax may vary considerably from one State to another. In view of paragraph 2.a of Article 21, it might be thought that assistance under the present article may be refused when a person is made liable for the payment of another person's tax under the law of the applicant State but would not be so liable under the law of the requested State. However, it is not intended that limitations provided for by paragraph 2.a of Article 21 shall apply in this case, since this provision is concerned with recovery measures and not with the basis of liability itself.

108. Parties which are not able to provide assistance in recovery may enter a reservation under paragraph 1.b of Article 30.

Article 11 – Recovery of tax claims

Paragraph 1

109. This paragraph is designed to make it clear that, upon a request by a Party, the requested State has to take action to recover taxes owed to the applicant State, provided the tax claim meets the conditions laid down in this section of the Convention. The paragraph also regulates the way in which the tax claim of the applicant State is to be recovered by the requested State. The recovery has to take place as if the requested State were recovering a tax claim of its own, except in relation to TLs (Article 14) and priority (Article 15). In particular where the laws of the requested State in respect of the recovery of tax claims provide for measures taken by judicial bodies, such action is covered by the Convention (see paragraphs 9 and 10 above).

110. The question may arise as to which procedure the requested State is to follow. As the Convention covers several kinds of taxes in addition to taxes on income and capital, it is possible that the request concerns a tax which does not exist in the requested State. However, since the applicant State has to indicate the character of the tax in the recovery of which assistance is requested (see paragraph 1.d of Article 18), this should not give rise to serious problems. The requested State will then follow the procedure applicable to a claim for a tax of its own which is similar to that of the applicant State or any other appropriate procedure if no similar tax exists.

111. The reference to the procedures of the requested State covers not only its statutory provisions but also the relevant administrative practices. As the collecting authorities are familiar with these procedures, the extra burden of assistance should not weigh too heavily on the administrative machinery of the requested State. Particular problems may arise for implementing the provisions of the article, for example, when the cost of recovery exceeds the amount of tax due. Whilst the applicant State should avoid pursuing small amounts under the Convention, both Contracting States may consult, under the provisions of Article 24, to overcome any difficulty. They may also agree on minimum amounts to be recovered.

Paragraph 2

112. This paragraph stipulates the conditions under which a request for assistance in recovery can be made and contains in this respect a double guarantee. In the first place, the tax claim has to be the subject of an instrument permitting its enforcement in the applicant State. This provision is aimed at preventing recovery from taking place in the requested State at too early a stage, that is to say before the tax has been assessed. Recovery of taxes, the amount of which has not yet been determined, can be damaging to the taxpayer and may cause the requested State to run the risk of being held responsible for the consequences of the premature recovery. Of course, the requested State also has to be able to recover the claim under its domestic law when the request is made.

113. In the second place, this article requires that the amount of tax due is not contested. If the tax claim has been contested, assistance can normally be requested only if the contestation has been the subject of a final decision. Nevertheless, the article provides for the possibility of the Parties agreeing otherwise, in other words seeking recovery without waiting for the appeal proceedings to be concluded. Such a possibility should make co-operation easier with certain States in which the taxpayers have extensive rights of appeal and ensure that such appeals, which tend to lengthen the procedure, do not prevent recovery of claims. The applicant State would none the less be required under its own law to refund to the taxpayer any amount of tax wrongly collected, together with interest and related charges where appropriate, in cases where the taxpayer's appeal is subsequently upheld.

114. Where a tax claim is made against a person who is not resident in the applicant State and might consequently be less well informed, this article introduces an additional requirement intended to increase the safeguard for the taxpayer. It will no longer be sufficient, in order to apply for assistance in recovery, for the claim not to have been contested; it will also be necessary – unless there is a specific agreement between the Parties on this point – for no further contestation to be possible. Thus, in the absence of a particular agreement between the Parties concerned, the remedies available to the taxpayer and to the applicant State respectively for contesting or substantiating the validity of the tax claim must have been exhausted before a request for assistance in recovery is made. But only effective remedies within the framework of the domestic legal system need to be exhausted, that is to say only ordinary means such as appeals and pleas of nullity and not extraordinary means such as the reopening of the case or the setting aside of a judgment that has been obtained. A claim cannot be regarded as one which may be contested within the meaning of

this provision solely because such possibilities exist. The agreement of principle between Parties to derogate from the requirements on contesting tax claims is by way of an international arrangement concluded between authorities empowered to commit the State under the internal constitutional order.

115. Special problems might arise in relation to provisional assessments since they can seldom be contested. These problems do not directly affect paragraph 2, but it might be doubted whether a provisional assessment for the full amount could be regarded as tax actually owed and therefore be considered to be a tax claim as defined in Article 3, since only in the final assessment are all the relevant circumstances taken into account. The result could, at least in theory, very well be restitution to the taxpayer. It is clear therefore that States should exercise care in asking for assistance in the recovery of tax charged under provisional assessments. In such circumstances, it might be more appropriate to ask for measures of conservancy.

116. The guarantee referred to in paragraph 113 above is based to a certain extent on an administrative practice of States according to which recovery of the contested part of a tax claim is often deferred (although sometimes only after security has been provided by the taxpayer), whereas the uncontested portion has to be paid within the normal time- limit. But in this case, contesting a claim, even in part, may prevent the whole claim from being recovered in the requested State, which provides a further guarantee for the position of the taxpayer.

117. The Convention tries to provide a reasonable balance between the need for the tax authorities to obtain the amount owed and the desire of the taxpayer to pay no more than he actually owes. In order to achieve this, Article 12 stipulates that the requested State can take, on request, measures of conservancy for the benefit of the requesting State, even if the tax claim does not comply with the conditions of paragraph 2 of this article. More details are given in the commentary on Article 12.

Paragraph 3

118. The aim of the provisions of paragraph 3 is to limit assistance in recovery from the estate of a deceased person to the value of that estate, so that it will not extend to the personal assets of those entitled to the estate.

119. For various reasons it is considered reasonable to restrict, to some extent, recovery from an estate or from heirs. In the first place, the heirs may very well be ignorant of the fact that the deceased person left tax debts in another country. In itself this is no reason to protect them at the expense of the tax authorities of the applicant State; but it is considered reasonable not to take their personal assets to meet the claim of that State, a risk which becomes greater the more the field of application of the Convention is extended. Further, the laws of the various States may have different consequences in relation to the responsibility of the heir for the debts of the deceased in the case of unconditional acceptance of an inheritance. Finally, it may be very difficult for the successors of a deceased person, who had connections with various countries, to estimate whether the estate will be solvent or insolvent. Therefore it would appear appropriate to limit the extent of the assistance provided in that context. At the time of the request, the applicant State should inform the requested State about the limit of the recoverable amount and provide details of the value of the estate or the property acquired by each beneficiary of the estate.

120. It may be noted that this paragraph in the first place covers tax claims in the name of the deceased, that is to say, not only taxes established during his lifetime and not paid at the date of death, but also taxes assessed in the name of the estate after that date but in respect of activities exercised (income taxes), capital

assets (taxes on net wealth) or for business transactions carried out (turnover tax) before that date as well as estate taxes themselves.

121. But the provision is also applicable to taxes recoverable from the heirs in cases in which the estate has already been distributed at the time that the recovery takes place. Paragraph 3 stipulates that the amount of tax recovered from each of the persons benefiting from the estate against whom a claim can still be made shall not exceed the value of his portion of the estate.

122. At first sight, it might appear that if assistance in recovery of a tax claim in respect of a deceased person, for example, income tax and turnover tax which are due abroad, coincides with the levying of an estate or inheritance tax, then this could lead in the end to recovery of more than the total value of the estate. This, however, could only be the case if, in the valuation of the estate or of the acquisitions from it, all the tax debts of the deceased were not taken into account. If a request for assistance clearly indicates that a foreign tax debt of the deceased has not been taken into account, this would normally justify a reopening of the assessment and so lead to a proportionate reduction in estate taxes.

Article 12 – Measures of conservancy

123. In most States, the law permits the recovery of tax notwithstanding that the claim is contested or may be contested. However, the possibility of recovery in the requested State may disappear in the period between the date on which the applicant State can itself collect and that on which assistance in recovery can be requested. In order to safeguard the rights of the applicant State, this paragraph enables it to request the other State to take measures of conservancy, even if it is not yet possible to ask for assistance in recovery. Such measures could include the seizure or the freezing of assets of the taxpayer before final judgment to guarantee that they will still be there when the enforcement takes place.

124. This article does not define all the conditions required for the taking of measures of conservancy, as these conditions may vary from one State to another. The Convention recognises this situation, but lays down one condition which must be complied with in every case, namely the requirement that the amount of the tax be determined beforehand, if only provisionally or partially (see also paragraph 115 above).

125. As is the case with assistance in recovery, it is clear that in any event a request for measures of conservancy cannot be made before the applicant State itself can take such measures.

126. The applicant State needs to indicate in each case what stage in the process of assessment or recovery has been reached. The requested State will then have to consider whether in such a case its laws and administrative practice permit it to take measures of conservancy.

127. It may be noticed especially that, insofar as these measures are taken before the start of the recovery procedure proper, they are often taken at a time when the existence or amount of the tax claim may still be contested in the applicant State. It will be clear that such a challenge does not result in a stay of these measures, the essence of which is precisely that they can be taken pending the result of court or other proceedings in respect of the tax claim.

Article 13 – Documents accompanying the request

Paragraph 1

128. Under this section a tax claim in respect of which assistance is requested must meet certain conditions which are directed only at the applicant and the requested State. Article 13 deals with the way in which it is to be ascertained that these conditions are met.

129. First of all, the applicant State has to declare that the claim relates to a tax to which the Convention applies. No formal requirements are prescribed for this declaration. In the case of assistance in recovery, the applicant State must also declare that the claim is not contested or, where it is directed against a person who is not a resident of that State, that it may not be contested (sub-paragraph a), unless the exception provided for in paragraph 2 of Article 11 applies (see paragraphs 113 to 115 above).

130. The applicant State is also required to submit with the request for assistance an official copy of the instrument permitting its enforcement in that State as proof of the enforceability of the claim (sub-paragraph b). The purpose of sub-paragraph b is to furnish the requested State with a document which can serve as an authorisation for the actions of enforcement it is requested to perform. The text only refers to the instrument permitting enforcement of the tax claim without further specifying what kind of document is meant. In fact, it is impossible to be more specific about this instrument in the Convention as this depends on the domestic laws of the applicant State. This matter is further discussed in the commentary on paragraph 2 of this article.

131. If other documents are required for the actual recovery or measures of conservancy according to the laws of the applicant State, an official copy of these documents must also be submitted (sub-paragraph c).

132. The exact nature of the documents referred to in sub-paragraphs b and c will have to be determined by the competent authorities, for instance under the regulations for the mode of application of the Convention (paragraph 1 of Article 24). If the tax claim has been contested, sub-paragraph c requires that a copy of the decision taken must be submitted with the request for assistance. The applicant State must then also indicate whether further remedies were open after this decision. If so, it can be said that the claim may not be contested only if the TLs for these legal remedies have elapsed.

Paragraph 2

133. Where a request for assistance meeting the conditions of the Convention has been received, the requested State will have to take steps to recover the tax claim of the applicant State. To this end the authorities of the requested State will need an authorisation or an instrument entitling them to undertake measures of enforcement. It is with this instrument that paragraph 2 is concerned. The text is designed to make it clear that the aim must be to enable the enforcement in the requested State through administrative channels. It enumerates ways of doing so. The Contracting States will have to decide in what way the requested State shall operate its powers of enforcement, as provided for under the last sentence of paragraph 1 of Article 24.

134. Some States may be able to accept a foreign instrument as permitting enforcement in their own territory. Other States, however, will not be able to recover the tax claim of the applicant State within their territory without further measures. These can be of various kinds: the instrument permitting enforcement in the applicant State may have to be recognised in the requested State, or it may have to be supplemented or even replaced by an instrument permitting enforcement in the territory of the requested State.

Article 14 – Time-limits

135. This provision is worded to avoid using terms such as "prescription" or "limitation", which not all legal systems construe identically. What is envisaged hereunder is the rule of law according to which the debtor can be relieved from enforcement by lapse of time.

Paragraph 1

136. When a State recovers, under its domestic procedures, taxes owed to another State, the question inevitably arises as to which State's laws are to govern the period beyond which a tax claim cannot be enforced. On the one hand, the requested State might be reluctant to lend assistance if its relevant period is shorter than that of the applicant State and has expired. On the other hand, when that period in the applicant State is shorter than in the requested State and has expired, the first State obviously may no longer ask for the assistance of the other; a problem remains, however, when the period expires after the request has been made, since it may be argued that assistance can no longer be lent because the applicant State itself is no longer able to recover its tax.

137. Where these periods differ in the two States, there are various possible solutions. One would be to apply the TL of the applicant State, another to apply the TL of the requested State and a third would be to apply the shorter of these TLs.

138. Conflicting opinions can be held about the solution to be adopted in a convention in this field. One view is that the TL of the requested State should apply, mainly because of the risk that, if the requested State operates on the basis of different TLs from those which apply in the recovery of its own taxes, the consistency and certainty under its own laws could be undermined. However, another view is that the TL of the applicant State should apply. The main argument for this solution is that the requested State is providing assistance in the recovery of a claim which has arisen under a different system of law, which undoubtedly governs the creation and the extinction of that claim. Therefore, as long as the right to recover the claim has not been lost by the expiry of the TL under the laws of the applicant State, the claim remains in being and can be recovered.

139. In this Convention, paragraph 1 provides that questions concerning any period beyond which a claim cannot be enforced shall be governed solely by the laws of the applicant State. Since these laws, and these laws only, are to be applied, it follows that as long as the validity of the claim has not expired under these laws, this validity may not be affected by the fact that the TL of the requested State has expired.

140. Quite a different approach would have been to have had no specific rule on this subject in the Convention but to have allowed the requested State to invoke Article 21 and refuse to lend assistance in cases where the TLs in the applicant State are longer than its own. However, it has been felt preferable that conflicts between the TLs of two States be solved by specific provisions. Accordingly, paragraph 1 offers a precise solution to the problem.

141. The second sentence of paragraph 1 obliges the applicant State to give particulars about its TL when making the request; the most important information will normally be the date of expiry of the claim but in some circumstances further details may be useful.

Paragraph 2

142. A request for assistance in recovery does not affect the possibilities which the applicant State has of suspending or interrupting under its laws the TL specified in paragraph 1. This does not require provisions in the Convention, since paragraph 1 stipulates that the laws of the applicant State govern any question relating to TLs.

143. However, the requested State, when recovering the foreign claim according to its own laws and administrative practice, may have to take steps in order to suspend or interrupt that TL and it is not obvious that the steps provided for by its domestic laws would have the effect of suspending or

interrupting the TL under the laws of the applicant State. In order to make the position clear, paragraph 2 stipulates that measures by the requested State to suspend or interrupt the TL shall have the same effect under the laws of the applicant State.

144. It follows that, when measures to this effect are taken by the requested State, the effect thereof for the applicant State will be the same as if it had taken such measures itself. For instance, if the requested State has taken a measure on a certain date which would, as a consequence thereof, become the starting-point for a new TL if it were taken in the recovery of its own taxes, the result of paragraph 2 is to provide the applicant State, from that same date, with a new TL of the same length as under its own laws.

145. Since both the applicant and the requested States may suspend or interrupt that period, it is evident that they have to keep each other informed about measures taken to this effect. In its own interest and as required by paragraph 1, the applicant State will inform the requested State about its own measures; paragraph 2 obliges the requested State to inform the applicant State about its measures, since the laws of that State govern the TL and it is essential for the applicant State to keep the position under review in order that its tax claim can still be enforced.

Paragraph 3

146. Legal systems differ considerably with regard to the length of the period beyond which a claim cannot be enforced. On account of many States' reluctance to assist in the recovery of longstanding claims, this paragraph provides that there is no obligation to comply with a request for assistance "submitted over fifteen years from the date of the original instrument permitting enforcement".

147. The fifteen-year period is such as to avoid an obligation to assist recovery of longstanding claims; yet it is sufficient time for disputes over the existence or the validity of a claim to be settled domestically before assistance is requested under the Convention. The period runs from the date of the original instrument permitting enforcement. By "original instrument permitting enforcement" is meant the instrument originally issued, permitting enforcement in the applicant State within the meaning of paragraph 1.b of Article 13 of the Convention. Legislation in some States requires renewal of the enforcement instrument, in which case the first instrument is the one that counts. The date of the original instrument is easily ascertainable, which makes it possible to avoid enquiries and conflicts relating to interruptions of the period.

Article 15 – Priority

148. In order to ensure that they can recover taxes to the fullest possible extent, States generally include in their laws provisions giving their tax claim priority over the claims of other creditors. This priority becomes apparent if the property of the taxpayer is seized, for instance in the case of bankruptcy. Sometimes special categories of taxes are a prior charge on certain goods, or the laws may provide for a prior charge on immovable property for tax debts in general.

149. The article provides that the tax claim in the recovery of which assistance is provided shall not have in the requested State any priority specially accorded to the tax claims of that State. This means that the priorities enjoyed by the requested State for the recovery of its own tax claims are not automatically extended to the tax claims of the applicant State. There are various reasons for this provision. First, the residents of a State are by and large well acquainted with the taxes which their State levies and with the priority that such tax claims enjoy. It cannot however be expected of residents of a State that they should also be acquainted with any priorities that tax claims of another State might have. It would be very

unsatisfactory for creditors in a State if the courses open to them for recovery, already restricted by the priority given to that State's tax claims, were also to be restricted by the priority being given to tax claims of another State. Other reasons for denying priority to claims of the applicant State in the requested State are to avoid competition between the priorities of the taxes of the two States or the complication of devising special rules for such occasions.

150. The rule that the applicant State's tax claim must not be given any special priority attaching to the requested State's claims is absolute, applying "even if the recovery procedure used is the one applicable to its own (that is to say the requested State's) tax claims". This provides a precaution against giving unjustified priority to the applicant State's tax claims by applying to them rules of procedure normally applicable in the requested State to the latter's own tax claims.

151. Nevertheless, the article does not limit in any way the possibility for the requested State, as in the case of any other creditor, to obtain security in general law in order to guarantee the tax claim of the applicant State, for example, by the registration of a charge on immovable property.

Article 16 – Deferral of payment

152. The domestic laws of States contain provisions which empower the State under certain circumstances to soften the full force of the law concerning recovery of tax claims in particular cases. Most States will also have developed administrative practices on this point.

153. This article makes clear what is already implied in paragraph 1 of Article 11, namely that deferral of payment or payment by instalments is permitted where the law or administrative practice of the requested State provides for this. This provision is not intended to cover cases where a short period of delay is allowed to enable the taxpayer to realise assets to meet the tax claim. It recognises the essential element of flexibility which most recovery procedures contain in order to deal with cases of genuine financial hardship or of practical difficulties in realising certain assets in the short term; it will normally be in the interest of both the applicant and the requested State to solve this special problem in a fair and practical way.

154. The requirement that the requested State is to inform the applicant State before deferral of payment or payment by instalments is allowed elaborates on the basic provisions of Article 20 (response to the request for assistance) and is meant not only to give the applicant State notice of the proposal but also an opportunity to provide, then or later, information which will show that this concession to the taxpayer is not, in the particular circumstances, justified. In general, however, once an arrangement is made by the requested State, it should not be disturbed unless there are new and special circumstances, for example, the taxpayer has received substantial further assets or has been found to have concealed assets.

155. Where there is disagreement between the States on questions of deferral of payment, it has to be remembered that the applicant State has found itself unable to collect its tax anyway and that it is the law and administrative practice of the requested State which predominates in the recovery procedure. It is of course possible for the applicant State or the requested State (under Article 12) to take measures of conservancy in any suitable case as additional protection when deferral arrangements are made with the taxpayer.

156. However, when the applicant State is prepared to grant to its taxpayers longer deferral of payment than is provided for under the laws of the requested State, there is no reason for that State to be less lenient than the applicant State vis-à-vis the latter's own taxpayer. The applicant State should indicate at the time

of its request whether this is the case. It should similarly inform the requested State if it decides to suspend the action for a period of time (see commentaries on Article 18).

SECTION III – SERVICE OF DOCUMENTS

Article 17 – Service of documents

Paragraph 1

157. There are often difficulties for States in serving documents abroad (for example, in the case of a tax claim against a non-resident). The Convention therefore provides for administrative assistance between Contracting States in this area. Although such assistance may, in principle, be requested at all phases of tax proceedings, assistance in the service of documents as referred to in this article will in practice relate mainly to the assessment phase. The aim here is to ensure as far as possible that documents such as notices of assessment or reminders actually reach the taxpayer, in order to avoid enforcement steps being taken against a taxpayer who is genuinely ignorant of the tax claim or is merely neglectful. Documents shall be served if required for the activities of the tax authorities or for the protection of taxpayers. The provision shall be inapplicable to any other circumstances, in particular to audits for non- tax purposes. As they may mutually agree on the mode of application of this provision, in accordance with Article 24, paragraph 1, of the Convention, the Contracting States may indicate whether they want to be informed of the content of the documents to be served. Relying upon paragraph 2.b of Article 21, the requested State may object to the service of a document which, in itself or because of its implications, it considers contrary to public policy.

158. In the great majority of countries, the possibility of recovery does not depend on whether the documents have actually reached the taxpayer. Most States have regulations concerning the way in which documents must be brought to the attention of the taxpayer in normal cases. Often there are also regulations to cover cases in which the taxpayer lives abroad or his address is not known (for example, documents are sent via consular missions or posted in public buildings). Generally, recovery can take place even when it is not certain that the notice to pay or final demand has reached the taxpayer.

159. For the reasons given in the foregoing paragraph, uncertainty that service of documents has been achieved should not in most cases be a legal obstacle to granting assistance in recovery. Also, assistance in the service of documents is an additional administrative burden on the requested State. Therefore, the omission of a provision on this subject would not have seriously weakened the Convention. Even so, such a provision gives additional protection for the taxpayer, may strengthen the recovery procedure and may itself lead to payment without the need for further assistance. However, Contracting States which are not able to provide assistance of this kind may enter a reservation under paragraph 1.d of Article 30.

Paragraph 2

160. This paragraph deals with the procedure to be followed by the requested State in serving the applicant State's documents. The service of documents will be effected by the requested State as if they were its own documents, that is to say by a method prescribed by its domestic laws for documents of a substantially similar nature (sub-paragraph a).

161. There are cases, however, where the applicant State has a preference for a certain method of service. Such a preference may be expressed when sending the request for assistance. The requested State shall then effect service of documents accordingly, insofar as the method requested by the applicant State is available under its own laws. If not, it will make use of the closest method available under its domestic laws (sub-paragraph b).

Paragraph 3

162. While States may agree to assist each other in this matter, it is clear that this will lead to an increase in the workload as two tax administrations will be involved. An obvious way of avoiding this extra work is to send directly by post notices of assessment, tax demands or other documents to the taxpayer abroad, it being understood that such sending by post cannot always be regarded as equivalent to an official notification under the laws of the taxing State. Paragraph 3 provides for such a possibility.

163. In the majority of countries, the use of their postal service does not seem to present any problems. However, difficulties arise where a State regards the sending by post of official documents of another State to its residents as an infringement of its sovereignty. It may also be inferred from the Hague Conventions on Civil Procedure that the use of foreign postal services for official notifications cannot be taken for granted. Hence this specific provision in the Convention. Contracting States which could not adhere to such a provision may enter a reservation under paragraph 1.e of Article 30 on the use of their postal services.

Paragraph 4

164. The Convention provides additional means whereby the applicant State may serve its documents. Neither this article nor anything else in the Convention is intended to prevent a Contracting State from using its own procedures for the service of documents in its own territory or in another State, if that is possible under the laws of that other State – or to invalidate the use of such procedures. This is of special interest to applicant States which may serve documents in other ways (for example, service on a representative of the taxpayer in the territory of that State or service by public notice). Although such methods of service do not necessarily guarantee that the taxpayer actually receives a notification, their usual effect is that he is deemed to have received it.

Paragraph 5

165. In some cases, the person on whom the document is served may not understand the language in which it is written. Paragraph 5 recognises this. Where the taxpayer has genuine problems in comprehending the language concerned and the competent authority is satisfied that it is so, the paragraph provides a solution which broadly parallels that adopted in Article 7 of the European Convention on the Service Abroad of Documents relating to Administrative Matters (ETS No. 94).

CHAPTER IV – PROVISIONS RELATING TO ALL FORMS OF ASSISTANCE

Article 18 – Information to be provided by the applicant State

Paragraph 1

166. The requested State must be informed as to the authority in the applicant State which originally made the request for assistance. Since the competent authority issuing the request to the other State as a rule is not directly concerned with the practical work as regards the case, this information is useful both to the requested State and to the taxpayer in the case of recovery. For the competent authority of the requested State, it facilitates contacts and makes it easier to get complementary information which may be needed in order to meet the request. For the taxpayer, it may help for instance to clear up which claim is meant.

167. The more details the applicant State can provide, the better the information received is likely to be. The paragraph asks the applicant State to provide the requested State with all available information which can assist in identifying the person, or an ascertainable group or category of persons, concerned. The

Convention was amended in 2010 to clarify this issue. The person, or ascertainable group or category of persons, concerned may be the taxpayer himself or, where relevant, any other person, such as the promoter of tax schemes or other intermediaries involved. As mentioned in paragraph 50 above, this does not mean, however, that Parties can engage in fishing expeditions.

168. Under sub-paragraph c, the applicant State is given the possibility of indicating the form in which it wishes the information to be supplied; where feasible, the information will be supplied by the requested State in the form requested (see comment under Paragraph 3 of Article 20).

169. The request must also, in the case of a request for assistance in recovery or measures of conservancy, specify the nature and amount of the claim. This information is necessary to enable the requested State to determine which provisions of its law and administrative practice apply for the recovery or measure of conservancy. For the same reason, requests for the service of documents must state the nature of the documents to be served.

170. Also in the case of a request for assistance in recovery or measures of conservancy, the request should give the maximum details of the claim, that is to say, show clearly, as appropriate the tax itself interest due in respect of late payment, any administrative fine and the costs already accrued in the applicant State. This information has explanatory value for the taxpayer and enables the requested State, for example, to allocate partial payment to the different elements of the claim. The applicant State should also indicate any preferred timetable for recovery or any possibility of deferral of payment under its own laws.

171. For practical reasons, the request for assistance should mention any known assets out of which the tax claim might be recovered. This could facilitate and accelerate the recovery or measure of conservancy in the requested State and relieve it of the task of having to trace the assets before being able to comply with the request. If, however, the request concerns a debtor resident in the requested State, that State will be better placed to know the possibilities for recovery or measures of conservancy than the applicant State. In that case, the applicant State will not be obliged to provide with its request information which it could only obtain with excessive effort.

172. Finally, when presenting a request for assistance, the applicant State shall indicate whether the said request is in conformity with its own law and administrative practice and whether all means available in its own territory have been pursued, in conformity with Article 21.2.g. Should these conditions not be satisfied, the requested State would not be obliged to accede to the request. The object of sub-paragraph f is to enable the requested State, without any investigation of its own into the law and administrative practice of the applicant State or into the possibilities of recovery in the territory of that State, to assess the possible implications of the request, as well as the best ways to handle it.

Paragraph 2

173. Obviously the competent authorities of the two States concerned must keep each other informed of any developments regarding the claim or the taxpayer occurring after the request has been made. In general, the applicant State should do everything in its power to reduce the burden of assistance on the requested State.

Article 19 – Possibility of declining a request

[DELETED]

Article 20 – Response to the request for assistance

174. If States agree to provide administrative assistance to each other, it would seem to be implied that they are in normal contact. But, for the purpose of clarity, this article sets out in specific terms the way in which the requested State could normally be expected to respond to a request for assistance.

Paragraph 1

175. This paragraph requires the requested State to inform the applicant State of the action taken and the outcome of the assistance as soon as possible. If the measures taken by the requested State are unlikely to produce results within a short period, it would help the applicant State to know that the request has been acted upon. The requirement to notify the outcome refers to the obvious point that the requested State is required to notify the applicant State as soon as possible after the examination has been carried out, the measure of conservancy has been taken, the claim has been recovered or the service of documents has taken place, or in the event that it is unable to meet the request, when it is decided not to pursue the matter further.

Paragraph 2

176. This paragraph requires the requested State also to give reasons if it decides not to provide assistance. It is important for the applicant State to be informed of the reasons for a refusal not only as a matter of courtesy but also to give it the opportunity to correct or elaborate its request with a view to resubmitting it if that is appropriate. However, the requested State does not normally have to give every detail of the reasons for declining the request (for example, why it considers certain measures as being contrary to public policy).

Paragraph 3

177. This paragraph stipulates that the information shall be supplied to the applicant State in the form in which the latter wishes it to be supplied. The object is that the information should be of the greatest use to the State concerned. This of course presupposes that the applicant State will have indicated beforehand the form in which it wished the information to be supplied (see paragraph 168 above). The obligation is conditional; it exists only insofar as the requested State "is in a position to do so".

Article 21 – Protection of persons and limits to the obligation to provide assistance

178. This article is of particular importance in achieving a proper balance between the need to make mutual administrative assistance in tax matters effective and the need to provide safeguards for the taxpayers and also for the requested State. The Article contains a number of provisions, which depending on the case, may be relevant for all forms of assistance covered by the Convention (for example, sub-paragraphs 2.a, 2.b, 2.e, 2.f, and 2.g), only for assistance in recovery (for example, sub-paragraph 2.h) or only for exchange of information (for example, sub-paragraphs 2.c and 2.d, paragraphs 3 and 4).

Paragraph 1

179. Paragraph 1 states explicitly what is implicit throughout the Convention: that the rights and safeguards of persons under national laws and administrative practices are not reduced in any way by the Convention (see also paragraph 181 below). However, as indicated in paragraphs 8 and 24 above, the requested State's domestic laws and administrative practices providing for such rights and safeguards should not be applied in a manner that undermines the object and purpose of the Convention. Such

procedural rights and safeguards also include any rights secured to persons that may flow from applicable international agreements on human rights.

180. For example, some countries' laws include procedures for notifying the person who provided the information and/or the taxpayer who is subject to the enquiry prior to the administrative assistance. Such notification procedures may be an important aspect of the rights provided under domestic law. They can help prevent mistakes (for example, in cases of mistaken identity) and facilitate assistance (by allowing taxpayers who are notified to co-operate voluntarily with the tax authorities in the applicant State). However, notification procedures are expected not to be applied in a manner that, in the particular circumstances of the request, would undermine the object and purpose of the Convention and frustrate the efforts of the applicant State. In other words, the Parties are expected not to unduly prevent or delay effective administrative assistance. For instance, it is expected that notification procedures would permit exceptions from prior notification, for example, in cases in which an information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the applicant State. A Party that under its domestic law is required to notify the person who provided the information and/or the taxpayer that an exchange of information is proposed is expected to inform the other Parties in writing that it has this requirement and what the consequences are for its obligations in relation to the administrative assistance covered by this Convention.

181. Furthermore, as is made clear in paragraphs 3 and 4 of the article, the rights and safeguards referred to in paragraph 1 cannot be construed to permit a requested State to decline to supply information solely because it has no domestic interest in such information or because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity, or because it relates to ownership interests in a person.

Paragraph 2

182. Paragraph 2 sets limits to the obligation to provide assistance and may therefore offer further safeguards for the taxpayer. While it is not structured as a mandatory provision under which the requested State must impose the relevant limits in responding to requests for assistance, some States may wish to operate strictly within these limits. The provision reflects as closely as is possible in this type of convention the principle of reciprocity which has traditionally governed international co-operation in the form of administrative assistance in tax matters.

183. The paragraph states first (sub-paragraph a), as a general principle, that the requested State is not obliged to carry out measures at variance with its own laws. Nor, since the obligation to provide assistance is further qualified, is the requested State obliged to use powers provided for in its domestic laws but which it does not in practice normally use. Nor is the requested State obliged, even if it can do so under its own law, to exercise powers which the applicant State does not possess in its own territory. Thus, if the applicant State has no domestic power to take measures of conservancy, the requested State could decline to take such measures on its behalf, or if seizure of goods to satisfy a tax claim is not permitted in the applicant State, the requested State is not obliged to seize goods when providing assistance in collection. In short, it is only those powers and practices which the Contracting States have in common which the requested State is obliged to carry out. This rule is important in safeguarding the rights of taxpayers since it prevents the applicant State from making use indirectly, because it has sought assistance, of greater powers than it possesses under its own law. By virtue of this principle, the requested State is at liberty, though not obliged, to refuse to grant assistance.

184. An exception to this principle is nevertheless made in the field of TLs for the recovery of tax claims, where it is made clear in Article 14 that the law of the applicant State shall apply. The commentary on Article 14 discussed this question in detail.

185. Another ground for refusing assistance (sub-paragraph b) is as follows: it is inconceivable that States would be prepared to jeopardise public policy within their own territory for the sake of another State.

186. It should be noted that the term "measure" used in sub-paragraphs a and b does not refer to the forms of assistance provided for by the Convention (for example, the supply of information to the applicant State) but to the domestic acts which are carried out by the authorities in order to implement these forms of assistance (for example, interviewing witnesses or carrying out searches, etc.).

187. Sub-paragraph c applies specifically to exchanges of information and provides for safeguards similar to those commented upon in paragraphs 183 and 184 above. Thus, the requested State is not obliged to supply information which is not obtainable under its own laws or in the normal course of its administration nor is it obliged to procure information in a way not open to the applicant State under its own law or in the normal course of that State's administration. As provided in Article 22, the authorities of the applicant State are obliged to observe secrecy in respect of information supplied under the Convention.

188. Information is regarded as obtainable in the normal course of administration if it is in the possession of the tax authorities or can be obtained by them by following the normal procedure, which may include special investigations, provided that the tax authorities would make similar investigations for their own purposes. It follows that the requested State has to collect the information needed by the other State in the same way as if its own taxes were involved.

189. The reciprocity provided for in sub-paragraphs a and c of the paragraph establishes a kind of minimum position whereby the requested State is not obliged to do more in providing assistance than the applicant State can do under its domestic law; moreover, the requested State need supply no more information than is the normal practice for that State. This does not imply that a more extensive assistance is excluded, but that the requested State need not comply with the request. In such a situation, the requested State is at liberty to supply or refuse to supply the requested information. If it does give the information, the requested State remains completely within the framework of the agreement on the exchange of information which is laid down in the Convention. Furthermore, it is worth noting that if a Party to this Convention applies, under Article 21 paragraph 4, measures normally not foreseen in its domestic law or practice, such as to access and exchange bank information, that State is equally entitled to request similar information from the other Parties to the Convention. This would be fully in line with the principle of reciprocity which underlies sub-paragraphs a and c of paragraph 2.

190. The right to refuse information because of lack of reciprocity could, if the structure of the information system of the treaty partners differed very much, lead to the result that very little information was exchanged. In order to avoid this undesirable result, a more practical solution would be for the applicant State to make a request even though it was not certain that the requested State would accede to it. At the same time, the latter State could refrain, as far as possible, from making use of its right of refusal.

191. A relevant question in the area of exchanges of information is whether and in what way the requested State, when passing the information, may ask for special secrecy requirements to be met in the applicant State. It may indeed be preferable in certain cases that the requested State, instead of refusing the information on the grounds of this article, should specify the nature of the information given

("earmarked" information) as well as any special conditions attached to its use (for example, special confidentiality requirements, notification of taxpayers, etc.). This would apply in particular to cases where trade and business secrets are involved. However, consistent with international law, in situations where the requested State determines that the applicant State does not comply with its duties regarding the confidentiality of the information exchanged under the Convention, the requested State may suspend assistance under the Convention until such time as proper assurance is given by the applicant State that those duties will indeed be respected. If necessary, the competent authorities may enter into specific arrangements or memoranda of understanding regarding the confidentiality of the information exchanged under the Convention.

192. Sub-paragraph d of the paragraph contains a reservation concerning the disclosure of certain secret information. Secrets mentioned in this sub-paragraph should not be taken in too wide a sense. Before invoking this provision, a Contracting State should carefully weigh whether the interests of the taxpayer really justify its application. Otherwise, it is clear that too wide an interpretation would in many cases render ineffective the exchange of information provided for in the Convention. The observations made in paragraphs 187 to 189 above apply here as well. The requested State, in protecting the interests of its taxpayers, is given a certain discretion to refuse to give the requested information, but if it does supply the information deliberately the taxpayer cannot allege an infraction of the rules of secrecy.

193. In its deliberations regarding the application of secrecy rules, the Contracting State should also take into account the confidentiality rules of Article 22 of the Convention. The domestic laws and practices of the applicant State, together with the obligations imposed under Article 22, may ensure that the information cannot be used for the types of unauthorised purposes against which the trade or other secrecy rules are intended to protect. Thus, a Contracting State may decide to supply the information where it finds that there is no reasonable basis for assuming that a taxpayer involved may suffer any adverse consequences incompatible with information exchange.

194. In most cases of information exchange no issue of trade, business or other secret will arise. A trade or business secret is generally understood to mean facts and circumstances that are of considerable economic importance and that can be exploited practically and the unauthorised use of which may lead to serious damage (for example, may lead to severe financial hardship). The determination, assessment or collection of taxes as such could not be considered to result in serious damage. Financial information, including books and records, does not by its nature constitute a trade, business or other secret. In certain limited cases, however, the disclosure of financial information might reveal a trade, business or other secret. For instance, a request for information on certain purchase records may raise such an issue if the disclosure of such information revealed the proprietary formula used in the manufacture of a product. The protection of such information may also extend to information in the possession of third persons. For instance, a bank might hold a pending patent application for safe keeping or a secret trade process or formula might be described in a loan application or in a contract held by a bank. In such circumstances, details of the trade, business or other secret should be excised from the documents and the remaining financial information exchanged accordingly.

195. A requested State may decline to disclose information relating to confidential communications between attorneys, solicitors or other admitted legal representatives in their role as such and their clients to the extent that the communications are protected from disclosure under domestic law. However, the scope of protection afforded to such confidential communications should be narrowly defined. Such protection does not attach to documents or records delivered to an attorney, solicitor or other admitted legal

representative in an attempt to protect such documents or records from disclosure required by law. Also, information on the identity of a person such as a director or beneficial owner of a company is typically not protected as a confidential communication. Whilst the scope of protection afforded to confidential communications might differ among States, it should not be overly broad so as to hamper effective exchange of information. Communications between attorneys, solicitors or other admitted legal representatives and their clients are only confidential if, and to the extent that, such representatives act in their capacity as attorneys, solicitors or other admitted legal representatives and not in a different capacity, such as nominee shareholders, trustees, settlors, company directors or under a power of attorney to represent a company in its business affairs. An assertion that information is protected as a confidential communication between an attorney, solicitor or other admitted legal representative and its client should be adjudicated exclusively in the Contracting State under the laws of which it arises. Thus, it is not intended that the courts of the requested State should adjudicate claims based on the laws of the applicant State.

196. It has been felt necessary also in sub-paragraph d to prescribe a limitation with regard to information which concerns the vital interests of the State itself. To this end, it is stipulated that Contracting States do not have to supply information the disclosure of which would be contrary to public policy (*ordre public*). However, this limitation should only become relevant in extreme cases. For instance, such a case could arise if a tax investigation in the applicant State were motivated by political, racial, or religious persecution. The limitation may also be invoked where the information constitutes a state secret, for instance sensitive information held by secret services the disclosure of which would be contrary to the vital interests of the requested State. Thus, issues of public policy (ordre public) should rarely arise in the framework of the Convention.

197. Sub-paragraph e enables a requested State to refuse to provide assistance "if and insofar as it considers the taxation in the applicant State to be contrary to generally accepted taxation principles". This might be the case, for instance, where the requested State considers that taxation in the applicant State is confiscatory, or where it considers that the taxpayer's punishment for the tax offence would be excessive.

198. The same sub-paragraph also provides for refusal rights where the requested State considers taxation in the applicant State to be "contrary to the provisions of a convention for the avoidance of double taxation". It is understood that such a phrase refers to taxation contrary to such convention rules as rates of withholding, the definition of permanent establishment and the determination of their taxable profits and so on. The phrase is not intended to refer to all cases of double taxation. Since income tax conventions do not eliminate all cases of double taxation, assistance should be provided even though it may result in double taxation not contrary to a convention. It should be noted that cases of this sort may be the subject of consultation between the competent authorities of the Contracting States under paragraph 5 of Article 24.

199. It is suggested that consultation between competent authorities should also take place whenever there is some doubt as to whether the taxation in the applicant State is of such a kind as to justify a refusal under the provisions of sub-paragraph e.

200. Sub-paragraph f is designed to ensure that the Convention does not result in discrimination between nationals of the requested State and nationals of the applicant State who are in the same circumstances. In the exceptional circumstances in which this issue may arise, sub-paragraph f allows the requested State to decline a request where the information requested by the applicant State would be used to administer or enforce tax laws of the applicant State, or any requirements connected therewith, which discriminate

against nationals of the requested State. Sub-paragraph f is intended to ensure that the Convention does not result in discrimination between nationals of the requested State and identically placed nationals of the applicant State. Nationals are not identically placed where an applicant State national is a resident of that State while a requested State national is not. Thus, sub-paragraph f does not apply to cases where tax rules differ only on the basis of residence. The person's nationality as such should not lay the taxpayer open to any inequality of treatment. This restriction should apply both to procedural matters (differences between the safeguards or remedies available to the taxpayer, for instance) and to substantive matters, such as the rate of tax applicable.

201. Sub-paragraph g opens up a possibility for the requested State to refuse to accede to a request if it considers that the applicant State has not made adequate use of the means available on its own territory. However, if frequently used, sub-paragraph g would diminish the obligation to provide assistance as set out in Article 1. Therefore, the requested State should use this facility only if it has good grounds for assuming that the applicant State still has convenient means of action within its own territory.

202. The ground for such a refusal is the extra burden placed on the administrative machinery of the requested State by the request for assistance, particularly in the case of assistance in recovery. The normal duty of a tax administration is to implement domestic tax laws and a request for such assistance from abroad always involves extra work for the tax authority.

203. In practice, there should be very little use of this sub-paragraph in relation to requests for information or requests for the service of documents: it must ordinarily be assumed that the applicant State has already made use of domestic means and that its request results from the difficulty of obtaining information or of making contact with the taxpayer.

204. If, however, the requested State does refuse a request on the ground that other means are still available in the applicant State, that State still has the possibility of arguing, under the last part of the sub-paragraph, that the actions it might take would give rise to disproportionate difficulties. For instance, in the case of examinations auditing one single supplier in the requested State might lead to the same conclusions as the audit of a large number of buyers in the applicant State. Or, in the case of assistance in recovery, some assets might only be seized through lengthy proceedings in the applicant State, while there are other assets in the requested State that can be seized more easily.

205. It can happen that the assistance required creates problems for the requested State. For instance, the requested State may be placed in a position where, under its own administrative practice, it would not, or would not yet, take steps towards recovery. In such cases, under sub-paragraph 2.a of Article 21, assistance can be refused or deferred. But there are less obvious situations where consultation between competent authorities under Article 24 would be the normal preliminary step in arriving at an agreed solution.

206. Finally, under sub-paragraph h, the requested State may reject a request for assistance in recovery due to practical considerations, for instance if the costs that it would incur in collecting a revenue claim of the applicant State would exceed the amount of the revenue claim.

Paragraph 3

207. Paragraph 3 was added in 2010 to deal explicitly with the obligation to exchange information in situations where the requested information is not needed by the requested State for domestic tax purposes. Prior to the addition of paragraph 3 this obligation was not expressly stated in the article, but was clearly evidenced by the practices followed by a number of countries which showed that, when collecting

information requested by another Party, the Party concerned often uses the special examining or investigative powers provided by their laws for purposes of levying their domestic taxes even though they do not themselves need the information for these purposes. This principle is also stated in the OECD report Improving Access to Bank Information for Tax Purposes.

208. According to paragraph 3, the requested State must use its information gathering measures, even though invoked solely to provide information to the applicant State. The term "information gathering measures" means laws and administrative or judicial procedures that enable a State to obtain and provide the requested information.

209. The second sentence of paragraph 3 makes clear that the obligation contained in paragraph 3 is subject to the limitations contained in the Convention (for example, in paragraphs 1 and 2 of the article) but also provides that such limitations cannot be construed to form the basis for declining to supply information where a country's laws or practices include a domestic tax interest requirement. Thus, whilst a requested State cannot invoke paragraph 2 and argue that under its domestic laws or practices it only supplies information in which it has an interest for its own tax purposes, it may, for instance, decline to supply the information to the extent that the provision of the information would disclose a trade secret.

Paragraph 4

210. The Convention imposes a positive obligation on the Parties to exchange all types of information. Paragraph 4 is intended to ensure that the limitations contained in the Convention (for example, in paragraphs 1 and 2 of the article) cannot be used to prevent the exchange of information held by banks, other financial institutions, nominees, agents and fiduciaries as well as ownership information. The addition of paragraph 4 in 2010 should not be interpreted as suggesting that the previous version of the Convention did not authorise the exchange of such information. Several countries already exchanged such information under the previous version of the article and the addition of paragraph 4 merely reflects current practice.

211. Paragraph 4 stipulates that a requested State shall not decline to supply information to a treaty partner solely because the information is held by a bank or other financial institution. Thus, paragraph 4 overrides paragraphs 1 and 2 to the extent that those paragraphs would otherwise permit a requested Contracting State to decline to supply information on grounds of bank secrecy. The addition of this paragraph to the article reflects the international trend in this area as reflected in the OECD Model Tax Convention on Income and on Capital, in the OECD Model Agreement on Exchange of Information on Tax Matters, and as described in the 2000 OECD report Improving Access to Bank Information for Tax Purposes. In accordance with that report, access to information held by banks or other financial institutions may be by direct means or indirectly through a judicial or administrative process. The procedure for indirect access should not be so burdensome and time-consuming as to act as an impediment to access to bank information.

212. Paragraph 4 also provides that a requested State shall not decline to supply information solely because the information is held by persons acting in an agency or fiduciary capacity. For instance, if a Party had a law under which all information held by a fiduciary was treated as a "professional secret" merely because it was held by a fiduciary, such State could not use such law as a basis for declining to provide the information to another Party. A person is generally said to act in a "fiduciary capacity" when the business which the person transacts, or the money or property which the person handles, is not its own or for its own benefit, but for the benefit of another person as to whom the fiduciary stands in a relation implying and

necessitating confidence and trust on the one part and good faith on the other part, such as a trustee. The term "agency" is very broad and includes all forms of corporate service providers (for example, company formation agents, trust companies, registered agents, lawyers).

213. Finally, paragraph 4 states that a requested State shall not decline to supply information solely because it relates to an ownership interest in a person, including companies and partnerships, foundations or similar organisational structures. Information requests cannot be declined merely because domestic laws or practices may treat ownership information as a trade or other secret.

214. Paragraph 4 does not preclude a requested State from invoking paragraphs 1 and 2 to refuse to supply information held by a bank, financial institution, a person acting in an agency or fiduciary capacity or information relating to ownership interests. However, such refusal must be based on reasons unrelated to the person's status as a bank, financial institution, agent, fiduciary or nominee, or the fact that the information relates to ownership interests. For instance, a legal representative acting for a client may be acting in an agency capacity but for any information protected as a confidential communication between attorneys, solicitors or other admitted legal representatives and their clients, paragraph 2 continues to provide a possible basis for declining to supply the information.

215. The following examples illustrate the application of paragraph 4:

a) Company X owns a majority of the stock in a subsidiary company Y, and both companies are incorporated under the laws of State A. State B is conducting a tax examination of business operations of company Y in State B. In the course of this examination the question of both direct and indirect ownership in company Y becomes relevant and State B makes a request to State A for ownership information of any person in company Y's chain of ownership. In its reply State A should provide to State B ownership information for both company X and Y.

b) An individual subject to tax in State A maintains a bank account with Bank B in State B. State A is examining the income tax return of the individual and makes a request to State B for all bank account income and asset information held by Bank B in order to determine whether there were deposits of untaxed earned income. State B should provide the requested bank information to State A.

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

Article 22 – Secrecy

Paragraph 1

216. Respect for the confidentiality of information is a corollary of the powers of tax authorities and is necessary to protect the legitimate interests of taxpayers. Mutual assistance between tax administrations is therefore feasible only if each administration is assured that the other administration will treat with proper confidence the information which it obtains in the course of their co-operation. The maintenance of secrecy in the receiving State is a matter of its domestic laws, and so the article provides that information obtained

under the provisions of the Convention shall be treated as secret and protected in the receiving State in the same manner as information obtained under its domestic laws. The right to privacy is acknowledged in numerous human rights instruments, and there are several international instruments addressing privacy with specific reference to the automatic processing of personal data (i.e., information relating to an identified or identifiable individual). See, for example, the OECD Privacy Guidelines on the Protection of Privacy and Transborder Flows of Personal Data (1980). In addition, certain Parties to the Convention have undertaken legal obligations relating to the protection of personal data (see, e.g., the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981 and its additional Protocol of 8 November 2001), and have adopted domestic laws regarding data protection. When revising the Convention in 2010, it was therefore decided to make it clear that the Party receiving the information shall treat them in compliance not only with its own domestic law, but also with safeguards that may be required to ensure data protection under the domestic law of the supplying Party. Such safeguards, as specified by the Supplying Party, may for example relate to individual access, independent oversight or redress. The specification of the safeguards may not be necessary if the supplying Party is satisfied that the receiving Party ensures the necessary level of data protection with respect to the data being supplied. In any case, these safeguards should not go beyond what is needed to ensure data protection. Such safeguards shall not be interpreted as to permit a requested state to decline to supply information because it has no domestic interest in such information or because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Paragraph 2

217. In order to lay down an additional minimum requirement for this secrecy, the article stipulates further that the information obtained "shall in any case be disclosed only to persons or authorities (including courts, administrative or supervisory bodies) concerned with the assessment, collection or recovery of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, taxes of that Party, or the oversight of the above" and also that only the persons or authorities mentioned above may use the information and then only for such purposes.

218. As the information obtained may be disclosed to persons and authorities mentioned in paragraph 2, this information may also be communicated to taxpayers or their representatives. As far as recovery is concerned, information may be disclosed to any other person from whom the tax is to be recovered, but only insofar as is necessary for the purposes of recovery. The confidentiality rules of Article 22 apply to all types of information received under the Convention, including both information provided in a request and information transmitted in response to a request. The maintenance of secrecy in the receiving State is a matter of domestic laws. It is therefore provided that information communicated under the provisions of the Convention shall be treated as secret in the receiving State in the same manner as information obtained under the domestic law of that State. Sanctions for the violation of such secrecy in that State will be governed by the administrative and penal laws of that State.

219. By reason of the variety of taxes covered by the Convention, the circle of authorities to which the secrecy provisions of Article 22 apply is likely to be wider here than is usual, for example, under a double taxation convention. This will be the case wherever some of the taxes, levies or contributions covered under Article 2 are not levied by the tax administration, as commonly defined, but by separate agencies; such agencies will then be covered by the provisions of the article, that is to say as authorities to which a piece of information obtained by the applicant State may be disclosed and which have to treat the

information as secret. In these cases, however, special domestic secrecy requirements may exist (for example, for information concerning social security contributions) which may impose more or less strict obligations than domestic tax secrecy rules.

220. Where, as a result of information received, the taxable income of a taxpayer is adjusted in the applicant State, that State may have occasion, in accordance with its legislation or regulations, to communicate the amount of taxable income so adjusted to non-tax authorities. Such communication would not be contrary to the provisions of the article, provided that the information itself which has been received by the applicant State is not disclosed. Furthermore, the information received by the competent authority of a Party, whether taxpayer-specific or not, should not be disclosed to persons or authorities not mentioned in paragraph 2, regardless of domestic information disclosure laws such as freedom of information or other legislation that allows greater access to governmental documents.

221. The fact that information obtained can be communicated to competent persons and authorities does not imply that it may be disclosed freely by them. These persons and authorities may use it only for the purposes stated in paragraph 2. The information obtained can be communicated to the persons and authorities mentioned and on the basis of the last sentence of paragraph 2 of this article can be disclosed by them in court sessions held in public or in decisions which reveal the name of the taxpayer. Once information is used in public court proceedings or in court decisions and thus rendered public, it is clear that from that moment such information can be quoted from the court files or decisions for other purposes even as possible evidence. But this does not mean that the persons and authorities mentioned in paragraph 2 are allowed to provide on request additional information received.

222. Except in the special circumstances described in paragraph 4 of the article, the information received by the competent authority of a Party may be used only for the purposes mentioned in paragraph 2 of the article.

Paragraph 3

223. While the first two paragraphs lay down general rules of secrecy applying to exchanged information, paragraph 3 is designed to protect secrecy in cases where the Parties have made reservations in respect of some taxes. The purpose of a reservation is to release the State which makes it from certain obligations under the Convention. This purpose would not be achieved if other States were to make free use of information received from the State which has made a reservation, thus disregarding the limitation imposed in the reservation. Under the present provision, it is therefore forbidden to use information obtained from a State which has made a reservation, provided for in sub-paragraph a of paragraph 1 of Article 30 (taxes other than taxes imposed on behalf of a Contracting State on income, profits, capital gains or net wealth), for the purpose of a tax in the category subject to the reservation. In some cases, the basis for assessing some taxes (for example, income taxes owed to the State) is used as such for assessing other taxes (for example income taxes owed to other authorities). In other cases, the basis used for assessing a tax is the starting-point for determining the basis of other taxes. In such cases, communication of the basis of the first tax, which has been adjusted in accordance with information obtained from another State, is not a breach of paragraph 3 of the article provided that there is no communication of the information as such.

224. Similarly, "the State making such reservation shall not use information obtained under this Convention for a tax in a category subject to the reservation". It is logical that the limitation imposed on other Parties by the State which has made the reservation should also apply to the latter.

Paragraph 4

225. As indicated above, the information received by a Party may, in general, be used by the persons or authorities mentioned in paragraph 2 of the article only for the purposes set out in that paragraph. Normally, therefore, that information could not be used for other purposes except by arranging, if this were possible under the laws of the supplying State, for it to be provided under an instrument specially designed for such other purposes (for example, a treaty concerning mutual assistance in judicial matters such as the European Convention on Mutual Assistance in Criminal Matters, ETS No. 30). There could be situations in which two Contracting States might agree that this limits undesirably the scope of mutual assistance in this area (for example, where there is no other instrument under which the information could be provided). Paragraph 4 of the article therefore makes it possible for the information received by a Party to be used for other purposes when such information may be used for such other purposes under the laws of the supplying State and the competent authority of that State authorises such use. For instance, paragraph 4 makes possible the sharing of the information received with other law enforcement agencies and judicial authorities on certain high priority matters (e.g., to combat money laundering, corruption, or terrorism financing).

226. It is, in principle, conceivable that the use of information for purposes other than those stated in the Convention could lead to a breach of privacy and clash with the 1981 Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No.108). However, the two conditions, that such use must be possible under the laws of the supplying State and that the competent authority of that State must authorise such use, constitute an adequate safeguard. It is therefore not necessary to include in the Convention specific provisions in this respect.

227. As noted in the commentary on Article 5 (see paragraph 61 above), a multilateral convention opens up a number of possibilities for co-operation between more than two States. There are situations where information obtained by one Party from another would be of interest to a third one. The second sentence of paragraph 4 opens up the possibility of exchanging information in such cases. However, in order to avoid a situation where the third Contracting State would thus obtain information which it could not obtain directly, the paragraph provides that the transmission of information from the second to the third Contracting State will be subject to prior authorisation from the Contracting State which originally provided the information.

Article 23 – Proceedings

228. This article indicates in which State the taxpayer must bring proceedings contesting a measure taken by an authority of the applicant State or of the requested State. A particular problem arises with regard to paragraph 3 of Article 14 and paragraph 2 of Article 21. These articles confer powers on the authority and the question arises as to whether the individual is entitled to require the authority to exercise them, especially where the failure to exercise a power violates a right guaranteed by the national law of the authority in question. The solution to this problem depends on the interpretation of the Convention given by the courts of each State.

Paragraph 1

229. When a taxpayer wants to resist the recovery of a tax or the enforcement of the tax laws, there are normally two grounds in the laws of a Contracting State on which the tax claim may be resisted. Either the taxpayer can contest the existence or the enforceability of the claim, or he can try to contest the enforcement measures themselves. Where the claim is established under the laws of one State and the recovery is taking

place in another State, the question arises as to which bodies are competent to deal with disputes brought forward by the taxpayer. As it is obvious that enforcement measures by the requested State may be contested only in that State, paragraph 1 provides that actions directed against the enforcement measures are to be brought only before the competent bodies of the State taking these measures.

Paragraph 2

230. This paragraph provides that proceedings relating to measures taken by the applicant State, in particular those which concern the existence of the tax claim or the amount of tax claim or the instrument permitting enforcement in the applicant State, shall be brought only before the competent body of the applicant State. The aim is to place it beyond all doubt that a taxpayer may not resist recovery in the requested State by disputing in that country the validity of the instrument issued by the applicant State or by alleging that the amount of the tax claim is erroneous because of payments he has already made.

231. Since disputes regarding the existence or the amount of the tax claim and the question of whether recovery is permissible are governed by the laws of the applicant State, the competent bodies of that State must resolve them. Only they are sufficiently acquainted with the tax laws governing the claim to give a properly founded judgment on such questions. Where the applicant State owes the taxpayer a sum of money, any application by the taxpayer for a setoff can be considered as falling within the ambit of the provision. Such applications must therefore be brought before the competent authority of the applicant State. However, the Convention does not deal with the admissibility of a setoff.

232. Since paragraph 2 of Article 11 requires the tax claim to be uncontested or incontestable if a request for assistance is to be made, paragraph 2 of this article may seem to be paradoxical. In addition, assistance in the service of documents should prevent the situation arising in which a taxpayer has failed to contest a tax claim because he was ignorant of its existence. In spite of this, Parties may, under paragraph 2 of Article 11 (second sentence), have agreed that the tax claim does not need to be uncontested or incontestable for a request for recovery to be made and in some States there is always a possibility of late appeal or of granting a "grace period". The aim of paragraph 2 is only to provide that, whether as a result of a bilateral agreement or whether it concerns a late appeal or an application for a "grace period" or any other action, if it is disputing the amount or the existence of the tax claim, the action has to be brought before the competent bodies of the applicant State under whose laws the tax claim was initiated.

233. The applicant State must notify the requested State if the tax claim or the instrument permitting its enforcement is contested. Upon receipt of the notification, the requested State is, unless otherwise agreed under paragraph 2 of Article 11, obliged to suspend the recovery procedure. Although the fact that the tax claim is contested does not necessarily result in recovery being suspended under the laws of most States, it is desirable to postpone recovery in the requested State if the claim is being contested. This provision is intended not just as a safeguard to the taxpayer but also to protect the requested State from an action for damages being brought by the taxpayer.

234. Contesting the tax claim would be one way in which the taxpayer could postpone recovery as long as possible, to gain time to place his assets out of the reach of the requested State. To avoid this, the requested State, if asked by the applicant State, shall require the taxpayer to provide security or shall take other measures of conservancy.

235. The applicant State is not the only party which may have an interest in informing the requested State that an action has been brought in the applicant State. In particular, the taxpayer himself may wish to

inform the requested State 'if only to prevent the damage which he could suffer if the applicant State should have failed to give the information itself. Therefore this paragraph permits any interested party – that is to say not only the taxpayer but also any other person liable to the payment of the tax – to inform the requested State of such an action. But, to prevent the possibility of delaying tactics by debtors acting in bad faith, the requested State is not obliged to suspend its recovery measures automatically – it should still consult the applicant State on the matter if this appears necessary, for instance because it has not previous been advised by the applicant State that an action has been brought.

236. Paragraphs 1 and 2 regulate matters concerning the competence of the courts for most of the actions capable of being brought, but these provisions do not form a comprehensive regulation for resolving every possible dispute in this field. In particular, they do not cover actions contesting the application of the Convention itself, whether by the applicant State (actions contesting the request for assistance) or by the requested State (actions contesting the obligation to provide assistance).

Paragraph 3

237. Paragraph 3 lays down that the applicant State is to inform the requested State of the outcome of the proceedings. It may be that judgment is given against the applicant State and that the tax claim is set aside in whole or in part. It is also conceivable that the applicant State and the taxpayer may settle the matter out of court. All these situations can affect the request for assistance since the basis for this request may cease to exist or the amount may be reduced in consequence of them. Therefore, the applicant State is to inform the requested State as soon as possible of whether and to what extent it wishes to proceed with its request for assistance. In the same way, the requested State is to inform the applicant State of the outcome of proceedings instituted in its territory.

CHAPTER V – SPECIAL PROVISIONS

Article 24 – Implementation of the Convention

Preliminary remarks

238. The purpose of this article is twofold. First, it establishes the ways in which the Convention is to be implemented between Parties, that is to say through the channel of competent authorities, which may communicate directly, authorise subordinate authorities to act on their behalf, and settle the practical mode of operation of administrative assistance between themselves by mutual agreement. Secondly, the article provides for the monitoring of the implementation of the Convention through a co-ordinating body set up under the aegis of OECD.

239. Owing to the multilateral character of this Convention, a co-ordinating body is necessary to supervise its implementation. In a bilateral context, it may be fairly easy to follow up the application and the interpretation of a convention on mutual assistance. A multilateral convention, however, which may be concluded between a number of states, requires a monitoring body which could transmit information among the Parties (see, *inter alia*, paragraph 4 of this article), and encourage the production of uniform solutions to problems in the application and interpretation of the provisions of the Convention.

240. The co-ordinating body should also be able to assist the Parties by furnishing its opinion on questions of application or interpretation of provisions of the Convention. These questions should in principle be of a general character and not relate to specific disputes that might exist between two Parties; the co-ordinating body is not to be set up as machinery for the settlement of disputes, which must be solved either through mutual agreement between the States concerned (paragraph 5 of this article), or in the framework of other

international instruments (for example, the 1957 European Convention for the Peaceful Settlement of Disputes (ETS No. 23). In order to ensure a consistent application and interpretation of the Convention, these opinions may be made public, as appropriate. In order to act efficiently, the co-ordinating body will need to collect information from the Parties and elsewhere about experience gained in the application and interpretation of conventions on mutual assistance.

241. By reason of its functions, the co-ordinating body set up under the aegis of OECD should comprise representatives of the authorities in charge of the implementation of the Convention, that is to say the competent authorities of the Parties. States which have signed the Convention and have thus made known their intention of becoming parties to it, even if they have not yet ratified it, shall be entitled to attend meetings of the co-ordinating body as observers. As a general rule, representatives of the Council of Europe Secretariat shall also be invited to attend meetings of the Coordinating Body as observers.

Paragraph 1

242. This paragraph establishes the ways in which Parties communicate with each other for the application of the Convention and opens up the possibility of delegation of powers and mutual agreements on the mode of application of the Convention.

243. In most countries, relations with other countries fall within the competence of the Minister for Foreign Affairs. In principle, therefore, official contacts with foreign countries have to be made through the Ministry of Foreign Affairs and the embassies abroad. This is however not very practical in every case, so, in bilateral relations, other means of contact have often been made possible. The Convention follows this line and provides that the Parties shall communicate with each other through their respective competent authorities as defined in paragraph 1.d of Article 3 and listed in Annex B, and that such competent authorities shall communicate directly for this purpose.

244. In countries where the implementation of tax conventions does not fall exclusively within the competence of the highest tax authorities, some matters, for example the exchange of information, can be delegated to other authorities and this possibility is foreseen in many existing treaties. In most cases, however, the exchange of information under the double taxation Convention has been entrusted to a central body.

245. The existence of a central body in each country for relations with other countries concerning administrative assistance could also be justified on the grounds that granting such assistance may involve an infringement – in principle – of certain domestic obligations (for example, tax secrecy, which is only waived under the terms and conditions of the Convention). The provision of assistance as well as the use of information received under the Convention will leave in many cases a certain margin of judgment for the country concerned, and this is best entrusted to a single, central body. There are, however, cases, especially for exchanges of information on certain types of activities, where direct and speedy contacts may be the only way to make the assistance effective. For such cases, the competent authority might wish to agree that certain of their responsibilities may be exercised by subordinate authorities acting on their behalf.

246. The provision of administrative assistance is regulated only in outline in the Convention. The precise way in which it is administered and the formalities to be taken into account require further elaboration, which is so closely related to details on the way in which the domestic laws of the Parties are administered, that its regulation is left to consultation between the competent authorities of the Parties. Such consultation will also enable competent authorities, if they so wish, to agree on the role of their representatives when

they exercise authority abroad (see commentary on Article 9) and to settle rules and procedures for direct contacts referred to in paragraph 245 above, for automatic exchanges of information, or any other matter (for example, fixing minimum amounts for cases in which assistance can be requested).

247. While Parties are free to select the areas in which they wish to enter into agreements for settling rules and procedures for assistance, these agreements must aim at facilitating the practical operation of the Convention and cannot be used as a means to reduce their substantive legal obligations under the Convention. Safeguards are, of course, provided to the States but are laid down in various other articles of the Convention.

248. As an example of questions relating to the implementation of the Convention which will have to be negotiated, where necessary, between the States concerned, there may be cases where there are substantial differences between the assistance to be provided or work to be carried out by one State and the assistance or work by the other State. These problems would have to be settled in the framework of mutual agreements taking into account all the relevant factors (characteristics of economic relations and trade patterns, structure and working of tax systems and administrative machinery in the States in question, etc.).

249. Another important matter on which the competent authorities will have to reach an agreement is the way in which the amounts of the claims recovered will be made available to the applicant State, for example, immediate payment, periodical settlements, setoff arrangements, etc. This is closely connected with the question of what effect fluctuations in rates of exchange of the domestic currencies have on relations between the taxpayer, the applicant State and the requested State. The basic principle here is thought to be that the applicant State has a claim in its own currency. A second basic rule would seem to be that neither the requested State nor the applicant State has any claim on the assets of the taxpayer beyond the amount of the tax owed, plus costs and interest where appropriate. Finally, it should be settled beyond doubt that the taxpayer will be released from the debt after payment of an amount in the currency of the requested State, that is, at the moment of payment, equivalent to the amount of the tax claim.

250. These principles may perhaps be best implemented if the requested State assumes that the claim is in the currency of the applicant State until such time as recovery takes place. The rate of exchange at the date of recovery then decides the amount in the currency of the requested State that has to be recovered. States could also agree that the claim be converted into the currency of the requested State at the date of the request, but this increases the risks of fluctuations in the rate of exchange. The requested State will have to transfer the amount received to the applicant State regardless of any changes in the exchange rates after the date of recovery. If then the applicant State thus receives more or less than its claim, any such difference, positive or negative, should have no consequence for the taxpayer and must, except in special circumstances (such as an undue delay in transferring the sums received), be to the profit or cost of the applicant State.

Paragraph 2

251. This paragraph deals with situations where the implementation of the Convention in a particular case might have serious undesirable consequences. It differs from Article 21 insofar as that article provides for cases in which there is a risk of violating a principle of law a rule of domestic law or an administrative practice, while the situations covered by paragraph 2 of Article 24 are those in which the principles, rules and practices have been complied with, but have consequences which give rise to serious, for example, economic or social, difficulties. In such situations, Article 24 imposes a duty of consultation on the States

concerned. If no compromise is reached and a disagreement remains, the requested State is not relieved from its duty to apply the Convention.

Paragraph 3

252. Paragraph 3 gives the co-ordinating body the task of monitoring the implementation and development of the Convention. The co-ordinating body would aim at assisting the Parties in the effective application of the Convention and, where necessary, suggest the introduction into the Convention of such new methods and procedures as could strengthen the effectiveness of the Convention. It may therefore recommend revisions of or modifications to the Convention.

Paragraph 4

253. This paragraph provides for the co-ordinating body to furnish opinions on questions of interpretation if requested by a Party. The request for an opinion may arise out of both action by the authorities in that State and action or appeals by taxpayers which may draw attention to rules in the Convention which lend themselves to different interpretations. Discussions within the co-ordinating body will help Parties to form an opinion in unforeseen cases or situations. As noted in paragraph 240 above, this should encourage the production of uniform solutions to problems in the interpretation of the Convention, for example, as to the "generally accepted taxation principles" referred to in paragraph 2.e of Article 21. It should be stressed that the co-ordinating body in this context has only an advisory function. It is, of course, up to the Party asking for advice to decide whether or not it shall argue on the lines of the advice given in a possible dispute with other Parties.

Paragraph 5

254. This paragraph contains procedural rules for solving questions of application and interpretation of the Convention. The provisions are dependent on the multilateral character of the Convention and oblige those States who are immediately affected by the problem at stake to try to resolve the matter by mutual agreement. If they succeed in coming to an agreement, they shall notify the co-ordinating body. When particular taxpayers are concerned, this notification will be made subject to the secrecy provisions of Article 22.

255. As it is drafted, the paragraph aims at settling any difficulty or eliminating any doubt which might arise, in particular over the interpretation of the provisions of the Convention. Paragraph 5 provides a framework for a consultation between the Parties for instance, as to whether a tax introduced after the signature of the Convention is identical or substantially similar to those listed in Annex A to the Convention according to paragraph 2 of Article 2 and, accordingly, whether it is covered by the Convention.

256. In one important respect, the mutual agreement procedure as provided for in this paragraph has a different scope from that stipulated in Article 25 of the 2008 OECD Model Tax Convention. One of the purposes of Article 25 is to solve individual cases of double taxation, either when one State has not applied the Convention in the right way, or when two States take diverging attitudes on a taxpayer's position (for example, in the case of wealth tax, for deduction of debt from the taxpayer's assets). As the attitudes of the States affect the taxpayer's personal position, he should in this context be given the possibility of initiating a consultation process between the two States.

257. Under a Convention for mutual assistance, the position is rather different. Where a taxpayer considers that one State has not acted in accordance with the Convention, he can present his case either in

the applicant State if the action concerns the request for assistance, for instance the tax claim or the instrument permitting enforcement, or in the requested State if the action concerns the measures taken there to satisfy the request. If the requested State has taken measures which are not in accordance with the Convention, the complaint will be met by the State unilaterally, without any need for consultations with the applicant State. Therefore, it has not been felt necessary to give the taxpayer the possibility of initiating a consultation procedure between the two States.

Paragraph 6

258. This paragraph provides that the Secretary General of OECD shall inform all the Parties and signatory States of opinions furnished by the co-ordinating body according to the provisions of paragraph 4 and of mutual agreements reached under paragraph 5. The fact that the agreements reached under paragraph 5 shall be made available by the co-ordinating body to those Parties which have not taken part in the procedure is, of course, not to be understood as in any way binding such States to apply or interpret the Convention in the manner agreed upon. The agreement reached obviously concerns only those States which have made the agreement under paragraph 5.

Article 25 – Language

259. This article deals with the language in which requests for assistance and answers thereto should be drawn up. In order to avoid practical difficulties which might hamper or slow down mutual assistance, the principle adopted in this context is to facilitate the task of the Parties by providing maximum flexibility. Parties are therefore free to agree on using in their bilateral relations one of the official languages of the Council of Europe and OECD (English or French) or any other language(s) agreed bilaterally.

260. A related question is whether documents, an official copy of which should be submitted with the request under various provisions of the Convention, have also to be translated into that language. An obligation of this kind could form an unexpected obstacle to asking for assistance; on the other hand, there is little point in submitting documents in an unknown language. States could agree bilaterally that the applicant State should provide not only a copy of the documents required but also a synopsis of the document in the agreed language.

261. The question of whether documents served should be accompanied by a translation is dealt with in paragraph 5 of Article 17.

Article 26 – Costs

262. Although a prosaic one, the problem of cost might be a serious obstacle to administrative assistance, as countries might desist from forwarding important requests for this reason. The provisions of the article enable the competent authorities to consult each other and agree, on a bilateral basis, on the rules they wish to apply generally, and the procedure to be followed for finding a solution in the most important and costly cases. Such flexibility is considered to be necessary for a smooth and efficient implementation of the Convention between Parties.

263. In the absence of any bilateral agreement, whether general or in specific cases, on the sharing of costs, the article provides that ordinary costs incurred by the requested State in providing assistance will not give rise to reimbursement by the applicant State. These are costs normally incurred by tax authorities for obtaining information or collecting tax for domestic purposes. This follows the common practice, where a certain degree of reciprocity is assumed.

264. Extraordinary costs incurred in providing assistance should be borne by the applicant State, unless otherwise agreed bilaterally. Extraordinary costs are meant to cover, for instance, costs incurred when a particular form of procedure has been used at the request of the applicant State, costs incurred by third parties from which the requested State has obtained the information (for example, bank information), or supplementary costs of experts, interpreters, or translators if needed, for example, for elucidating the case or translating accompanying documents or damages which the requested State has been obliged to pay to the taxpayer as a result of measures taken on the request of the applicant State. It is assumed that consultation between the Contracting States concerned would take place in any particular case where extraordinary costs are likely to be involved.

265. As far as recovery is concerned, the cost is charged as a rule to the debtor, that is to say the taxpayer but, if it cannot be recovered from him, it has to be decided who shall bear it. The Contracting States could agree that they will charge one another no costs at all or only the costs of, say, court proceedings or advice from experts. In this connection, it would be worthwhile for the applicant State, if it is to bear the costs and the costs are likely to be high, to agree in advance to the relevant steps to be taken. The costs charged to the applicant State could be deducted from the amounts of tax recovered. The Convention does not prevent the requested State from recovering its own costs.

CHAPTER VI – FINAL PROVISIONS

Article 27 – Other international agreements or arrangements

Paragraph 1

266. As the aim of this Convention is to foster international co-operation in tax matters, it is worthwhile making sure that, when two or more States are parties both to this Convention and to other instruments or arrangements with provisions in this field, the most effective instrument can be used in any particular situation. This paragraph therefore provides that "the possibilities of assistance provided by this Convention do not limit, nor are limited by, those contained in existing or future international agreements or other arrangements between Parties, or other instruments which relate to co-operation in tax matters".

267. According to this principle, the application of this Convention and of other instruments should be considered independently. More restrictive provisions for assistance in tax matters in other – present or future - instruments would not prevail; less restrictive ones, on the other hand, providing for closer or more specific co-operation (for example, between neighbouring States) could be used instead of the provisions of the Convention. In practice, when two States are parties to both the Convention and another instrument, the competent authority of the applicant State will request assistance under the instrument likely to be most effective, provided of course that the terms of the request meet all the necessary requirements set for assistance to be granted under that instrument. Hence, States are at liberty to choose whichever instrument they think most appropriate to the particular case. They could not however simultaneously apply more than one instrument to a given case, since each instrument is self-contained, having its own characteristics and aims and its provisions may be incompatible with other instruments. Article 27 accordingly uses "limit" rather than "affect", since the latter word might have been misconstrued as meaning that the simultaneous application of more than one instrument was possible.

268. The reference to other international agreements, arrangements and instruments is a very wide one. It refers to bilateral agreements for the avoidance of double taxation or for mutual administrative assistance, as well as to existing multilateral conventions such as the Nordic Convention or the Treaty between

Belgium, Luxembourg and the Netherlands on administrative assistance in the recovery of tax claims, concluded on 5 September 1952 in connection with the Benelux Economic Union. This provision also covers social security agreements which contain provisions in this field (for example, for the recovery of social security contributions).

Paragraph 2

269. At the request of the European Union and its member States, the Convention was amended in 2010 to clarify the relationships between this Convention and those rules on administrative assistance in tax matters which exist or may exist in the future among the said States: the Parties which are Member States of the European Union can apply, in their mutual relations, the possibilities of assistance provided for by the Convention in so far as they allow a wider co-operation than the possibilities offered by the applicable European Union rules. It is understood that this provision only applies between Member States of the European Union and should in no way prejudice the application of the Convention between Member States of the European Union and other Parties of the Convention.

Article 28 – Signature and entry into force of the Convention

Paragraph 1

270. Paragraph 1 states that the Convention is open for signature by the member States of the Council of Europe and the Member countries of OECD.

Paragraph 2

271. Paragraph 2 states that the Convention enters into force on the first day of the month following the expiration of a period of three months after the date on which five States have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 1.

Paragraph 3

272. Paragraph 3 states that in respect of any member State of the Council of Europe or any Member country of OECD which expresses its consent to be bound by the Convention after its entry into force, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Paragraph 4

273. Paragraph 4 makes clear that once the 2010 Protocol enters into force, member States of the Council of Europe or Member countries of the OECD which are not Parties to the Convention, may choose to become Parties to either the Convention or to the Convention as amended by the 2010 Protocol. In this respect, it is stated that unless they express a different intention in a written communication to one of the depositaries, they will be a Party to the Convention as amended by the 2010 Protocol. This is in accordance with Article 40 paragraph 5 of the Vienna Convention on the Law of Treaties.

Paragraph 5

274. Paragraph 5 was added in 2010 to open up the Convention also beyond OECD and Council of Europe membership.

275. The opening of the Convention beyond OECD and Council of Europe membership offers a valuable opportunity for countries to swiftly implement their commitments to the internationally agreed standards

of transparency and exchange of information for tax purposes and for emerging and developing countries to secure the benefits of the new cooperative tax environment.

276. Accordingly, paragraph 5 states that any State which is not a member of the Council of Europe or of the OECD may request to be invited to sign and ratify this Convention as amended by the 2010 Protocol. Any request to this effect shall be addressed to one of the depositaries, who shall transmit it to the Parties. The depositary shall also inform the Committee of Ministers of the Council of Europe and the OECD Council. The decision to invite States which so request to become Party to this Convention shall be taken by consensus by the Parties to the Convention through the Coordinating Body. In taking this decision, the Parties will take into account, inter alia, the confidentiality rules and practices of the State concerned. They may also consider whether the State concerned is a member of the Global Forum on Transparency and Exchange of Information. Paragraph 5 differs from the usual accession clause that can be found in most Council of Europe conventions. From the Council of Europe perspective, however, it is not totally innovative as it is modelled on Article XI-3 of the 1997 joint Council of Europe/UNESCO Convention on the Recognition of Qualifications concerning Higher Education in the European Region (ETS No. 165).

277. States not members of the Council of Europe or of OECD, which become Parties to the Convention after the entry into force of the 2010 Protocol, can only be Parties to the Convention as amended by that Protocol. This is because, before the entry into force of the 2010 Protocol, which contains provisions allowing such States to become Parties to the Convention, the Convention was not open to States which are not members of the Council of Europe or of OECD.

Paragraph 6

278. Paragraph 6 relates to the effective dates on which the Convention as amended by the 2010 Protocol shall have effect. It states that it shall have effect for administrative assistance related to taxable periods beginning on or after 1 January of the year following the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party, or where there is no taxable period, for administrative assistance related to charges to tax arising on or after 1 January of the year following the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party. It also states that any two or more Parties may mutually agree that the Convention, as amended by the 2010 Protocol, shall have effect for administrative assistance related to earlier taxable periods or charges to tax.

Paragraph 7

279. Paragraph 7 states that, notwithstanding paragraph 6, for tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party, the provisions of this Convention, as amended by the 2010 Protocol, shall have effect from the date of their entry into force in respect of a Party in relation to earlier taxable periods or charges to tax."

Article 29 – Territorial application of the Convention

280. This article is drafted in conformity with the practice of the Council of Europe. It is explicit and does not call for a commentary.

Article 30 – Reservations

Paragraph 1

281. The purpose of the Convention is to facilitate the provision of mutual administrative assistance in the field of taxes of any kind, including social security contributions, but excluding customs duties, for which a

separate multilateral convention already exists. However, a State may not, for practical, constitutional or political reasons, be able at the time of signature to provide to other States the full assistance envisaged by the Convention. Some States, while able to provide information concerning income, profits, capital gains and net wealth taxes levied at central government level – a minimum requirement for acceding to the Convention – may not be able to do so in relation to such taxes imposed by subordinate levels of government or to other particular types of tax. Similarly, while able to provide assistance in the establishment of liability to tax, they may not be able to do so in the recovery of tax claims or service of documents in relation to all or any particular type of tax.

282. It would be unfortunate if this limited ability to provide assistance on the part of a State had the consequence that the State could not sign the Convention at all, and thus could neither benefit from it in any way nor provide any benefit to other States under it. Article 30 is designed to enable a State to sign the Convention with reservations about the type of tax to be covered and/or the type of assistance to be provided, so that it may limit its participation in the provision of mutual assistance under the Convention to certain taxes or certain forms of assistance. There are limits on what reservations can be made. Were States able to make whatever reservations they liked, without any restriction, this would detract from the multilateral nature of the Convention, as well as from the principle of reciprocity. Paragraph 1 therefore, in conjunction with paragraph 2, sets out a system under which States are able to negotiate reservations within stated limits. This ensures the necessary minimum degree of uniformity of Parties' rights and obligations, facilitating implementation, interpretation and settlement of any disputes; and at the same time gives Parties the degree of flexibility which they need.

283. Sub-paragraph a of paragraph 1 provides that a State may reserve the right not to provide assistance in respect of any taxes of other Parties of one or more categories listed in Article 2, paragraph 1.b, provided that State has not included any domestic tax of that category under Annex A of the Convention.

284. Sub-paragraph a enables a Contracting State to enter reservations about providing administrative assistance of any kind in respect of taxes imposed at levels other than central government on income, profits, capital gains or net wealth, and in respect of any other kinds of tax, whatever the level of government by which they are imposed.

285. Sub-paragraph b enables a State to enter reservations for all or any particular kind of tax, in respect of recovery of tax claims, including measures of conservancy. As noted in the commentary on Article 3 (paragraph 42 above), Parties may wish not to apply the Convention to administrative fines, and the possibility of entering a partial reservation on the recovery of such fines is provided for under sub-paragraph b.

286. As the Convention applies, in principle, to all enforceable tax claims, including those in existence before the Convention's entry into force, sub-paragraph c enables States to reserve the right not to provide any administrative assistance in respect of tax claims in existence before the said entry into force. This also applies where reservations made under paragraph 1.a or b are withdrawn. The present sub-paragraph c is designed to make accession to the Convention easier for States which might have difficulty providing administrative assistance in respect of claims in existence before its entry into force. A tax claim is deemed to exist when the tax to which it refers is, in conformity with paragraph 1.c of Article 3, owed and not yet paid at the moment of the entry into force of the Convention.

287. Under sub-paragraph d, the right may be reserved not to provide assistance in the service of documents, either for all taxes, or only for taxes of one or more categories.

288. Sub-paragraph e is designed to meet the special needs of some Contracting States, which, while accepting that they should provide assistance in the service of documents, may not be able to accept that their postal services should be used for a direct service of documents on a person within the territory.

289. Sub-paragraph f enables a State to apply paragraph 7 of Article 28 of the Convention exclusively for administrative assistance related to taxable periods beginning on or after 1 January of the third year preceding the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party, or where there is no taxable period, for administrative assistance related to charges to tax arising on or after 1 January of the third year preceding the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party.

Paragraph 2

290. This paragraph is complementary to the provisions of paragraph 1 and illustrates the system of negotiated reservations in the Convention, the advantages of which have already been pointed out (see paragraph 282 above).

291. It follows from paragraph 2 that reservations must be drafted by following exactly the indications contained in paragraph 1. Thus, it will not be allowed, as to sub-paragraphs a, b and d, to make a distinction within the categories existing in Annex A. By contrast, sub-paragraphs b and c allow partial reservation insofar as a State may wish not to give assistance in recovering administrative fines, whereas it is prepared to give it for other elements of the tax claim (principal of the tax, interest and cost of recovery).

Paragraph 3

292. This provision allows States to make reservations after the entry into force of the Convention. It aims at making it possible for States to change the extent of their commitments in the light of the operation of the Convention as well as of any repercussions of its application upon their administrations. Such flexibility should encourage States to adhere to the Convention and to enlarge the assistance they are prepared to give to the other Parties.

Paragraph 4

293. This paragraph enables reservations to be withdrawn. If a reservation is withdrawn, then, from the date of receipt of the notification of withdrawal by one depositary, the State making the notification can be called upon for relevant assistance by other Parties who have not themselves exercised their right to make such a reservation, and it can call upon them for such assistance.

Paragraph 5

294. Paragraph 5 shows the effects of reservations entered under paragraph 1 or 3. If a State signs with such a reservation, then it may decline to provide assistance in relation to taxes which are the subject of the reservation, or in relation to the form of assistance which is the subject of the reservation. By the same token, it cannot call for such assistance from the other Parties.

295. If a State has entered a reservation against the application of the Convention in respect of a particular category of tax, then information which it supplies cannot be used for the purposes of a tax of that category in the receiving State. Thus, information supplied by a State which has entered a reservation against the application of this Convention on social security contributions cannot be used in the receiving State for the purpose of social security contributions. This is so notwithstanding the absence of a similar reservation by

the receiving State (the general rules about the use of the information supplied are discussed in the commentary on Article 22).

296. However, even where a Contracting State has entered a general reservation under Article 30 against providing administrative assistance to other Parties for one particular type of tax or one form of assistance, that State is not prevented from providing such assistance in particular cases, if it so wishes.

Article 31 – Denunciation

297. This article is drafted in conformity with the practice of the Council of Europe. It is explicit and does not call for a commentary.

Article 32 – Depositaries and their functions

298. Article 32 lists the functions of the two depositaries of the Convention, the Secretary General of the Council of Europe and the Secretary General of OECD (see paragraph 3 of Article 2). States are free to address their declarations, notifications or reservations to either depositary. The depositary with whom a declaration, notification or reservation has been made, shall notify the other member States of the Organisations and any other Party to this Convention.

ANNEXURE-E
SAARC LIMITED MULTILATERAL AGREEMENT

SAARC LIMITED MULTILATERAL AGREEMENT ON AVOIDANCE OF DOUBLE TAXATION AND MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS

PREAMBLE

The Governments of the SAARC (South Asian Association for Regional Cooperation) Member States comprising the People's Republic of Bangladesh, the Kingdom of Bhutan, the Republic of India, the Republic of Maldives, the Kingdom of Nepal, the Islamic Republic of Pakistan and the Democratic Socialist Republic of Sri Lanka;

Desiring to conclude an Agreement on Avoidance of Double Taxation and Mutual Administrative Assistance in tax matters with a view to promoting economic cooperation amongst the SAARC Member States.

Have agreed as follows:

ARTICLE 1 : GENERAL DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:

   (a) the term "Member State" means one of the States as per **Schedule-I;**

   (b) the term "person" includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Member States;

   (c) the term "tax" means, tax(es) covered as per **Schedule-II**, as the context requires;

   (d) the term "Competent Authority" means Competent Authority as per **Schedule III**;

   (e) the term "national" means any individual possessing the nationality of a Member State; and

   (f) the term "fiscal year" means the year as defined in **Schedule IV**.

2. As regards the application of the Agreement at any time by a Member State any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Member State for the purposes of the taxes to which the Agreement applies and any meaning under the applicable tax laws of that Member State prevailing over a meaning given to the term under other laws of that Member State.

ARTICLE 2 : PERSONS COVERED

This Agreement shall apply to persons who are residents of one or more of the Member States, in respect of which it has entered into force in accordance with Article 16.

ARTICLE 3 : TAXES COVERED

1. This Agreement shall apply to taxes on income imposed by or on behalf of the Member States.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property and taxes on the total amounts of wages or salaries paid or deemed to be paid by enterprises.

3. The existing taxes to which the Agreement shall apply are listed in **Schedule-II**.

4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The Competent Authorities of the Member States shall notify the SAARC Secretariat of any significant changes that have been made in their respective taxation laws.

ARTICLE 4 : RESIDENT

1. For the purposes of this Agreement, the term "resident of a Member State" means any person who, under the laws of that Member State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that Member State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that Member State in respect only of income from sources in that Member State.

2. Where, by reason of the provisions of paragraph 1, an individual is a resident of more than one Member State, his/her status shall be determined as follows:

(a) he/she shall be deemed to be a resident only of the Member State in which he/she has a permanent home available to him/her; if he/she has a permanent home available to him/her in more than one Member State, he/she shall be deemed to be a resident only of the Member State with which his/her personal and economic relations are closer (centre of vital interests);

(b) if the Member State in which he/she has his/her centre of vital interests cannot be determined, or if he/she has not a permanent home available to him/her in any Member State, he/she shall be deemed to be a resident only of the Member State in which he/she has an habitual abode;

(c) if he/she has an habitual abode in more than one Member State or in neither of them, he/she shall be deemed to be a resident only of the Member State of which he/she is a national;

(d) if he/she is a national of more than one Member State or of none of them, the Competent Authorities of the concerned Member States shall settle the question by mutual agreement.

3. Where, by reason of the provisions of paragraph 1, a person other than an individual is a resident of more than one Member State, it shall be deemed to be a resident only of the Member State in which its place of effective management is situated. If the Member State in which its place of effective management is situated cannot be determined, then the Competent Authorities of the concerned Member States shall settle the question by mutual agreement.

ARTICLE 5 : EXCHANGE OF INFORMATION

1. The Competent Authorities of the Member States shall exchange such information, including documents and public documents or certified copies thereof, as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Member States concerning taxes covered by this agreement insofar as the taxation thereunder is not contrary to the Agreement. Any information received

by a Member State shall be treated as secret in the same manner as information obtained under the domestic laws of that Member State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes covered by the agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Member State the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practices of that or of the other Member State;

(b) to supply information, including documents and public documents or certified copies thereof, which are not obtainable under the laws or in the normal course of the administration of that or of the other Member State;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

ARTICLE 6 : ASSISTANCE IN THE COLLECTION OF TAXES

1. The Member States shall lend assistance to each other in the collection of revenue claims. The Competent Authorities of the Member States may, by mutual agreement, settle the mode of application of this Article.

2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes covered by the Agreement together with interest, penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a Member State is enforceable under the laws of that Member State and is owed by a person who, at that time, cannot, under the laws of that Member State, prevent its collection, that revenue claim shall, at the request of the Competent Authority of that Member State, be accepted for purposes of collection by the Competent Authority of the other Member State, and that revenue claim shall be collected by that other Member State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other Member State.

4. When a revenue claim of a Member State is a claim in respect of which that Member State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the Competent Authority of that Member State, be accepted for purposes of taking measures of conservancy by the Competent Authority of the other Member State. That other Member State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other Member State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned Member State or is owed by a person who has a right to prevent its collection.

5. The provisions of this Article shall be invoked on request of a Member State only after all permissible measures of recovery under the domestic laws of that Member State have been exhausted.

6. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Member State for purposes of paragraph 3 or 4 shall not, in that Member State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that Member State by reason of its nature as such. In addition, a revenue claim accepted by a Member State for the purposes of paragraph 3 or 4 shall not, in that Member State, have any priority applicable to that revenue claim under the laws of the other Member State.

7. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Member State shall only be brought before the courts or administrative bodies of that Member State. Nothing in this Article shall be construed as creating or providing any right to such proceedings before any court or administrative body of the other Member State.

8. Where, at any time after a request has been made by a Member State under paragraph 3 or 4 and before the other Member State has collected and remitted the relevant revenue claim to the first-mentioned Member State, the relevant revenue claim ceases to be:

(a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned Member State that is enforceable under the laws of that Member State and is owed by a person who, at that time, cannot, under the laws of that Member State, prevent its collection, or

(b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned Member State in respect of which that Member State may, under its laws, take measures of conservancy with a view to ensure its collection. The Competent Authority of the first-mentioned Member State shall promptly notify the Competent Authority of the other Member State of that fact and, at the option of the other Member State, the first-mentioned Member State shall either suspend or withdraw its request.

9. In no case shall the provisions of this Article be construed so as to impose on a Member State the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Member State;

(b) to carry out measures which would be contrary to public policy (ordre public);

(c) to provide assistance if the other Member State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practices;

(d) to provide assistance in those cases where the administrative burden for that Member State is clearly disproportionate to the benefit to be derived by the other Member State.

ARTICLE 7 : SERVICE OF DOCUMENTS

1. At the request of the applicant Member State the requested Member State shall serve upon the addressee, documents and public documents including those relating to judicial decisions, which emanate from the applicant Member State and which relate to a tax covered by this Agreement.

2. The requested Member State shall effect service of documents, including public documents:

(a) by a method prescribed by its domestic laws for the service of documents of a substantially similar nature;

(b) to the extent possible, by a particular method requested by the applicant Member State or the closest to such method available under its own laws.

3. A Member State may effect service of documents directly through the post on a person in another Member State.

4. Nothing in the Agreement shall be construed as invalidating any service of documents by a Member State in accordance with its laws.

5. When a document is served in accordance with this Article and it is not in English language, the same should be accompanied by a translation into English.

ARTICLE 8 : PROFESSORS, TEACHERS AND RESEARCH SCHOLARS

1. A professor, teacher or research scholar who is or was a resident of the Member State immediately before visiting the other Member State for the purpose of teaching or engaging in research, or both, at a university, college or other similar approved institution in that other Member State shall be exempt from tax in that other Member State on any remuneration for such teaching or research for a period not exceeding two years from the date of his/her arrival in that other Member State.

2. For the purposes of this Article, an individual shall be deemed to be a resident of a Member State if he/she is resident in that Member State in the fiscal year in which he/she visits the other Member State or in the immediately preceding fiscal year.

3. For the purposes of paragraph 1 "approved institution" means an institution which has been approved in this regard by the Government of the concerned Member State.

ARTICLE 9 : STUDENTS

1. A student who is or was a resident of one of the Member States immediately before visiting the other Member State and who is present in that other Member State solely for the purpose of his/her education or training shall, besides grants, loans and scholarships and any payments received from sources outside that State for the purpose of his/her maintenance, education or training, be exempt from tax in that other Member State on remuneration which he/she derives from an employment which he/she exercises in the other Member State if the employment is directly related to his/her studies.

2. The exemption available under paragraph 1 above in respect of remuneration from employment shall not exceed an amount equal to US$ 3000/- per annum.

3. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article, for more than six consecutive years from the date of his/her first arrival in that other Member State.

ARTICLE 10 : TRAINING

1. The Member States shall endeavour to hold and organise training programmes, seminars and workshops for the tax administrators with the objective of:

(i) providing a common forum for senior tax administrators to meet and discuss problems of common concern;

(ii) enhancing the technical and administrative knowledge and skills of tax administrators; and

(iii) evolving strategies to combat common tax problems like tax avoidance/evasion in the SAARC region.

ARTICLE 11 : SHARING OF TAX POLICY

1. Each Member State shall endeavour to bring out a yearly report on changes made in its tax laws. This may also cover introduction of new systems or techniques for circulation among the Member States.

2. A Member State may, on request, make available its pool of talented experts to other Member States for the purposes of drafting and organising legislation, tax procedures, operational management, on-the-job training programmes, information system and technology etc.

ARTICLE 12 : IMPLEMENTATION

The Member States shall hold periodic consultations, as appropriate, of Competent Authorities, with a view to facilitating the effective implementation of this Agreement.

ARTICLE 13 : REVIEW

The Member States shall meet in order to review this Agreement on request or at the end of five years from the date of its entry into force, unless they notify the SAARC Secretariat, in writing, that no such review is necessary.

ARTICLE 14 : AMENDMENTS

This Agreement may be amended by consensus. Any such amendment will become effective upon the deposit of instrument(s) of acceptance with the Secretary-General of SAARC by all Member States and issuance of notification thereof by the SAARC Secretariat. Such an amendment shall have effect in the Member States from the date of commencement of their respective fiscal year following the issuance of notification by the SAARC Secretariat.

ARTICLE 15 : DEPOSITARY

This Agreement will be deposited with the Secretary General of SAARC, who will furnish a certified copy thereof to each Member State.

ARTICLE 16 : ENTRY INTO FORCE

1. This Agreement shall enter into force on the thirtieth day after the notification issued by the SAARC Secretariat regarding completion of all formalities, including ratification, wherever applicable, by all Member States.

2. The provisions of this Agreement shall have effect:

(i) **In Bangladesh**

(a) in respect of taxes withheld at source, in respect of amounts paid or credited on or after the first day of July next following the date upon which the Agreement enters into force;

(b) with regard to other taxes, in respect of tax years beginning on or after the first day of July next following the date upon which the Agreement enters into force;

(ii) **In Bhutan**

(a) in respect of taxes withheld at source, in respect of amounts paid or credited on or after the first day of July next following the date upon which the Agreement enters into force;

(b) with regard to other taxes, in respect of tax years beginning on or after the first day of July next following the date upon which the Agreement enters into force

(iii) **In India**, in respect of income derived in any fiscal year on or after the first day of April next following the date upon which the Agreement enters into force;

(iv) **In Maldives** in respect of income derived in any fiscal year on or after the first day of January next following the date upon which the Agreement enters into force;

(v) **In Nepal** in respect of income arising in any year of income beginning on or after the first day of Nepalese fiscal year starting mid-July next following the date upon which the Agreement enters into force;

(vi) **In Pakistan**:

(a) in respect of taxes withheld at source, in respect of amounts paid or credited on or after the first day of July next following the date upon which the Agreement enters into force;

(b) with regard to other taxes, in respect of tax years beginning on or after the first day of July next following the date upon which the Agreement enters into force; and

(vii) **In Sri Lanka** in respect of income derived on or after the first day of April of the year next following the date upon which the Agreement enters into force**;**

ARTICLE 17 : TERMINATION

This Agreement shall remain in force indefinitely until terminated by a Member State. A Member State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of five years from the date of entry into force of the Agreement. In such event, the Agreement shall cease to have effect:

(i) **In Bangladesh,** in respect of income derived in any fiscal year on or after the first day of July next following the expiration of six months period from the date on which the written notice of termination is given;

(ii) **In Bhutan,** in respect of income derived in any fiscal year on or after the first day of July next following the expiration of six months period from the date on which the written notice of termination is given;

(iii) **In India,** in respect of income derived in any fiscal year on or after the first day of April next following the expiration of six months period from the date on which the written notice of termination is given;

(iv) **In Maldives,** in respect of income derived in any fiscal year on or after the first day of January next following the expiration of six months period from the date on which the written notice of termination is given;

(v) **In Nepal,** in respect of income derived in any fiscal year on or after the first day of mid-July next following the expiration of six months period from the date on which the written notice of termination is given;

(vi) **In Pakistan**, in respect of income derived in any fiscal year on or after the first day of July next following the expiration of six months period from the date on which the written notice of termination is given; and

(vii) **In Sri Lanka,** in respect of income derived on or after the first day of April of the year next following the expiration of six months period from the date on which the written notice of termination is given;

IN WITNESS WHEREOF, the undersigned, duly authorized thereto, have signed this Agreement.

DONE at Dhaka, Bangladesh, On This The Thirteenth Day of November Two Thousand Five, In Nine Originals In English Language, All Texts Being Equally Authentic.

PROTOCOL

On formalization, this SAARC Limited Multilateral Agreement on Avoidance of Double Taxation and Mutual Administrative Assistance in Tax Matters shall be applicable only in the Member States where an adequate Direct Tax Structure is in place. Further, in case of a Member State where such a structure is not in place, this Agreement shall become effective from the date on which such a Member State introduces a proper Direct Tax Structure and notifies the SAARC Secretariat to this effect. Further that in the event of a conflict between the provisions of this Limited Multilateral Agreement and that of any bilateral Double Taxation Avoidance Agreement between the Member States, the provisions of the Agreement signed or amended at a later date shall prevail.

DONE at Dhaka, Bangladesh, On This The Thirteenth Day of November Two Thousand Five, In Nine Originals In English Language, All Texts Being Equally Authentic.

SCHEDULE I : MEMBER STATES TO THE AGREEMENT

1.	The People's Republic of Bangladesh
2.	Kingdom of Bhutan
3.	Republic of India
4.	Republic of Maldives
5.	Kingdom of Nepal
6.	Islamic Republic of Pakistan
7.	Democratic Socialist Republic of Sri Lanka

SCHEDULE II : TAXES COVERED

The existing taxes to which this Agreement shall apply:

1.	In Bangladesh	Taxes on income that is direct tax
2.	In Bhutan	Income Tax imposed under Income Tax Act 2001 and the rules thereof
3.	In India	Income Tax, including any surcharge thereon
4.	In Maldives	Taxes on income that is direct tax
5.	In Nepal	Income Tax imposed under the Income Tax Act, 2058
6.	In Pakistan	Taxes on Income
7.	In Sri Lanka	Income tax including the income tax based on the turnover of enterprises licensed by the Board of Investment

SCHEDULE III : COMPETENT AUTHORITY

The term "Competent Authority" means :

1.	In Bangladesh	National Board of Revenue or its authorized representative
2.	In Bhutan	The Ministry of Finance or its authorized representative
3.	In India	The Finance Minister, Government of India, or its authorized representative
4.	In Maldives	Department of Inland Revenue, Ministry of Finance and Treasury
5.	In Nepal	His Majesty's Government of Nepal, Ministry of Finance or its authorized representative
6.	In Pakistan	Central Board of Revenue or its authorized representative
7.	In Sri Lanka	Commissioner General of Inland Revenue

SCHEDULE IV : FISCAL YEAR

The term "fiscal year" means:

1.	In Bangladesh	1st July – 30th June
2.	In Bhutan	1st July – 30th June
3.	In India	1st April – 31st March
4.	In Maldives	1st January – 31st December
5.	In Nepal	The fiscal year beginning mid-July
6.	In Pakistan	1st July – 30th June
7.	In Sri Lanka	1st April – 31st March

ANNEXURE-F

LIST OF COUNTRIES WITH WHICH ASSISTANCE IN COLLECTION OF TAXES IS POSSIBLE (AS ON 1ST MAY, 2015)

Assistance in Collection of Taxes under DTAAs (48 out of 94 countries)

Sl. No.	Country
1.	Albania
2.	Armenia
3.	Australia
4.	Bangladesh
5.	Belarus
6.	Belgium
7.	Bhutan
8.	Botswana
9.	Colombia
10.	Croatia
11.	Czech Republic
12.	Denmark
13.	Estonia
14.	Ethiopia
15.	Fiji
16.	Finland
17.	Georgia
18.	Iceland
19.	Jordan
20.	Kazakhstan
21.	Kuwait
22.	Kyrgyz Republic
23.	Latvia
24.	Lithuania

Sl. No.	Country
25.	Luxembourg
26.	Macedonia
27.	Mexico
28.	Morocco
29.	Mozambique
30.	Nepal
31.	Norway
32.	Poland
33.	Portuguese Republic
34.	Qatar
35.	Romania
36.	South Africa
37.	Sri Lanka
38.	Sudan
39.	Sweden
40.	Taiwan
41.	Tajikistan
42.	Tanzania
43.	Trinidad and Tobago
44.	Turkmenistan
45.	Uganda
46.	Ukraine
47.	United Kingdom
48.	Uruguay

Assistance in Collection of Taxes under TIEAs (3 out of 16 countries/jurisdictions)

Sl. No.	Country/Jurisdiction
1.	Argentina
2.	Jersey
3.	Liberia

Status of Assistance in Collection of Taxes under Multilateral Convention (possible in 23 out of 85 countries/jurisdictions)

Sl. No.	Country/Jurisdiction	Whether ratified the Multilateral Convention	Whether Assistance in Tax Collection Possible
1.	Albania	Yes	No (Reservation given)
2.	Andorra	No	Will know after ratification
3.	Anguilla	Yes	No (Reservation given)
4.	Argentina	Yes	No (Reservation given)
5.	Aruba	Yes	No (Reservation given)
6.	Australia	Yes	Yes
7.	Austria	Yes	No (Reservation given)
8.	Azerbaijan	No	Will know after ratification
9.	Belgium	Yes	No (Reservation given)
10.	Belize	Yes	No (Reservation given)
11.	Bermuda	Yes	No (Reservation given)
12.	Brazil	No	Will know after ratification
13.	British Virgin Islands	Yes	No (Reservation given)
14.	Cameroon	No	Will know after ratification
15.	Canada	Yes	No (Reservation given)
16.	Cayman Islands	Yes	No (Reservation given)
17.	Chile	No	Will know after ratification
18.	China	No	Will know after ratification
19.	Colombia	Yes	No (Reservation given)

20.	Costa Rica	Yes	No (Reservation given)
21.	Croatia	Yes	No (Reservation given)
22.	Curacao	Yes	Yes
23.	Cyprus	Yes	No (Reservation given)
24.	Czech Republic	Yes	Yes
25.	Denmark	Yes	Yes
26.	Estonia	Yes	No (Reservation given)
27.	Faroe Islands	Yes	Yes
28.	Finland	Yes	Yes
29.	France	Yes	Yes
30.	Gabon	No	Will know after ratification
31.	Georgia	Yes	Yes
32.	Germany	No	Will know after ratification
33.	Ghana	Yes	Yes
34.	Gibraltar	Yes	No (Reservation given)
35.	Greece	Yes	Yes
36.	Greenland	Yes	Yes
37.	Guatemala	No	Will know after ratification
38.	Guernsey	Yes	No (Reservation given)
39.	Hungary	Yes	No (Reservation given)
40.	Iceland	Yes	No
41.	India	Yes	Yes
42.	Indonesia	Yes	No (Reservation given)
43.	Ireland	Yes	
44.	Isle of Man	Yes	No (Reservation given)
45.	Italy	Yes	No (Reservation given)
46.	Japan	Yes	No (Reservation given)
47.	Jersey	Yes	No (Reservation given)
48.	Kazakhstan	Yes	No (Reservation given)
49.	Korea	Yes	No (Reservation given)
50.	Latvia	Yes	No (Reservation given)

51.	Lichtenstein	No	Will know after ratification
52.	Lithuania	Yes	Yes
53.	Luxembourg	Yes	No (Reservation given)
54.	Malta	Yes	No (Reservation given)
55.	Mexico	Yes	No (Reservation given)
56.	Moldova	Yes	Yes
57.	Monaco	No	Will know after ratification
58.	Montserrat	Yes	No (Reservation given)
59.	Morocco	No	Will know after ratification
60.	Netherlands	Yes	Yes
61.	New Zealand	Yes	Yes
62.	Nigeria	No	Will know after ratification
63.	Norway	Yes	Yes
64.	Philippines	No	Will know after ratification
65.	Poland	Yes	No (Reservation given)
66.	Portugal	Yes	No (Reservation given)
67.	Romania	Yes	Yes
68.	Russia	Yes	No (Reservation given)
69.	San Marino	No	Will know after ratification
70.	Saudia Arabia	No	Will know after ratification
71.	Seychelles	No	Will know after ratification
72.	Singapore	No	Will know after ratification
73.	Sint Maarten	Yes	Yes
74.	Slovak Republic	Yes	No (Reservation given)
75.	Slovenia	Yes	Yes
76.	South Africa	Yes	No (Reservation given)
77.	Spain	Yes	Yes
78.	Sweden	Yes	Yes
79.	Switzerland	No	Will know after ratification
80.	Tunisia	Yes	Yes
81.	Turkey	No	Will know after ratification

82.	Turks & Caicos Islands	Yes	No (Reservation given)
83.	Ukraine	Yes	No (Reservation given)
84.	United Kingdom	Yes	Yes
85.	United States	No	Will know after ratification

Assistance in Collection of Taxes under SAARC Multilateral Agreement

Sl. No.	Country/Jurisdiction
1.	Afghanistan
2.	Bangladesh
3.	Bhutan
4.	Maldives
5.	Nepal
6.	Pakistan
7.	Sri Lanka

ANNEXURE-G

ARTICLE 27 OF THE OECD MODEL TAX CONVENTION AND ITS COMMENTARY

ARTICLE 27

ASSISTANCE IN THE COLLECTION OF TAXES

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation there under is not contrary to this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be:

a) in the case of a request under paragraph 3, a revenue claim of the first mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or

b) in the case of a request under paragraph 4, a revenue claim of the first mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

b) to carry out measures which would be contrary to public policy (*ordre public*);

c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;

d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

COMMENTARY ON ARTICLE 27

CONCERNING THE ASSISTANCE IN THE COLLECTION OF TAXES

1. This Article provides the rules under which Contracting States (throughout this Commentary on Article 27, the State making a request for assistance is referred to as the "requesting State" whilst the State from which assistance is requested is referred to as the "requested State") may agree to provide each other assistance in the collection of taxes. In some States, national law or policy may prevent this form of assistance or set limitations to it. Also, in some cases, administrative considerations may not justify providing assistance in the collection of taxes to another State or may similarly limit it. During the negotiations, each Contracting State will therefore need to decide whether and to what extent assistance should be given to the other State based on various factors, including

– the stance taken in national law to providing assistance in the collection of other States' taxes;

– whether and to what extent the tax systems, tax administrations and legal standards of the two States are similar, particularly as concerns the protection of fundamental taxpayers' rights (*e.g.* timely and adequate notice of claims against the taxpayer, the right to confidentiality of taxpayer information, the right to appeal, the right to be heard and present argument and evidence, the right to be assisted by a counsel of the taxpayer's choice, the right to a fair trial, etc.);

– whether assistance in the collection of taxes will provide balanced and reciprocal benefits to both States;

– whether each State's tax administration will be able to effectively provide such assistance;

– whether trade and investment flows between the two States are sufficient to justify this form of assistance;

– whether for constitutional or other reasons the taxes to which the Article applies should be limited.

The Article should only be included in the Convention where each State concludes that, based on these factors, they can agree to provide assistance in the collection of taxes levied by the other State.

2. The Article provides for comprehensive collection assistance. Some States may prefer to provide a more limited type of collection assistance. This may be the only form of collection assistance that they are generally able to provide or that they may agree to in a particular convention. For instance, a State may want to limit assistance to cases where the benefits of the Convention (*e.g.* a reduction of taxes in the State where income such as interest arises) have been claimed by persons not entitled to them. States wishing to provide such limited collection assistance are free to adopt bilaterally an alternative Article drafted along the following lines:

COMMENTARY TO ARTICLE 27

ASSISTANCE IN THE COLLECTION OF TAXES

1. The Contracting States shall lend assistance to each other in the collection of tax to the extent needed to ensure that any exemption or reduced rate of tax granted under this Convention shall not be enjoyed by persons not entitled to such benefits. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

b) to carry out measures which would be contrary to public policy (*ordre public*).

Paragraph 1

3. This paragraph contains the principle that a Contracting State is obliged to assist the other State in the collection of taxes owed to it, provided that the conditions of the Article are met. Paragraphs 3 and 4 provide the two forms that this assistance will take.

4. The paragraph also provides that assistance under the Article is not restricted by Articles 1 and 2. Assistance must therefore be provided as regards a revenue claim owed to a Contracting State by any person, whether or not a resident of a Contracting State. Some Contracting States may, however, wish to limit assistance to taxes owed by residents of either Contracting State. Such States are free to restrict the scope of the Article by omitting the reference to Article 1 from the paragraph.

5. Article 26 applies to the exchange of information for purposes of the provisions of this Article. The confidentiality of information exchanged for purposes of assistance in collection is thus ensured.

6. The paragraph finally provides that the competent authorities of the Contracting States may, by mutual agreement, decide the details of the practical application of the provisions of the Article.

7. Such agreement should, in particular, deal with the documentation that should accompany a request made pursuant to paragraph 3 or 4. It is common practice to agree that a request for assistance will be accompanied by such documentation as is required by the law of the requested State, or has been agreed to by the competent authorities of the Contracting States, and that is necessary to undertake, as the case may

be, collection of the revenue claim or measures of conservancy. Such documentation may include, for example, a declaration that the revenue claim is enforceable and is owed by a person who cannot, under the law of the requesting State, prevent its collection or an official copy of the instrument permitting enforcement in the requesting State. An official translation of the documentation in the language of the requested State should also be provided. It could also be agreed, where appropriate, that the instrument permitting enforcement in the requesting State shall, where appropriate and in accordance with the provisions in force in the requested State, be accepted, recognised, supplemented or replaced, as soon as possible after the date of the receipt of the request for assistance, by an instrument permitting enforcement in the latter State.

8. The agreement should also deal with the issue of the costs that will be incurred by the requested State in satisfying a request made under paragraph 3 or 4. In general, the costs of collecting a revenue claim are charged to the debtor but it is necessary to determine which State will bear costs that cannot be recovered from that person. The usual practice, in this respect, is to provide that in the absence of an agreement specific to a particular case, ordinary costs incurred by a State in providing assistance to the other State will not be reimbursed by that other State. Ordinary costs are those directly and normally related to the collection, *i.e.* those expected in normal domestic collection proceedings. In the case of extraordinary costs, however, the practice is to provide that these will be borne by the requesting State, unless otherwise agreed bilaterally. Such costs would cover, for instance, costs incurred when a particular type of procedure has been used at the request of the other State, or supplementary costs of experts, interpreters, or translators. Most States also consider as extraordinary costs the costs of judicial and bankruptcy proceedings. The agreement should provide a definition of extraordinary costs and consultation between the Contracting States should take place in any particular case where extraordinary costs are likely to be involved. It should also be agreed that, as soon as a Contracting State anticipates that extraordinary costs may be incurred, it will inform the other Contracting State and indicate the estimated amount of such costs so that the other State may decide whether such costs should be incurred. It is, of course, also possible for the Contracting States to provide that costs will be allocated on a basis different from what is described above; this may be necessary, for instance, where a request for assistance in collection is suspended or withdrawn under paragraph 7 or where the issue of costs incurred in providing assistance in collection is already dealt with in another legal instrument applicable to these States.

9. In the agreement, the competent authorities may also deal with other practical issues such as:

- whether there should be a limit of time after which a request for assistance could no longer be made as regards a particular revenue claim;
- what should be the applicable exchange rate when a revenue claim is collected in a currency that differs from the one which is used in the requesting State;
- how should any amount collected pursuant to a request under paragraph 3 be remitted to the requesting State.

Paragraph 2

10. Paragraph 2 defines the term "revenue claim" for purposes of the Article. The definition applies to any amount owed in respect of all taxes that are imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, but only insofar as the imposition of such taxes is not contrary to the Convention or other instrument in force between the Contracting States. It also applies to the interest, administrative penalties and costs of collection or conservancy that are related to such an amount.

Assistance is therefore not restricted to taxes to which the Convention generally applies pursuant to Article 2, as is confirmed in paragraph 1.

11. Some Contracting States may prefer to limit the application of the Article to taxes that are covered by the Convention under the general rules of Article 2. States wishing to do so should replace paragraphs 1 and 2 by the following:

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Article 1. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.
2. The term "revenue claim" as used in this Article means any amount owed in respect of taxes covered by the Convention together with interest, administrative penalties and costs of collection or conservancy related to such amount.

12. Similarly, some Contracting States may wish to limit the types of taxes to which the provisions of the Article will apply or to clarify the scope of application of these provisions by including in the definition a detailed list of the taxes. States wishing to do so are free to adopt bilaterally the following definition:

The term "revenue claim" as used in this Article means an amount owed in respect of the following taxes imposed by the Contracting States, insofar as the taxation there under is not contrary to this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount:

a) (in State A):

b) (in State B):

13. In order to make sure that the competent authorities can freely communicate information for purposes of the Article, Contracting States should ensure that the Article 26 is drafted in a way that allows exchanges of information with respect to any tax to which this Article applies.

14. Nothing in the Convention prevents the application of the provisions of the Article to revenue claims that arise before the Convention enters into force, as long as assistance with respect to these claims is provided after the treaty has entered into force and the provisions of the Article have become effective. Contracting States may find it useful, however, to clarify the extent to which the provisions of the Article are applicable to such revenue claims, in particular when the provisions concerning the entry into force of their convention provide that the provisions of that convention will have effect with respect to taxes arising or levied from a certain time. States wishing to restrict the application of the Article to claims arising after the Convention enters into force are also free to do so in the course of bilateral negotiations.

Paragraph 3

15. This paragraph stipulates the conditions under which a request for assistance in collection can be made. The revenue claim has to be enforceable under the law of the requesting State and be owed by a person who, at that time, cannot, under the law of that State, prevent its collection. This will be the case where the requesting State has the right, under its internal law, to collect the revenue claim and the person owing the amount has no administrative or judicial rights to prevent such collection.

16. In many States, a revenue claim can be collected even though there is still a right to appeal to an administrative body or a court as regards the validity or the amount of the claim. If, however, the internal law of the requested State does not allow it to collect its own revenue claims when appeals are still pending,

the paragraph does not authorise it to do so in the case of revenue claims of the other State in respect of which such appeal rights still exist even if this does not prevent collection in that other State. Indeed, the phrase "collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State" has the effect of making that requested State's internal law restriction applicable to the collection of the revenue claim of the other State. Many States, however, may wish to allow collection assistance where a revenue claim may be collected in the requesting State notwithstanding the existence of appeal rights even though the requested State's own law prevents collection in that case. States wishing to do so are free to modify paragraph 3 to read as follows:

When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State that met the conditions allowing that other State to make a request under this paragraph.

17. Paragraph 3 also regulates the way in which the revenue claim of the requesting State is to be collected by the requested State. Except with respect to time limits and priority (see the Commentary on paragraph 5), the requested State is obliged to collect the revenue claim of the requesting State as though it were the requested State's own revenue claim even if, at the time, it has no need to undertake collection actions related to that taxpayer for its own purposes. As already mentioned, the phrase "in accordance with the provisions of its law applicable to the enforcement and collection of its own taxes" has the effect of limiting collection assistance to claims with respect to which no further appeal rights exist if, under the requested State's internal law, collection of that State's own revenue claims are not permitted as long as such rights still exist.

18. It is possible that the request may concern a tax that does not exist in the requested State. The requesting State shall indicate where appropriate the nature of the revenue claim, the components of the revenue claim, the date of expiry of the claim and the assets from which the revenue claim may be recovered. The requested State will then follow the procedure applicable to a claim for a tax of its own which is similar to that of the requesting State or any other appropriate procedure if no similar tax exists.

Paragraph 4

19. In order to safeguard the collection rights of a Contracting State, this paragraph enables it to request the other State to take measures of conservancy even where it cannot yet ask for assistance in collection, *e.g.* when the revenue claim is not yet enforceable or when the debtor still has the right to prevent its collection. This paragraph should only be included in conventions between States that are able to take measures of conservancy under their own laws. Also, States that consider that it is not appropriate to take measures of conservancy in respect of taxes owed to another State may decide not to include the paragraph in their conventions or to restrict its scope. In some States, measures of conservancy are referred to as "interim measures" and such States are free to add these words to the paragraph to clarify its scope in relation to their own terminology.

20. One example of measures to which the paragraph applies is the seizure or the freezing of assets before final judgement to guarantee that these assets will still be available when collection can subsequently take

place. The conditions required for the taking of measures of conservancy may vary from one State to another but in all cases the amount of the revenue claim should be determined beforehand, if only provisionally or partially. A request for measures of conservancy as regards a particular revenue claim cannot be made unless the requesting State can itself take such measures with respect to that claim (see the Commentary on paragraph 8).

21. In making a request for measures of conservancy the requesting State should indicate in each case what stage in the process of assessment or collection has been reached. The requested State will then have to consider whether in such a case its own laws and administrative practice permit it to take measures of conservancy.

Paragraph 5

22. Paragraph 5 first provides that the time limits of the requested State, *i.e.* time limitations beyond which a revenue claim cannot be enforced or collected, shall not apply to a revenue claim in respect of which the other State has made a request under paragraph 3 or 4. Since paragraph 3 refers to revenue claims that are enforceable in the requesting State and paragraph 4 to revenue claims in respect of which the requesting State can take measures of conservancy, it follows that it is the time limits of the requesting State that are solely applicable.

23. Thus, as long as a revenue claim can still be enforced or collected (paragraph 3) or give rise to measures of conservancy (paragraph 4) in the requesting State, no objection based on the time limits provided under the laws of the requested State may be made to the application of paragraph 3 or 4 to that revenue claim. States which cannot agree to disregard their own domestic time limits should amend paragraph 5 accordingly.

24. The Contracting States may agree that after a certain period of time the obligation to assist in the collection of the revenue claim no longer exists. The period should run from the date of the original instrument permitting enforcement. Legislation in some States requires renewal of the enforcement instrument, in which case the first instrument is the one that counts for purposes of calculating the time period after which the obligation to provide assistance ends.

25. Paragraph 5 also provides that the rules of both the requested (first sentence) and requesting (second sentence) States giving their own revenue claims priority over the claims of other creditors shall not apply to a revenue claim in respect of which a request has been made under paragraph 3 or 4. Such rules are often included in domestic laws to ensure that tax authorities can collect taxes to the fullest possible extent.

26. The rule according to which the priority rules of the requested State do not apply to a revenue claim of the other State in respect of which a request for assistance has been made applies even if the requested State must generally treat that claim as its own revenue claim pursuant to paragraphs 3 and 4. States wishing to provide that revenue claims of the other State should have the same priority as is applicable to their own revenue claims are free to amend the paragraph by deleting the words "or accorded any priority" in the first sentence.

27. The words "by reason of their nature as such", which are found at the end of the first sentence, indicate that the time limits and priority rules of the requested State to which the paragraph applies are only those that are specific to unpaid taxes. Thus, the paragraph does not prevent the application of general rules concerning time limits or priority which would apply to all debts (*e.g.* rules giving priority to a claim by reason of that claim having arisen or having been registered before another one).

Paragraph 6

28. This paragraph ensures that any legal or administrative objection concerning the existence, validity or the amount of a revenue claim of the requesting State shall not be dealt with by the requested State's courts and administrative bodies. Thus, no legal or administrative proceedings, such as a request for judicial review, shall be undertaken in the requested State with respect to these matters. The main purpose of this rule is to prevent administrative or judicial bodies of the requested State from being asked to decide matters which concern whether an amount, or part thereof, is owed under the internal law of the other State. States in which the paragraph may raise constitutional or legal difficulties may amend or omit it in the course of bilateral negotiations.

Paragraph 7

29. This paragraph provides that if, after a request has been made under paragraph 3 or 4, the conditions that applied when such request was made cease to apply (*e.g.* a revenue claim ceases to be enforceable in the requesting State), the State that made the request must promptly notify the other State of this change of situation. Following the receipt of such a notice, the requested State has the option to ask the requesting State to either suspend or withdraw the request. If the request is suspended, the suspension should apply until such time as the State that made the request informs the other State that the conditions necessary for making a request as regards the relevant revenue claim are again satisfied or that it withdraws its request.

Paragraph 8

30. This paragraph contains certain limitations to the obligations imposed on the State which receives a request for assistance.

31. The requested State is at liberty to refuse to provide assistance in the cases referred to in the paragraph. However if it does provide assistance in these cases, it remains within the framework of the Article and it cannot be objected that this State has failed to observe the provisions of the Article.

32. In the first place, the paragraph contains the clarification that a Contracting State is not bound to go beyond its own internal laws and administrative practice or those of the other State in fulfilling its obligations under the Article. Thus, if the requesting State has no domestic power to take measures of conservancy, the requested State could decline to take such measures on behalf of the requesting State. Similarly, if the seizure of assets to satisfy a revenue claim is not permitted in the requested State, that State is not obliged to seize assets when providing assistance in collection under the provisions of the Article. However, types of administrative measures authorised for the purpose of the requested State's taxmust be utilised, even though invoked solely to provide assistance in the collection of taxes owed to the requesting State.

33. Paragraph 5 of the Article provides that a Contracting State's time limits will not apply to a revenue claim in respect of which the other State has requested assistance. Subparagraph *a)* is not intended to defeat that principle. Providing assistance with respect to a revenue claim after the requested State's time limits have expired will not, therefore, be considered to be at variance with the laws and administrative practice of that or of the other Contracting State in cases where the time limits applicable to that claim have not expired in the requesting State.

34. Subparagraph *b)* includes a limitation to carrying out measures contrary to public policy (*ordre public*). As is the case under Article 26 (see paragraph 19 of the Commentary on Article 26), it has been felt

necessary to prescribe a limitation with regard to assistance which may affect the vital interests of the State itself.

35. Under subparagraph *c)*, a Contracting State is not obliged to satisfy the request if the other State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice.

36. Finally, under subparagraph *d)*, the requested State may also reject the request for practical considerations, for instance if the costs that it would incur in collecting a revenue claim of the requesting State would exceed the amount of the revenue claim.

37. Some States may wish to add to the paragraph a further limitation, already found in the joint Council of Europe-OECD multilateral Convention on Mutual Administrative Assistance in Tax Matters, which would allow a State not to provide assistance if it considers that the taxes with respect to which assistance is requested are imposed contrary to generally accepted taxation principles.

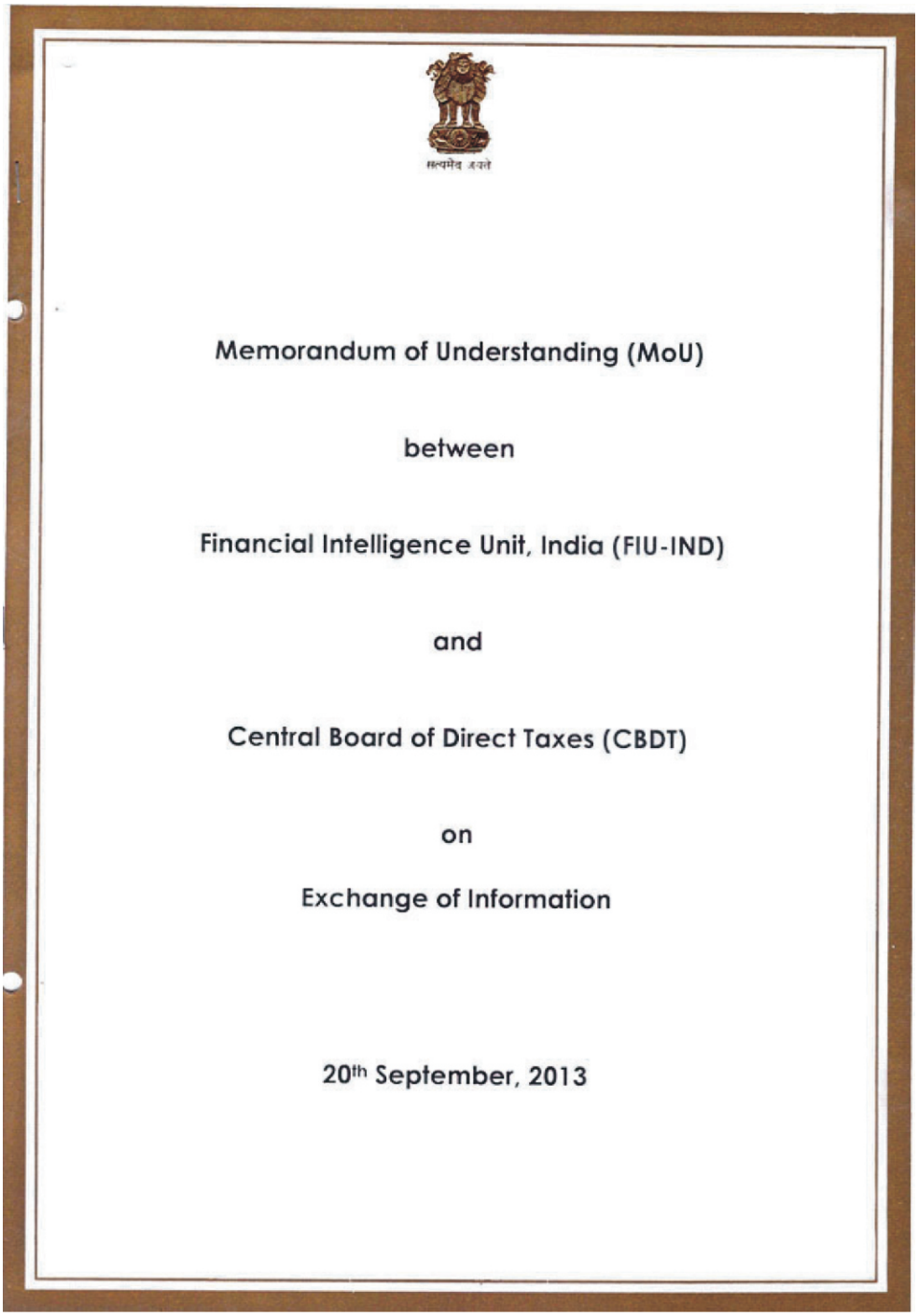
ANNEXURE-H

LIST OF COUNTRIES WITH WHICH INDIA HAS A MUTUAL LEGAL ASSISTANCE TREATY AS ON 1ST MAY, 2015

Sl.No.	Name of the Country	Year
1	Australia	2011
2	Azerbaijan	2013
3	Bahrain	2005
4	Bangladesh	2011
5	Belarus	2006
6	Bosnia&Herzegovina	2010
7	Bulgaria	2008
8	Canada	1998
9	Egypt	2009
10	France	2005
11	Hong Kong	2009
12	Iran	2010
13	Indonesia	2011
14	Israel	2015
15	Kazakhstan	2000
16	Kyrgyz Republic	2014
17	Kuwait	2007
18	Malaysia	2012
19	Mauritius	2006

Sl.No.	Name of the Country	Year
20	Mexico	2009
21	Mongolia	2004
22	Myanmar	2010
23	Russia	2000
24	Singapore	2005
25	South Africa	2005
26	South Korea	2005
27	Spain	2007
28	Sri Lanka	2010
29	Switzerland	1989
30	Sultanate of Oman	2015
31	Tajikistan	2003
32	Thailand	2004
33	Turkey	1993
34	Ukraine	2003
35	United Arab Emirates	2000
36	United Kingdom	1995
37	United States of America	2005
38	Vietnam	2008

ANNEXURE-I
MoU BETWEEN FIU-IND AND CBDT



सत्यमेव जयते

Memorandum of Understanding (MoU)

between

Financial Intelligence Unit, India (FIU-IND)

and

Central Board of Direct Taxes (CBDT)

on

Exchange of Information

20th September, 2013

General

1. This Memorandum of Understanding (MoU) is entered between the Director, Financial Intelligence Unit, India, hereinafter referred to as "FIU-IND", and the Member (Investigation), Central Board of Direct Taxes, hereinafter referred to as "CBDT", in relation to the exchange and use of information between the two agencies under Prevention of Money Laundering Act, 2002 (hereinafter called the "PMLA") and Income Tax Act, 1961 (herein referred to as "IT Act"). It is recognized that CBDT is authorized to receive information from FIU-IND under section 66 of the PMLA.

2. The terms and conditions of this MoU may be amended after mutual agreement between the contracting parties.

3. The MoU shall come into force from the date it is signed by the Director, FIU-IND, and Member (Investigation) CBDT, and shall remain in effect until it is replaced by another MoU or until it is terminated.

4. The MoU may be terminated by any of the parties by a written notice served on the other party.

Exchange of information

5. FIU-IND and CBDT will assist each other by sharing intelligence and information and by providing feedback on the information shared. In particular, FIU-IND will share with the CBDT, of its own accord or on a request made by CBDT, the relevant information available in its databases in accordance with section 66 of the PMLA, and CBDT will make available to FIU-IND:

a) Information about persons suspected to be involved in a scheduled offence under the PMLA and the list of offenders prosecuted by the CBDT from time to time.

b) Feedback on quality and usefulness of information shared by FIU-IND, which may be used by FIU-IND for typologies, red flag indicators, training and improvement in the quality of suspicious transaction reports, etc.

6. Both parties to the MoU will appoint a nodal officer and an alternate nodal officer who will be the primary channel of exchange of information.

7. Both parties will respond to each other's requests with promptness and diligence.

8. In case, CBDT requires information from a foreign FIU, a request will be made to FIU- IND in EGMONT prescribed proforma in electronic format. CBDT shall abide by the conditions that may be imposed by the foreign FIU on the use of information provided by the foreign FIU.

9. The requests for information by the parties will ordinarily be in writing or as web-based request through FINnet; however, in exceptional cases requiring urgent attention, information may be shared on a verbal request, to be followed by a written request. The parties while rejecting a request made by the other party, will, as far as possible, give reasons for rejecting the request.

10. Both parties will ensure that the information sought is not in the nature of roving or fishing enquiry, is specific in nature, and is accompanied by reasons for seeking information and its intended use.

Data protection and confidentiality

11. Both the parties agree, in view of the sensitive and confidential nature of information disseminated by them, to ensure that the information disseminated by both the parties, whether in paper or electronic form, including the source of information, is protected from unauthorized use and proliferation and kept confidential, throughout the chain of transmission of the information.

12. Both the parties, while disseminating the information further within their own organization, would ensure that such dissemination is done on "need to know" basis and that such recipients are bound by the provisions of data protection and confidentiality. Both the parties also agree to apply the standards of data protection and confidentiality prescribed by Government of India from time to time.

13. Neither of the parties will transfer the information disseminated by the other party to a third party without prior consent of the party from whom the information was received.

14. The information provided by FIU-IND will not be used as evidence in any departmental or judicial proceeding. The parties shall also not disclose, in any departmental or judicial proceedings, the identity of the entity from whom the information is received or the name of the officer who has forwarded the information.

Signed at New Delhi on this 20th Day of September, 2013

For Financial Intelligence Unit-India

P K Tiwari
Director
Financial Intelligence Unit-India

For Central Board of Direct Taxes

K V Chowdary
Member (Investigation)
Central Board of Direct Taxes

ANNEXURE-J

SAMPLE PROFORMA FOR MAKING REQUEST FROM EGMONT GROUP OF FIUS

The Egmont Group of Financial Intelligence Units - Request for FIU Information

REQUESTOR REPRESENTATIONS

By using this form, the requesting agency agrees that upon receipt of information provided by the disclosing FIU:

- The requesting agency will maintain the confidentiality of any and all information provided to it by the disclosing FIU;
- The requesting agency will not disclose the information outside of its agency without the prior written permission of the disclosing FIU; and
- The requesting agency will limit the use of the information for the purpose(s) stated on this form.

Please Type or Print All Information (Be sure to save file locally)

REQUESTOR INFORMATION

Case No. Country/Territory: India

Agency Financial Intelligence Unit (on behalf of National Investigation Agency, India)

Name Title

Telephone Fax

E-Mail

Signature _____ Date _____

DD/MM/YYYY

Authorising Official _____ Title _____

Telephone _____ Fax _____

Signature _____ Date _____

DD/MM/YYYY

SUBJECT INFORMATION REQUESTED

SUBJECT IDENTIFYING DATA

Subject Name (Natural Person or Business):

Last First Middle

Alias(es) :

Address :

Relationship of Subject to Investigation :

Professional Activity :

Identification No :

Issuing jurisdiction :

Phone No. :

Other (specify) :

Nationality :

Sex :

Date of birth :

Place of birth :

State/Province :

Country :

FINANCIAL AND OTHER INFORMATION

Related/Associated Business(es) :

Bank Name, Bank Account No(s), Bank address :

NATURE OF THE INVESTIGATION

Describe the case under investigation and state the principal violation(s):

Criminal ☐ Civil ☐

What information do you need from the disclosing FIU?

How and for what purpose(s) will the information requested be used?

Are there on-going formal investigations or judicial proceedings?

Do you anticipate asset forfeiture or securement in this case?

State the amount and type, or nature, of assets involved in this case.

What other agencies or countries are involved in this investigation?

ANNEXURE-K

JURISDICTIONS COMMITTED TO IMPLEMENT CRS ON AEOI AS ON 1ST MAY, 2015

Sl.No.	Name of the Jurisdiction
	First Exchange by 2017
1.	Anguilla
2.	Argentina
3.	Barbados
4.	Belgium
5.	Bermuda
6.	British Virgin Islands
7.	Bulgaria
8.	Cayman Islands
9.	Chile
10.	Colombia
11.	Croatia
12.	Curacao
13.	Cyprus
14.	Czech Republic
15.	Denmark
16.	Dominica
17.	Estonia
18.	Faroe Islands
19.	Finland
20.	France
21.	Germany
22.	Gibraltar

Sl.No.	Name of the Jurisdiction
	First Exchange by 2017
23.	Greece
24.	Greenland
25.	Guernsey
26.	Hungary
27.	Iceland
28.	India
29.	Ireland
30.	Isle of Man
31.	Italy
32.	Jersey
33.	Korea
34.	Latvia
35.	Liechtenstein
36.	Lithuania
37.	Luxembourg
38.	Malta
39.	Mauritius
40.	Mexico
41.	Montserrat
42.	Netherlands
43.	Niue
44.	Norway

Sl.No.	Name of the Jurisdiction
	First Exchange by 2017
45.	Poland
46.	Portugal
47.	Romania
48.	San Marino
49.	Seychelles
50.	Slovak Republic
51.	Slovenia
52.	South Africa
53.	Spain
54.	Sweden
55.	Trinidad and Tobago
56.	Turks and Caicos Islands
57.	United Kingdom
58.	Uruguay
	First Exchange by 2018
59.	Albania
60.	Andorra
61.	Antigua and Barbados
62.	Aruba
63.	Australia
64.	Austria
65.	Bahamas
66.	Belize
67.	Brazil
68.	Brunei Darussalam

Sl.No.	Name of the Jurisdiction
	First Exchange by 2018
69.	Canada
70.	China
71.	Costa Rica
72.	Grenada
73.	Hong Kong (China)
74.	Indonesia
75.	Israel
76.	Japan
77.	Marshall Islands
78.	Macau (China)
79.	Malaysia
80.	Monaco
81.	New Zealand
82.	Qatar
83.	Russia
84.	Saint Kitts and Nevis
85.	Saint Lucia
86.	Saint Vincent and The Grenadines
87.	Samoa
88.	Saudi Arabia
89.	Singapore
90.	Sint Maarten
91.	Switzerland
92.	Turkey
93.	United Arab Emirates

GLOSSARY OF TERMS

Automatic Exchange of Information

Automatic Exchange of Information is the systematic and periodic collection and transmission of "bulk" taxpayer information by the source country to the country of residence of the taxpayer, without the latter country having to make a request for the same. The exchange of information on an automatic basis is permitted under the provisions of DTAAs (unless specifically prohibited) and under the Multilateral Convention.

Many countries, including India, have been exchanging information automatically under the DTAAs and Multilateral Convention with their treaty partners for long. However, the exchange of information was not obligatory; there was no uniformity in the nature and type of information exchanged and further, there were no standards on the periodicity of exchange or on the technical solutions to be utilised for collection and transmission of information. Thus, the information exchanged automatically often was of limited use to the receiving country.

To address these issues, a single uniform and global standard for automatic exchange of information has been developed which is known as the Common Reporting Standard on Automatic Exchange of Information.

AEOI Group

The Global Forum has established a AEOI Group in consequence of the G20 Leaders' Declaration in September, 2013 with a view to establish a mechanism to monitor and review the implementation of the new global standard on automatic exchange of information. India is a vice-chair of this Group.

Bank Secrecy

Bank secrecy is a legal principle in some jurisdictions under which banks are not allowed to provide to authorities personal and account information about their customers unless certain conditions apply for example filing a criminal complaint. Under the new international standards on exchange of information, a Contracting State shall not decline to supply information to a treaty partner solely because the information is held by a bank or financial institution provided the information requested is foreseeably relevant for administration and enforcement of domestic law of the requesting State relating to taxes.

Beneficial Owner

Beneficial owner refers to the natural person(s) who ultimately owns or controls the legal entity or the legal arrangement and include the natural person on whose behalf a transaction is being conducted, including those persons who exercise ultimate effective control over the legal entity or arrangement.

Business or Trade Secret

A requested State may decline to disclose information relating to a trade or business secret. A trade or business secret is generally understood to mean facts and circumstances that are of considerable economic

importance and that can be exploited practically and the unauthorised use of which may lead to serious damage (e.g. may lead to severe financial hardship). The determination, assessment or collection of taxes as such could not be considered to result in serious damage. Financial information, including books and records, does not by its nature constitute a trade, business or other secret.

Competent Authority

The term "Competent Authority" is defined in the tax treaties as the Minister of Finance/Ministry of Finance or a person authorized by it. In India, JS (FT&TR-I) performs the role of Competent Authority for countries in North America (including Caribbean) and Europe, while JS (FT&TR-II) performs the role of Competent Authority for the rest of the world.

Common Reporting Standards on Automatic Exchange of Information

The Common Reporting Standards on Automatic Exchange of Information is a uniform global standard for the collection of financial account information by financial institutions in participating jurisdictions in respect of account holders who are residents in another jurisdiction and reporting of that information to the jurisdictions' tax authority for exchanging the information with the respective tax authorities of the non-residents on an automatic basis. It has been designed with a broad scope across the following three dimensions to ensure that meaningful information is exchanged automatically:

(a) The financial information to be reported with respect to reportable accounts includes all types of investment income (including interest, dividends, income from certain insurance contracts and other similar types of income) and also includes account balances and sales proceeds from financial assets.

(b) The financial institutions that are required to report under the Common Reporting Standards do not only include banks and custodians but also other financial institutions such as brokers, certain collective investment vehicles and certain insurance companies.

(c) Reportable accounts include accounts held by individuals and entities (which includes trusts and foundations), and the standard includes a requirement to look through passive entities to report on the individuals that ultimately control these entities.

Criminal Tax Matters

The term "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of a country.

Confidentiality under Tax Treaties

Any information received under the provisions of tax treaties shall be treated as secret in the same manner as information obtained under the domestic laws of that State. In India, section 138 read with section 280 of the Income-tax Act, 1961, governs the disclosure of taxpayer information obtained under domestic law and the same principles would govern information received under treaties also. In addition, the information received under the tax treaties shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution or deciding appeals in relation to taxes or to the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

Domestic Tax Interest

Under the new international standard on exchange of information, the Contracting States are obliged to exchange information even if the said information is not required for its own domestic purpose. The only condition is that the requesting Contracting State should demonstrate that the information is foreseeably relevant for administration or enforcement of taxes imposed by the requesting State.

Double Taxation Avoidance Agreement

The Double Taxation Avoidance Agreement (DTAAs) are entered into between two Contracting States with the primary purpose of allocation of taxing rights between the treaty partners and the avoidance of double taxation. However, the other important purpose of DTAA is prevention of fiscal evasion and for this purpose it contains provisions for providing wide range of administrative assistance including exchange of information for the purposes of application of the DTAA and for administration or enforcement of domestic tax laws of the Contracting States.

Dual criminality

Under the concept of "dual criminality", the Contracting States are obliged to provide assistance under international agreements only if the purpose for which the information is requested is treated as crime under the laws of both the Contracting Sates. For instance, in many countries "tax evasion" (under reporting of income) is not a crime but "tax fraud" **(**scheme of lies, use of false documents / information to deceive the tax authorities**)** is a crime and in such cases, request for information solely for the purposes of tax evasion may be refused under the principles of "dual criminality". However, under the new international standards, the dual criminality principles do not restrict exchange of information under tax treaties.

Egmont Group of Financial Intelligence Units

The Egmont Group Financial Intelligence Units (FIUs) is an informal network of FIUs established with a view to have international cooperation including information exchange in the fight against money laundering and financing of terrorism. As on 1st May, 2015, FIUs of 147 countries are part of the Egmont Group. The FIUs of the Group exchange information in accordance with Egmont Principles for Information Exchange and Operational Guidance for FIUs, which is available on the Internet. The tax authorities may request information available with FIUs of other countries through FIU-IND (the Indian FIU) using the information exchange mechanism of the Egmont Group.

For the purpose of information from Egmont Group, the Nodal Officer in CBDT is Director/Deputy Secretary (Investigation-IV), CBDT, A.R.A. Centre (Ground Floor), E-2; Jhandewalan Extension, New Delhi – 110055. Tele-fax:011-23547511 [email ID: dirinv4cbdt-itax@nic.in]. Requests in this regard should be sent by the CIT/DIT concerned to the Nodal Officer in CBDT who, after examining the request, will forward it to FIU-IND.

Fishing Expedition

"Fishing Expedition" refers to speculative requests that have no apparent nexus to the inquiry or investigation. Thus, the information about all Indians having bank accounts in a particular country cannot be requested as it would amount to a fishing expedition. The Contracting States are not required to provide administrative assistance and exchange information in cases of "fishing expedition".

Foreign Accounts Tax Compliance Act

Consequent to serious concerns raised in the USA on offshore tax evasion, the United States Senate Permanent Sub-Committee on Investigations chaired by Mr. Carl Levin submitted a report on 17th July, 2008, which resulted in introduction of Foreign Accounts Tax Compliance Act in 2010, which essentially has two components

(a) 30% withholding tax on US source payments made to Foreign Financial Institutions unless they enter into an agreement with the US IRS to provide information about accounts held with them by USA persons or entities controlled by USA person through the new Chapter 4 of subtitle "A" comprising of sections 1471 to 1474 in their Internal Revenue Code of 1986

(b) Requiring U.S. persons, owning foreign accounts or other specified financial assets, to report these on a new IRS Form 8938, Statement of Specified Foreign Financial Assets, and filing of the same with tax returns

Foreseeable Relevance

Under the tax treaties, the Competent Authorities are obliged to exchange information which is foreseeably relevant for administration and enforcement of the domestic laws concerning taxes. The standard of "foreseeable relevance" requires that the requesting State provides an explanation as to how the information requested would be relevant for the tax affairs of the taxpayer concerned relating to investigation, assessment or collection of taxes. The standard provides that the Contracting States are not at liberty to engage in "fishing expeditions" or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer.

The standard requires that at the time a request is made, there is a reasonable possibility that the requested information will be relevant; whether the information, once provided, actually proves to be relevant is immaterial. Thus, the requested State would not decline requests in cases where a definite assessment of the pertinence of the information to an ongoing investigation can only be made following the receipt of the information.

Global Forum on Transparency and Exchange of Information For Tax Purposes

The Global Forum on Transparency and Exchange of Information For Tax Purposes is the continuation of a forum which was created in the early 2000s in the context of the OECD's work to address the risks to tax compliance posed by tax havens. The original members of the Global Forum consisted of OECD countries and jurisdictions that had agreed to implement transparency and exchange of information for tax purposes.

The Global Forum was restructured in September 2009 in response to the G20 call to strengthen implementation of these standards. The Global Forum now has 126 members on equal footing and is the premier international body for ensuring the implementation of the internationally agreed standards of transparency and exchange of information in the tax area. Through an in-depth peer review process, the restructured Global Forum monitors that its members fully implement the standard of transparency and exchange of information they have committed to implement. It also works to establish a level playing field, even among countries that have not joined the Global Forum.

Group Request

Under the new international standard on exchange of information, "group requests" are also possible if they can be demonstrated to be "foreseeably relevant" for administration or enforcement of domestic laws concerning taxes. For this purposes, the requesting State is required to provide a detailed description of the group and the specific facts and circumstances that have led to the request, an explanation of the applicable law and why there is reason to believe that the taxpayers in the group in respect of whom information is requested have been non-compliant with that law, supported by a clear factual basis. It further requires a showing that the requested information would assist in determining compliance by the taxpayers in the group. Although "group requests" are now possible, their scope is not very wide and can be made only if the bank/financial institution in the other country/jurisdiction has actively contributed to the non-compliance of the taxpayers in the group, and the requesting State is able to provide evidence for the same.

Industry-wide exchange of information

As international transactions have increased, so too has the need for tax treaty partners to seek assistance from each other by sharing knowledge and expertise on particular industries and special issues of mutual interest. An industry-wide exchange of information is the exchange of tax information specifically concerning a whole economic sector and not taxpayers in particular. The purpose of such an exchange is to secure comprehensive data on worldwide industry practices and operating patterns, enabling tax inspectors to conduct more knowledgeable and effective examinations of industry taxpayers.

Joint Audit

Under the provisions of tax treaties, Joint Audits are also possible which can be described as two or more countries joining together to form a single audit team to examine an issue(s)/transaction(s) of one or more related taxable persons (both legal entities and individuals) with cross-border business activities, including cross-border transactions involving related affiliated companies organized in the participating countries, and in which the countries have a common or complementary interest. Under Joint Audits, the taxpayer jointly makes presentations and shares information with the countries, and the team includes Competent Authority representatives from each country.

Multilateral Convention on Mutual Administrative Assistance in Tax Matters

Multilateral Convention on Mutual Administrative Assistance in Tax Matters is a multilateral instrument for wide range of administrative co-operation between states in the assessment and collection of taxes, in particular with a view to combating tax avoidance and evasion. This co-operation ranges from exchange of information, including automatic exchanges, to the recovery of foreign tax claims. The original Convention was developed jointly by the Council of Europe and the OECD and opened for signature by the member states of both organizations on 25 January 1988. It was amended in 2010 to align it to the international standard and to open it to all countries, responding to the call of the G20 to make it easier for all countries to secure the benefits of the new co-operative tax environment. The Multilateral Convention is in force in India since 1st June, 2012. As on 1st May, 2015, the Multilateral Convention has been signed by 85 countries/jurisdictions out of which 64 countries/jurisdictions have deposited the instrument of ratification.

Mutual Legal Assistance Treaties

The Mutual Legal Assistance Treaties (MLATs) are legal instruments through which the Contracting States agree to provide each other with the widest measures of mutual legal assistance in criminal matters. The scope of cooperation is different in different MLATs but is normally quite wide and may include the following:

- Provision of information, documents and other records
- Taking of evidence and obtaining of statements of persons
- Location and identification of persons and objects
- Execution of requests for search and seizure
- Measures to locate, restrain and forfeit the proceeds and instruments of crime
- Facilitating the personal appearance of the persons giving evidence
- Service of documents including judicial documents
- Delivery of property, including lending of exhibits
- Other assistance consistent with the objects of the MLAT which is not inconsistent with the law of the requested State (catch all provision)

Under MLAT, exchange of information takes place between authorities designated as 'Central Authority' in the requesting and requested state. In India the 'Central Authority' is the Joint Secretary, Internal Security Division–II, Ministry of Home Affairs, NDCC Building (1st Floor), Jaisingh Road, Near Jantar Mantar, New Delhi-110001.

For the purpose of MLAT, the Nodal Officer in CBDT is Director/Dy. Secretary (Investigation-I), CBDT, Ministry of Finance, Room No. 243-F, North Block, New Delhi, Telefax: 011-23093902. Requests under the MLAT should be sent by the CIT/DIT concerned to the Nodal Officer in CBDT who, after examining the request, will forward it to the Central Authority in MHA.

Peer Reviews of Exchange of Information on Request

Since restructuring in 2009, the Global Forum through a process of Peer Review has been examining the extent to which a jurisdiction has implemented the international standards on transparency and exchange of information for tax purposes and suggesting ways and means by which the deficient jurisdictions can improve and come upto the recognized international standards. The Peer Reviews are done in two Phases. Phase 1 relates to the existence of legal and regulatory frameworks as per international standards while Phase 2 relates to practical implementation of those legal and regulatory frameworks. After completion of Phase 2 review, ratings (Compliant, Largely Compliant, Partially Compliant or Non Complaint) are allocated on ten elements, divided into three parts, viz. (a) availability of information, (b) access to information and (c) exchanging information. An overall rating is also allocated.

Peer Review Group

The Peer Reviews of the Exchange of Information on Request is carried out by a Peer Review Group comprising of thirty members of the Global Forum on Transparency and Exchange of Information. France is chair of the Peer Renew Group and India is one of the vice-chairs.

Public policy

A requested State may decline to provide information if it is contrary to Public Policy/order public. "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, where a tax investigation in another country was motivated by racial or political persecution.

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. This condition of reciprocity is present in the OECD Model Tax Convention (Art. 26) and in the Model Agreement on Exchange of Information on Tax Purposes (Art. 7). A requested party is not obliged to supply information that the requesting party itself could not obtain in the normal course of administration.

Request to Refrain from Prior Notification

Under the laws of certain countries/jurisdictions, the taxpayer or the holder of the information has certain rights including a right to be informed or notified that a request concerning him for information under a tax treaty has been made. The requesting country, however, in certain exceptional cases can make a request that the taxpayer/holder of information may not be so notified. If a request to refrain from notifying the taxpayer(s) concerned is made, the reasons for the same must be clearly explained. Such reasons could be that the information is of a very urgent nature and the process of prior notification to the taxpayer will delay supply of information or the prior notification is likely to undermine the success of the investigation being conducted. A request to refrain from notifying the taxpayer should not be made in a routine manner and such request should be made only if it is essential and can be justified on the basis of documentary evidence. The reason that the taxpayer concerned is likely to file an appeal against the supply of information may not be a valid reason for making such a request.

Simultaneous Tax Examination

Simultaneous examination is an arrangement between two or more parties to examine simultaneously each in its own territory, the tax affairs of (a) taxpayer(s) in which they have a common or related interest, with a view of exchanging any relevant information which they so obtain;

Spontaneous Exchange of Information

Under the DTAAs, information may be exchanged on a spontaneous basis also without making a specific request by the requesting country. This exchange may be made for example in cases where a Contracting State has acquired through certain investigations, information which it supposes to be of interest to the other State. The Multilateral Convention has a specific Article on "Spontaneous Exchange of Information" (Article 7).The OECD Commentary on the Model TIEA, however, states that the parties are not obliged to exchange information spontaneously and thus spontaneous exchange normally do not take place under TIEAs.

Tax Information Exchange Agreements

The Tax Information Exchange Agreements are treaties that have provisions only for exchange of information and are entered into with those countries/jurisdictions (such as offshore financial centres) where there is no need for allocation of taxing rights.

Tax Examination Abroad

Tax examination abroad allows for the possibility to obtain information through the presence of representatives of the competent authority of the requesting Contracting State. To the extent allowed by its domestic law, a Contracting State may permit authorised representatives of the other Contracting State to enter the first Contracting State to interview individuals or examine a person's books and records — or to be present at such interviews or examinations carried out by the tax authorities of the first Contracting State—in accordance with procedures mutually agreed upon by the competent authorities. Such a request might arise, for example, where the taxpayer in a Contracting State is permitted to keep records in the other Contracting State. This type of assistance is granted on a reciprocal basis. Countries' laws and practices differ as to the scope of rights granted to foreign tax officials. For instance, there are States where a foreign tax official will be prevented from any active participation in an investigation or examination on the territory of a country; there are also States where such participation is only possible with the taxpayer's consent.

SOME IMPORTANT CASE LAWS UNDER EOI

1. Shri Mohan Manoj Dhupelia, Shri Ambrish Manoj Dhupeliaand Ms. Bhavya Manoj Dhupeliavs. Deputy Commissioner of Income Tax (ITA No 3544/MUM/2011, ITA No 3545/MUM/2011 and ITA No 3546/MUM/2011) – date of decision 31st October, 2014.

Information was received by Indian Tax Authorities that Shri Manoj Dhupelia, Shri Ambrish Manoj Dhupelia and Ms. Bhavya Manoj Dhupelia are beneficiaries of a discretionary trust named Ambrunova Trust which had a bank account in Liechtenstein Bank with a substantial balance [US$ 24,06,604.90 as on 31.12.2001]. This information was not disclosed by the taxpayers in their tax returns and thus their cases were reopened under section 148 of the Income-tax Act and additions were made in their hands as per their share in the trust.

The taxpayers challenged the order of the Assessing Officer before the appellate Commissioner who decided in favour of the tax authorities. Thereafter, taxpayers field appeal before the ITAT, Mumbai, India.

The ITAT also ruled in favour of the tax authorities. The taxpayers contention that reopening of the assessment was bad in law, was rejected by ITAT stating that reopening of the assessments were as per law and natural justice and due process was followed in this regard.

The taxpayers contended that since the trust was a discretionary trust, no income accrued or was credited to them as beneficiaries and thus income cannot be assessed in their hands. The taxpayers also argued that there was no evidence to show that they had made these deposits in the name of the trust. They also contended that if at all tax was to be charged, it could be levied only on $13,500 earned by the trust and not the entire fund standing in the trust's Liechtenstein bank account.

The ITAT in its decision referred to exhibits from earlier investigations and hearings of a US Senate Sub-Committee in the context of funds held in Liechtenstein banks. The ITAT also observed that Liechtenstein qualifies as an offshore financial centre due to a very modest tax regime, high standard of secrecy laws, which enables foreign investors to set up trusts under Host Trust regulations. While the trust initially pays a nominal tax, profits made and distributions to the beneficiaries are not subject to any tax at all. The ITAT noted that interestingly, in November 2013, Liechtenstein became a signatory to the OECD Multilateral Convention on Mutual Administrative Assistance on tax matters, which allows countries, including India, to gather required banking information in relation to tax evaders, as also an option to undertake automatic exchange of information.

Considering the materials on record including hearings of the US Senate sub-committee and the fact of Liechtenstein being an offshore financial centre with a preferential tax regime, the ITAT noted that it is a common knowledge that discretionary trusts are created for the benefit of particular persons. Those persons need not necessarily control the affairs of the trust, but the fact remains that they are the sole beneficiaries of the trust. The ITAT accordingly held that the totality of facts clearly indicates that the deposit made in the bank account of the trust represents unaccounted income of the taxpayers, as the same was not disclosed by these taxpayers in their respective returns in India. The additions made by the Assessing Officer were accordingly confirmed.

2. Shri K.M. Mammen vs. DCIT (ITA No. 870/Mds/201) – date of decision 21st January, 2013

Information on record showed that on 24th March, 2000, the taxpayer had made a declaration of endowment in favour of M/s. Webster Foundation, Vaduz whereby the Foundation was endowed with a sum of Euro 123,000. The said sum of 123,000 in Euro currency was transferred to the Foundation's account No. 0163517AAA EUR with LGT Bank in Liechtenstein Aktiengesellschaft, Vaduz. In the said declaration it was confirmed that the taxpayer had lawfully acquired and was entitled to dispose freely of these moneys and it was also confirmed that the said declaration of endowment was free from mistakes, threat or compulsion. The said declaration was duly signed by the taxpayer. The declaration was also accepted by the said M/s. Webster Foundation with declaration of acceptance and confirmation of the transfer of the above sum to the Foundation's ownership under the signature of the persons managing the Foundation. The information also showed that the taxpayer was one of the beneficiaries of the Foundation as he is entitled to the ultimate economic assets.

On the basis of this information, the assessment was reopened and the Assessing Officer added the amount outstanding as on 31.12.2001 as unexplained investment under section 69 of the Income-tax Act. The Assessing Officer observed that the signatures found in the documents are of the taxpayer and the same exactly tally with the signature found on the returns of income filed and the sworn statement. Since the taxpayer was the founder of the trust, and in the declaration of endowment he confirmed that he had lawfully acquired the money and that he was competent to dispose of the money, the sources for the balance in the said bank account had to be treated to be his contribution and the same had to be brought to tax as his unexplained investment under section 69 of the Income-tax Act, in the absence of any evidence to show that the same was out of accounted for income.

The appellate Commissioner decided against the taxpayer and an appeal was filed before the ITAT. The ITAT noted that the Foundation was created by the taxpayer and the declaration was duly signed by the taxpayer. The declaration of the taxpayer was also accepted by M/s. Webster Foundation and the same was confirmed by the Foundation's ownership under the signature of the persons managing the Foundation. The ITAT accordingly held that additions have been correctly made.

The taxpayer also submitted before the ITAT that additions under section 69 of the Income-tax Act 1961 cannot be made without authentication of the documents. The ITAT observed that the documents were received from CBDT and the taxpayer was given copies of the said documents and his explanation was called. The additions were made only after confronting the taxpayer. Further, since the information was received from CBDT it could not be said that the documents were not authenticated. This argument was rejected also on the grounds that the Income Tax authorities are not bound by strict Rules of Evidence as held by the Hon'ble Supreme Court in the case of CIT v. East Coast Commercial Company Ltd. (63 ITR 449) (SC).

3. Mitsui and Company India Pvt. Ltd. (the taxpayer) vs. ITO (the tax authorities) - WPC No. 1121/2012 & CM No. 2447/2012 - High Court of Delhi – Date of decision 26th September, 2012

The Indian Income Tax authorities received certain information under Article 26 of the DTAA between India and Japan regarding Mitsui and Company India Pvt. Ltd. On the basis of this information, a reassessment notice under section 148 of the Income-tax Act was issued to the company by the Income Tax authorities. The company was tax resident of India. It belonged to a multinational corporation having headquarters in Japan.

The taxpayer company challenged the notice of reassessment by filing a writ petition before the Delhi High Court stating that the reasons for reopening the assessment were frivolous and only a pretence. The company raised the issue whether the tax authorities had jurisdiction to carry out reassessment on the basis of information received from the Competent Authority of Japan under Article 26 of the DTAA between India and Japan. The company stated that the Japanese authorities have no authority to verify the accounts of the company to find out whether the income has been accounted for in its books and, therefore, the Assessing Officer was not right in stating that the information received from the Japanese authorities related only to the amount not disclosed in the books of accounts of the Indian company. The assumption of the Assessing Officer that the material in his possession related to the amount of income that had escaped assessment was challenged on this basis.

The Court considered the submissions made by the company and by the tax authorities and ruled in favor of the tax authorities. The Court held that at the stage when reasons are recorded under section 148(2) of the Income-tax Act, 1961, the Assessing Officer is not expected to hold an inquiry, with the participation of the taxpayer, and come to a final determination that the amount in question represented the undisclosed income of the taxpayer. Assessing officer is required only to reach prima facie or tentative belief. The formation of the belief must be based on some valid material. It cannot be disputed that the information received from a governmental agency constitutes valid material on the basis of which the Assessing Officer could form a tentative or prima facie belief regarding escapement of income.

The court stated that it is difficult to appreciate the petitioner's objection that the information received under Article 26 of the DTAA between India and Japan cannot constitute valid material on the basis of which the Assessing Officer can form even a tentative or prima facie belief that income had escaped assessment. The very fact that this information was received from a governmental agency under Article 26 of the DTAA constitutes the live link or nexus between the material and the formation of the belief that income to that extent has escaped assessment. The Petition of the Company was, therefore, rejected.

4. Bikramjit Singh Kalra vs. United States of America in US District Court, Northern District of Illinois – Case No.12-cv-3154 date of decision 21st January, 2014 and 23rd April, 2013

The Indian Competent Authority requested details of bank accounts of Mr. Bikramjit Singh Kalra from the US Competent Authority in Bank of America and HSBC Bank, USA, for the period 1st April, 2000 to 31st December, 2011 under Article 28 of the DTAA between India and USA.

Mr. Kalra filed a Petition in the US Court requesting quashing of the summons issued to the Banks for providing the information. The US Court in its decision dated 23rd April, 2013, denied the Government's motion to dismiss the Petition but retained the jurisdiction. The decision was given mainly on technical grounds of inadequate notice to the taxpayer and not adequate notice to show that the summons were issued in good faith.

On 25th June, 2013, the US IRS reissued the summons to Bank of America and HBBC, after seeking further clarifications from Indian Competent Authority, which was again challenged by Mr. Kalra. Subsequently, Mr. Kalra conceded validity of summons to the extent they seek information and documents for 2001 and 2011 but continued to resist production of bank records for 2000 through 2009.

The Court in its decision of 21st January, 2014, held that to establish a prima facie case that an IRS summons is valid the government must satisfy the four factors set forth by the Supreme Court in United States v. Powell, 379 U.S. 48 (1964):(1) the summons were issued for a legitimate purpose; (2) the

summoned data may be relevant to that purpose; (3) the data is not already in the IRS's hands; and (4) the IRS has followed the administrative steps for issuing and serving the summons. Additionally, the government must not violate the Internal Revenue Code provision that "the summons is issued in good faith." These requirements "impose only a minimal burden" on the government. The government typically demonstrates its prima facie case through affidavits of the agents involved in the investigation. An affidavit of the investigating agent that the Powell requirements are satisfied is sufficient to make the prima facie case. The Powell factors are applicable even where, as here, the IRS has issued the summons pursuant to a treaty with a foreign country. Once the government makes a prima facie showing of a valid summons, the burden shifts to the petitioner to either "disprove one of the Powell factors, or to show that the IRS issued the summons in bad faith." The petitioner "faces a 'heavy burden'" in refuting the government's prima facie case. He "must do more than just produce evidence that would call into question the Government's prima facie case"; rather, he carries the burdens of production and proof.

On the basis of affidavits filed by the US Authorities, the Court came to the conclusion that the government has made a prima facie case that the summonses are valid. In particular, with regard to the Powell's first test, the Court noted that "[a]ssisting the investigation of a foreign tax authority has been held to be a legitimate purpose by itself." Mazurek v. United States, 271 F.3d 226, 230 (5th Cir. 2001) (finding that "the IRS meets Powell's first ("legitimate purpose") requirement because it is attempting to fulfill the United States' obligations under the Treaty efficiently").

Mr. Kalra in his reply conceded the validity of the summons to the extent that they seek information for the time period of 2010-2011 but contested the production of bank records for 2000 through 2009. Mr. Kalra argued that the first and second Powell factors are not met for this time period because: (1) the Indian Competent Authority has not commenced an investigation into his tax liabilities for the years 2000 through 2005, and (2) the income he earned in the United States for the years 2005 through 2010 was exempt from taxation under Indian law.

The Court held that Mr. Kalra's arguments are misplaced since the Powell factors do not require the IRS to assess the adequacy of the Indian tax practices or the scope of its tax investigation before issuing the summons for the requested information. See, e.g., Guglielmi v. United States, No. 12 Civ. 6007(WHP), 2013 WL 1645718, at *2 (S.D.N.Y. Apr. 15, 2013) ("To enforce a summons, the IRS is not required to assess the adequacy of [another country's] tax law or practices."). Rather, the focus is on whether the IRS acted in good faith in complying with the requests. As long as the IRS acts in good faith, it need not also attest to—much lest prove—the good faith of the requesting nation." As such, courts have rejected arguments, such as those made by Kalra, that seek to attack the good faith or legitimacy of the requesting country's investigation. See, e.g., Villareal v. United States, 524 F. App'x 419, 423(10th Cir.2013) (Mexico taxing authorities' good faith in requesting information was irrelevant; "what matters is the IRS's good faith in issuing the summons").

The Petition of Mr. Kalra was, therefore, rejected and the summons issued by the US IRS seeking banking information were held to be valid.

5. Comptroller of Income Tax v BJY &Ors. - High Court of Singapore – date of decision 13th September, 2013 [2013] SGHC 173

In Comptroller of Income Tax v BJY & Ors, the Singapore High Court considered whether banking information sought pursuant to a double taxation agreement should be disclosed. The application for the

disclosure of the information was made by the Singapore Comptroller of Income Tax (the "Comptroller") pursuant to section 105J of the Income Tax Act (the "ITA"). The court held that the conditions set out in section 105J of the ITA were fulfilled and granted the order providing disclosure of all the documents sought by the Comptroller.

In this case, Competent Authority of India made an EOI request to Competent Authority of Singapore regarding activities of a company BJX who was running a Ponzi-like scheme in India with another Singapore company. BJX had appointed three Indian companies to collect the monies from this operation in India. The money collected was then allegedly paid into BJX's Singapore bank accounts (the "bank accounts"). The three Indian companies were considered by the Competent Tax Authority of India to constitute permanent establishments for BJX in India. As such, the income of BJX that was directly or indirectly attributable to the permanent establishments in India was regarded as taxable under Indian law. However, the money remitted to the bank accounts had not been subjected to tax.

Under the framework for EOI, where information is generally prohibited from disclosure under the Banking Act or the Trust Companies Act, the Comptroller is required to apply to Court to obtain the information under section 105J of the IRA and serve a notice to the person in relation to whom the information is sought and also to the person who is believed to have possession or control of the information. Therefore, the Comptroller served a notice on BJX and the director of BJX, on behalf of BJX filed an affidavit to oppose the application made by the Comptroller.

Before the Court can grant an order under section 105J, two conditions must be satisfied - the making of such an order is justified in the circumstances and that it would not be contrary to the public interest. The court considered each condition separately.

The court stated that to determine whether the order would be justified, two considerations were pertinent: whether the information was foreseeably relevant and whether the information sought disclosed a trade, business, industrial, commercial or professional secret or trade process ("business secrets").

The court found that the EOI request was not speculative nor was it a "fishing expedition". There was sufficient evidence to establish a connection between the tax investigations on BJX and the information in the bank accounts and it was not disputed that BJX was involved with the three Indian companies.

The information sought was foreseeably relevant as the bank account statements would allow for the movement and amount of moneys transferred to be traced. The account opening documents would allow the Competent Authority of India to investigate the identity of the person behind BJX to see whether that person had infringed Indian tax laws in connection with the alleged Ponzi-like scheme.

BJX argued that the information sought was not foreseeably relevant because it had not been shown that BJX was subject to Indian tax laws. The court disagreed, finding that it was not for the Court to make pronouncements on who was subject to Indian tax laws, and also noting that it was not necessary for the Competent Authority of India to prove that BJX was so liable in India when seeking the very information which was foreseeably relevant to helping them establish BJX's liability.

The court interpreted what constituted "business secrets" in a narrow vein with consideration given to the OECD commentary in this regard. The court noted that section 105J of the ITA was implemented to bring Singapore in line with the international agreed standard on such requests. The court then found that

the information sought did not fall within the narrow exception of business secrets, rejecting BJX's argument that the documents sought were "akin to customer and supplier lists".

In addition to the findings above, the court also noted that the disclosure of the information sought would not be contrary to the public policy of Singapore. The court held that the conditions set out in section 105J of the ITA were fulfilled and granted the order providing disclosure of all the documents sought by the Comptroller.

6. ABU v Comptroller of Income Tax [2015] SGCA 4 (Singapore, Court of Appeal, 22 January 2015)

The National Tax Agency of Japan ("JNTA") had requested banking information relating to the taxpayer from the Comptroller of Income Tax in Singapore ("Comptroller") pursuant to the DTAA between Japan and Singapore. The purpose of the request was to determine whether the taxpayer had failed to declare distributions received from foreign securities investment funds.

As the Comptroller concluded that the bank statements sought were protected against unauthorised disclosure by the Banking Act, the Comptroller made an application to the court for the production of the statements under section 105J(2) of the Income Tax Act ("Act"). The Appellant sought to oppose the application on the basis that the request from JNTA was not valid and that the DTAA could not allow for the exchange of information which had come into being before the period that the DTAA was given effect.

The Singapore Court of Appeal upheld the decision of the High Court to allow the application and ordered the production of the bank statements requested. It noted that the provisions in the Act regarding the exchange of information were introduced to comply with the Organisation of Economic Cooperation and Development 2008 Model Tax Convention on Income and on Capital ("EOI Standard"). The Court noted that four pertinent features of the EOI Standard were:

(a) The touchstone for the exchange of information was whether the requested information was "foreseeably relevant" for carrying out the provisions of the relevant tax treaty or the enforcement of the domestic laws of the requesting state.

(b) It does not permit a contracting state to decline a request merely because it lacks a "domestic interest" in the information.

(c) It does not permit a contracting state to decline a request for information only because the information is held by a bank, a financial institution, or a person acting in a fiduciary capacity.

(d) It allows the sharing of information relating to all forms of taxes, not just income tax.

The Court noted that the High Court's power to make an order for protected information under section 105J(2) of the Act was premised on whether the conditions in section 105J(3) were satisfied. These conditions were whether the making of the order was justified in all the circumstances of the case and that it was not contrary to public interest. As the taxpayer did not contend that the making of an order for production of the bank statements was contrary to the public interest, the sole issue was whether the making of the order for production was justified in the circumstances of the case.

The Court noted that under section 105(D) of the Act, a request must provide certain mandatory information as prescribed in the Eighth Schedule of the Act. This information included the information sought, the identity of the individual, and the grounds for the request. A statement that the request conforms to the law of the country seeking the information must also be provided, along with a statement that the country has pursued all means in its own territory in obtaining the information.

In the present case, the Court held that there was no real dispute that, on its face, JNTA's request met the requirements of the Eighth Schedule. The Court held that, whilst the High Court should be independently satisfied as to the justification of a request, it was not the intention of Parliament that the High Court substantively review a request to the extent of enquiring into the truth of the factual assertions contained in it. As a matter of international law, it was not for the courts to, in effect, adjudicate the validity of a request made by a foreign tax authority. If there were doubts concerning the validity of a request, it would fall on the Comptroller to resolve them through diplomatic channels. The Court held that international comity would be compromised if the Singapore court was required to make pronouncements that could question the underlying bona fides of requests made by foreign tax authorities as foreign tax authorities cannot appear in the Court to prove the basis of the request.

With regard to the taxpayers' contention that the statutory regime implementing the DTAA did not permit disclosure of information relating to periods before the DTAA came into effect, the Court held that in determining whether legislation has a retrospective application, a purposive approach should be applied. This would entail a single overarching enquiry as to parliamentary intent, and that would be found in the words of the law, its context and the relevant extrinsic aids to statutory interpretation. Only if ambiguity persisted on a purposive interpretation may recourse be had to the various presumptions.

The Court held that the relevant issue of statutory interpretation concerned whether the exchange of information regime applied to information relating to periods before the Treaty was given effect as a "prescribed arrangement" under the Act. The Court held that it was clear that Parliament had intended to permit the exchange of information relating to any period both before and after the date on which the DTAA was given effect. The point really was that the present request could only be made after the DTAA had been given effect as a prescribed arrangement, but once made, the request could relate to information pertaining to an earlier period. Put simply, the Court held that the temporal scope of information which could be exchanged under the exchange of information regime under the Act was unlimited save for where a contrary provision was made under the relevant tax treaty. This was not the case in the present tax treaty.

In the present case, the Court was satisfied that the letter of request contained all the information prescribed by the Eighth Schedule and accordingly the standard of foreseeable relevance had been met.

7. Comptroller of Income Tax vs AZP, 2012, Singapore, SGHC 112, date of decision 23 May, 2012

The Indian Income tax authorities seized some documents from an Indian national which indicated the existence of undeclared bank accounts in Singapore. These documents were unsigned transfer instructions allegedly issued by the Indian national in respect of the two bank accounts which were held at a bank in Singapore by Company X and Y respectively.

Therefore Indian Income tax authorities made an EOI request to the Singapore tax authorities for obtaining details about these two bank accounts.

The Comptroller of Income Tax, Singapore applied to the court under 105J of the Income Tax Act for an order requiring production of the documents. The court dismissed the application citing that the information requested was not demonstrated to be "foreseeably relevant for carrying out the provisions of the Agreement" due to the inadequacy of the supporting documentation provided by the tax authority in India.

The tax authority in India relied on unsigned transfer instructions allegedly issued by the Indian national as evidence that the Indian national remitted monies to company X's and company Y's bank accounts in Singapore. The tax authority in India also relied on transfer instructions as evidence of the connection between the Indian national and Company X & Y. The Indian national had not admitted to any connection between him and Company X & Y. These transfer instructions were dated prior to the treaty period (December 2005 & July 2000) and therefore the comptroller had already stated to the Indian tax authorities that the bank records and statements requested for the period before 1 January 2008 could not be provided. The tax authority in India did not provide evidence of any transaction between Company X & Y and the Indian national on or after 1 January 2008 in relation to both the bank accounts and therefore, the EOI Request and the supporting evidence was not sufficiently clear and specific to say that the information requested would be foreseeably relevant to the enforcement of India's tax laws and the ongoing investigations on the Indian national.

8. Swiss Federal Administrative Court (SFAC) decision of 17 December 2013

The Indian tax authorities were investigating the tax affairs of an Indian national who was allegedly having a bank account with a Swiss private bank and relating to the fiscal years 2001/2002 to 2012/2013. This bank account was not disclosed to the Indian tax authorities. An EOI request was made by Indian tax authorities to the Switzerland tax authorities based on Article 26 of the DTAA between India and Switzerland. The Swiss Federal Tax Administration (SFTA) accepted the EOI request for assistance filed by the Indian authorities. However, the taxpayer filed an appeal against a decision of the SFTA.

In its appeal, the taxpayer argued that Article 26 had no retroactive effect and that any information could only be exchanged with the Indian tax authorities for the fiscal years 2011-2012 onwards.

The taxpayer quoted the wording of Article 14(3) 2010 Protocol, which provides that the exchange of information between the two states will only apply to information relating to any 'fiscal year' beginning on or after 1 January of the year following the signature of the 2010 Protocol. The 2010 protocol was signed on 30 August 2010. Therefore, Article 26 could only apply to information relating to the Indian fiscal year which started on 1 April 2011 (i.e. the fiscal year 2011-2012). As a result, the SFAC ruled that Article 26 had no retroactive effect beyond this date and information prior to this date cannot be provided to Indian tax authorities.

The SFAC annulled the SFTA's decision and ruled that, based on Article 26, no administrative assistance should be provided to India for fiscal years prior to 2011-2012.

9. The Federal Supreme Court of Switzerland: Switzerland Case No. A-5390/2013 dated 6th January, 2014

The USA tax authorities submitted a request for administrative assistance to the Swiss authorities requesting disclosure of bank account data of clients of the Swiss private bank. The US tax authorities accused the Swiss bank of having had employees that actively assisted their clients in concealing their income and assets from US tax authorities. The request contained an abstract description of the behavior of the bank's clients. The request further gave a concrete example of a married couple using debit cards linked to an account of a company which is domiciled in a state outside the US (domiciliary company). Affected clients of the bank appealed against the decision of the tax authorities to grant the request.

The Federal Supreme Court ruled in favor of the taxpayers and held that the Swiss tax authorities had

unlawfully granted the request for administrative assistance. The Court stated that administrative assistance shall not be granted for presumed tax evasion, even if high amounts are at stake. The Court further confirmed that the mere failure to declare a bank account may be qualified at the utmost as tax evasion, which is not subject to administrative assistance. It noted that administrative assistance under Article 26 of the relevant treaty could be granted only for the prevention of tax fraud or the like, which is further defined in paragraph 10 of the protocol to the Treaty between Switzerland and USA.

The Court found that the facts and example given in the request do not indicate a behavior that qualifies as tax fraud or the like. The US tax authorities did not even state that the married couple had not respected the company's separate legal existence nor that the withdrawal of cash served private purposes only.

The Federal Supreme Court then held that administrative assistance could also not be granted under a measure adopted by the Swiss government allowing for administrative assistance in the case of group requests in line with Article 26 of the OECD Model. The Court considered that the facts and examples put forward by the US tax authorities in the request for assistance are not sufficient to meet the level of detail which is required for the demarcation between group requests for which administrative assistance can be granted and forbidden fishing expeditions.

10. The Commissioner for the South African Revenue Service vs Werner Van Kets – Case No. 13446/2011 – date of decision 22nd November, 2011

The Australian Tax Office (ATO) was investigating the tax affairs of Mr. Duncan Paul Saville, an Australian resident, regarding his income tax affairs, in particular his possible offshore wealth and his involvement with a Labuan (Malaysian) entity known as Republic Life Common Fund Ltd (RLCF) which transferred huge money into Australia. Mr. Werner Van Kets was a director of RLCF and residing in Australia.

Therefore, the ATO sent an EOI request to the South African Revenue Service (SARS) regarding Mr. Saville under Article 25 on exchange of information of the DTA between Australia and South Africa.

Mr. Werner Van Kets, a resident of South Africa, was in possession of the information required by the ATO but refused to release it to SARS on the basis that the information was confidential and that he was not so authorized to disclose it.

SARS sought a court order declaring that sections 74A and 74B of the Income Tax Act No. 58 of 1962 (the "Act") may be invoked for the purpose of obtaining information from the respondent and any other person in South Africa in order for SARS to comply with its obligations under a tax treaty which contains a provision for exchange of information.

The issue for determination was whether the word "any taxpayer" employed in the section 74A and 74B of the Act can be interpreted to include a person who is not a taxpayer as defined in section 1 of the Act, but who, in terms of DTA, has been identified as the person who can provide the information pursuant to the request which, in this case, had been initiated by ATO.

Sections 74A and 74B provide as follows:

" 74A The Commissioner...may, for the purpose of the administration of this Act in relation to any taxpayer, require such taxpayer or any other person to furnish such information (whether orally or in writing) documents or things as the Commissioner...may require.

74B The Commissioner...may, for the purpose of the administration of this Act in relation to any taxpayer, require such taxpayer or any other person, with reasonable prior notice, to furnish, produce or make available any such information, documents or things as the Commissioner...may require to inspect, audit, examine or obtain. "

Section 1 of the Act defines a "taxpayer" as:

" ...any person chargeable with any tax levieable under this Act and includes every person required by this Act to furnish any return. "

The respondent argued that the expression "any taxpayer" in Sections 74A and 74B refers to a taxpayer in South Africa, therefore, the provisions of the Act being relied upon by SARS only applied to a person who is a taxpayer in South Africa, and not a taxpayer in another country (in this case, an Australian taxpayer).

The court stated that the essential dispute comes down to whether the provisions of DTA in general and Article 25 in particular broaden the scope of section 74A and section 74B beyond the strict meaning of definition of taxpayer in section 1.

The High Court granted the application of SARS and issued an order as follows:

"1. that Sections 74A and 74B may be invoked by SARS for the purposes of obtaining information from the respondent and any person in the Republic of South Africa for purposes of complying with its obligations under any tax treaty or treaty concluded for exchange of information;

2. that the term "taxpayer" as contained in sections 74A and 74B must be interpreted to be consistent with South Africa's obligations under any tax treaty or treaty concluded for exchange of information;

3. that South African residents are bound by the provisions of the treaty (as amended by the 2008 protocol) and in terms of which South African residents are bound to furnish information pursuant to any request in terms thereof; and

4. that the respondent should disclose the information required to SARS for onward transmission to the ATO."

11. Ben Nevis (Holdings) Limited, Metlika Trading Limited vs Commissioners for HM Revenue & Customs [2013] EWCA Civ 578

Ben Nevis is a company incorporated in the British Virgin Islands. It is owned and controlled by a South African based businessman, Mr. David King, and/or his trustees. Ben Nevis was liable to the Commissioner for the South African Revenue Service ("SARS") for taxes for the 1998, 1999 and 2000 years of assessment in the total sum (including various penalties and interest) of Rand 2.6 billion (approximately £222 million), following the final determination of a tax appeal in October 2010. On the 4 March 2011 a judgment was entered against Ben Nevis in proceedings in the Republic of South Africa for these sums.

SARS maintained that when Mr. King learned that SARS was investigating Ben Nevis's tax affairs he procured the transfer of Ben Nevis' assets to the Metlika Trading Limited ("MTL"), a company also incorporated in the British Virgin Islands. SARS became aware that as a result of these activities a fund of approximately £7.8 million had been credited to a bank account in London in the name of MTL.

Following the coming into force on 13 October 2011 of a Protocol to the 2002 treaty (signed in 2010) amending an existing double taxation treaty between the United Kingdom and the Republic of South Africa which made provision for mutual assistance in the collection of taxes, SARS made a request to the Respondent ("HMRC") that it assist in the collection of the tax debt.

The taxpayers challenged the temporal scope of the relevant mutual assistance provisions between the United Kingdom and the Republic of South Africa, contending that the proper construction of the 2002 treaty and the 2010 protocol (Article 27) had the effect of precluding mutual assistance under Article 25A in the collection of tax amounts which related to periods prior to 1 January 2003.

The court decided in favor of HMRC and stated that Article 27did not limit the temporal application of the 2010 protocol and Article 25A and considered that Article 25A, when read free of the fetters of Article 27, applied to requests for assistance in the enforcement of tax liabilities which arose before the coming into force of the protocol. The court stated that UK and South Africa had made clear in Article VI of the protocol their intention that Article 25A should apply to all requests for assistance in the enforcement of tax claims complying with Article 25A provided that the request was made on or after the date of entry into force of the protocol.

12. M.H. Investment, J.A. Investment vs. the Cayman Islands Tax Information Authority (CITIA), Cause number G391/2012

The Australian Tax Office (ATO) made four EOI request to Cayman Islands Tax Information Authority (CITIA) for obtaining information regarding the applicant entities. CITIA accepted the EOI requests and issued notice accordingly. The applicant entities appealed to the Grand Court of the Cayman Islands against the decision of CITIA.

The court ruled in the favour of taxpayers and held the actions of CITIA as unlawful. The Court stated that respondent has a duty to do everything to assist ATO but in doing so it also has a duty to ensure that applicant's rights are not infringed and its actions are not unlawful.

The court held that in the first EOI request, the respondent should have asked more information from ATO pursuant to section 7(2) of ITA Law in relation to the use of information for periods before the 1st July 2010 and whether or not the investigations related to the proceedings, or alternatively, whether the proceedings in Australia related to the Investigations.

Therefore, the respondent's decision to issue notice to the applicant pursuant to section 8(4)(b) of the TIA Law infringed the Applicant's right to privacy and to a fair and public hearing in the determination of their rights pursuant to article 9 & 7, respectively, of the Bill of Rights.

For the second EOI request, the request related to information prior to the entry into force of the TIEA, the disclosure of which was unlawful.

In the third EOI request, the information was provided by the respondent to ATO. Afterwards, ATO sought permission from respondent to disclose the information to the tax authorities of UK which was given. The court held that respondent should not have provided the consent without first applying to the Grand court for directions pursuant to section 21 (1) of the TIA Law, and , therefore, respondent's decision pursuant to third EOI request is ultra vires. Further, and as a direct result of the respondent's ultra vires consent, the ATO's use of the information in the United Kingdom was a contravention of Articles 1 & 8 of the Tax information Agreement.

In the fourth EOI request, ATO sought permission to disclose information to the court in Australia which was given by the respondent. The court held that respondent is in breach of TIA law. It had no authority to provide the ATO with its consent to use the material in court proceedings without first applying to a judge of the Grand Court for directions. Further, the respondent was in breach of TIA Law and Tax Information Agreement by consenting to the ATO for the use of documents for taxable periods prior to 1 July 2010. The Court held that it is clear from the Tax Information Agreement that it does not apply to taxable periods on or before the 1st July 2010, and it must have been clear to the ATO when it asked the respondent for this consent.

Therefore, the court decided in favor of applicants and granted the applicants the following relief:

i. An order of Certiorari quashing the decisions of the CITIA, collectively and or individually as the decisions were ultra vires of the powers vested in the CITIA by the TIA Law.

ii. A declaration that the decisions by the CITIA to comply with the first and second Requests were unlawful because the CITIA failed to apply to the Grand Court under s.8(4) of the TIA prior to issuing production notices.

iii. A declaration that the Decisions by the CITIA pursuant to the third and fourth Requests to consent to the use of the information previously obtained by the ATO was unlawful because the CITIA failed to apply to the Grand Court under s.21(2) of the TIA Law prior to giving its consent.

iv. A declaration that the Applicants were entitled to receive Notices pursuant to s.17(1) of the TIA Law and the CITIA was in breach of its obligation to provide Notices of the four Requests to the Applicants.

v. A declaration that the Applicants were entitled to attend at any hearing under s.8(4)(a) or s.2l of the TIA Law.

vi. A declaration that the information which has been produced to the ATO, and which was the subject of the third and fourth Requests, was and remains confidential to the Applicants pursuant to s.21 (1) of TIA Law.

vii. A direction that the CITIA shall forthwith write to the ATO:

   a) Formally revoking its consent to the divulging of the Applicants' documents, or any part thereof, in Court proceedings in Australia, or otherwise; and

   b) Seeking the ATO's undertaking that it will not divulge the Applicants' documents or any part thereof m Court proceedings in Australia or otherwise; and

   c) Demanding the immediate return and/or destruction of all copies of the Applicants' documents.

13. Hua Wang Bank Berhad v Commissioner of Taxation (No 7) [2013] FCA 1020, Federal Court of Australia, date of judgment 8 October 2013

In the case M.H. Investment, J.A. Investment vs the Cayman Islands Tax Information Authority (CITIA), cause number G391/2012 described in the previous case, the Grand Court of Cayman Island decided that information was provided unlawfully to Australian Tax Office (ATO). Following this judgment in Cayman Island, the taxpayers challenged the orders of ATO in the Federal Court of Australia.

The taxpayer submitted that documents obtained from Cayman Island cannot now be used in the Australian Courts as these documents have been obtained illegally in breach of law of Cayman Island. This argument depended upon the decision of the Grand Court to set aside the decisions of CITIA to give the documents to the Commissioner along with the decision to consent to use of the documents in these proceedings.

The applicants submitted that those decisions were set aside by the Grand Court and from there, the illegality was said to arise from s 5(1) of the Confidential Relationships (Preservation) Law (2009) Revision (Cayman Islands), Consolidated & revised 16 June 2009, Supplement No. 5 published with Gazette No. 14 of 7 July 2009 ('the Cayman Islands Confidential Relationships Law'). That provision makes it an offence punishable by two years imprisonment or a fine of $5,000 to divulge confidential information (s 5(1)(a)(i)) or wilfully to obtain or attempt to obtain such information (s 5(1)(b)). Subsection 3(1) of that Act applies that prohibition '… to all persons coming into possession of such information at any time thereafter whether they be within the jurisdiction or thereout'. As a matter of the law of the Cayman Islands s 5(1) of the Cayman Islands Confidential Relationships Law therefore operates in Australia.

It was therefore said that documents obtained from Cayman Island which were produced as evidence in the court proceedings in Australia, were obtained 'improperly' within the meaning of s 138(1) of the Evidence Act 1995. Consequently, the Court was invited to reject the documents, in the manner contemplated by that provision, on the basis that 'the desirability of admitting the evidence outweighs the undesirability of admitting evidence that has been obtained in the way in which the evidence was obtained' (s 138(1)). In addition, it was argued that the documents had been obtained through a breach of the Agreement between the Government of Australia and the Government of the Cayman Islands on the Exchange of Information with respect to Taxes, signed 30 March 2010, [2011] ATS 14 (entered into force 14 February 2011) and this would amount to their obtaining in circumstance of impropriety.

The request made by the Commissioner to CITIA was made pursuant to the Treaty. The taxpayers submitted that for the Commissioner now to use the documents obtained from CITIA when CITIA had asked for the return or destruction of them involved a breach by Australia of the Treaty. Consequently, or perhaps further, the documents had the potential to prejudice international relations between Australia and the Cayman Islands.

The Federal Court of Australia analyzed the issues in depth. The court stated that there was no breach of treaty in obtaining the information from Cayman Island. The ATO validly requested the material under Art 5 of the treaty and it validly received them under Art 6 of the treaty. That the Grand Court has quashed that decision is a matter of domestic law and can have no effect upon the lawfulness of the ATO's receipt of that material. The court held that documents were obtained lawfully and can be used in the court proceedings in Australia.

14. Constitutional Court of Rhineland-Palatinate rules on use of stolen bank data

In this case (VGH B 26/13) of 24 February 2014, German Authorities purchased some CD-ROM which had stolen bank data of Liechtenstein bank. On the basis of this CD ROM, the regional court issued a search warrant. The taxpayer went into appeal.

The Court dismissed the constitutional complaint and found that the claimant's constitutional rights were not infringed.

The Court held that the claimant's right to a fair trial was not infringed by basing the initial suspicion, which is required by law for the initiation of criminal investigation proceedings, on the data found on the cd-rom. From a constitutional law point of view, the unlawful taking of evidence does not automatically result in an exclusion of such evidence. In the light of the principle of fair trial, the rights of the accused as well as the requirements of a well functioning criminal justice system must be considered from an overall perspective and balanced accordingly.

The Court held that in the underlying case, the regional court of Koblenz had properly considered all relevant circumstances regarding its decision to issue a search warrant and that the court's decision cannot be challenged on these grounds. Based on the current legal situation and jurisprudence of German courts, it cannot be considered that public officials committed a crime by purchasing a cd-rom as in the underlying case. Further, any actions, in particular the theft of data, by the individual who sold the cd-rom to the public officials cannot be attributed to the Federal State of Rhineland-Palatinate. The Court found that any purchase of such cd-roms is considered on a case-by-case basis and that there is no practice in place of generally purchasing any cd-rom that is offered to the Federal State of Rhineland-Palatinate. Therefore, it must be considered that the alienator of the cd-rom had acted on his own initiative and cannot be considered "assistant" of the public officials of the Federal State of Rhineland-Palatinate. The Court thus concluded that there is no indication that the evidence was obtained under severe, intended or arbitrary statutory violations.

The Court further found that the claimant's general right of personality was not infringed as the data concerned did not touch the taxpayer's core area of privacy, because the data only concerns the taxpayer's business contacts with banks and credit institutes. The Court finally held that the claimant's right regarding inviolability of the home was also not infringed as the search warrant was lawfully issued.

15. Judgement of the Court (Grand Chamber) in the case of Jiøí Sabouvs Finanèníøeditelství pro hlavnímìsto Prahu, Case C-276/12, date of decision 22 October 2013

In his income tax return for 2004 in the Czech Republic, Mr Sabou, a professional footballer, claimed to have incurred expenditure in several Member States. That expenditure would have reduced his taxable income by the corresponding amount. The Czech tax authorities, however, raised doubts over the truthfulness of that expenditure and carried out an inspection involving requests for information from the tax authorities of the Member States concerned, acting in particular on the basis of Law No 253/2000 and Directive 77/799. Thus they sought assistance from the Spanish, French, Hungary and United Kingdom tax authorities, asking them in particular for the views of the football clubs concerned.

Following their inspection, the Czech tax authorities, on 28 May 2009, issued an additional notice of assessment of the income tax owed by Mr Sabou for 2004. The taxpayer challenged the notice before the lower courts and finally to the Nejvyššísprávnísoud (Supreme Administrative Court).

The Supreme Administrative Court referred the following questions regarding the interpretation of EU Mutual Assistance Directive to the European Court of Justice for ruling:

1. Does it follow from European Union law that a taxpayer has the right to be informed of a decision of the tax authorities to make a request for information in accordance with Directive [77/799]? Does the taxpayer have the right to take part in formulating the request addressed to the requested Member State? If the taxpayer does not derive such rights from European Union law, is it possible for domestic law to confer similar rights on him?

2. Does a taxpayer have the right to take part in the examination of witnesses in the requested Member State in the course of dealing with a request for information under Directive [77/799]? Is the requested Member State obliged to inform the taxpayer beforehand of when the witness will be examined, if it has been requested to do so by the requesting Member State?

3. Are the tax authorities in the requested Member State obliged, when providing information in accordance with Directive [77/799], to observe a certain minimum content of their answer, so that it is clear from what sources and by what method the requested tax authorities have obtained the information provided? May the taxpayer challenge the correctness of the information thus provided, for example on grounds of procedural defects of the proceedings in the requested State which preceded the provision of the information? Or does the principle of mutual trust and cooperation apply, according to which the information provided by the requested tax authorities may not be called in question?'

On the first and second question, the ECJ held that the EU law, as it results from the Directive, in particular, and the fundamental right "to be heard" should not be interpreted as conferring on a taxpayer of a Member State the right to be informed of a request for assistance or to take part in formulating the request or to take part in examinations of witnesses. The Directive does not govern the question whether the taxpayer may challenge the accuracy of the information or impose any particular obligation with regard to the content of the Information. On the third question, the ECJ held that the Directive does not impose any particular obligation with regard to use of the information and it can be challenged only under the domestic law of the country where the taxpayer is subject to tax.

16. Taylor Fladgate & Yeatman Limited vs Comptroller of Taxes, Royal Court (Samedi Division), Jersey, date of judgment 12 March 2014.

Taylor Fladgate, is a Jersey incorporated company having 99.93% shares of Fladgate Partnership, SA, a Portuguese resident company, which in turn owns 100% of Quinta and Vineyard Bottlers-Vinhos SA (QVB). QVB is also Portuguese resident company.

Portuguese Competent Authority made an EOI request to Jersey seeking legal and beneficial ownership details of Taylor Fladgate. Accordingly, Deputy Comptroller of taxes issued notice to Taylor Fladgate seeking information. The person under examination was listed as Taylor Fladgate and QVB. Taylor Fladgate issued a notice of appeal and filed affidavit. Deputy comptroller sought clarification from Portugal which was provided. Thereafter, deputy comptroller withdrew the first notice and issued a fresh notice to seek information. Taylor Fladgate applied for the judicial review of this notice

The applicant submitted that the comptroller had acted illegally in issuing the Notice which is materially flawed as it fails to identify an ongoing investigation in respect of a specific taxpayer sufficiently as required by the regulations. The request appears to be a fishing expedition and therefore outside the scope of TIEA. The comptroller failed to take into account relevant facts and considerations made available to them. Such information ought to have put the comptroller on a heightened sense of enquiry on receipt of the request.

The court declined to grant leave to Taylor Fladgate. The court held that deputy comptroller's probing and thus clarification of the request from Portuguese Competent Authority is entirely consistent with his duties and having done so, and after evaluating the very detailed response received form the Portuguese Competent Authority, it is not for the Comptroller, short of a "knockout blow", to question the correctness of the confirmations provided to him by the Portuguese Competent Authority.

The Court stated that the Comptroller had neither the power nor the facility to provide a decision making process, and so he was empowered to act on his belief or opinion. The Jersey court therefore held that the Deputy Comptroller's probing and thus clarification of the request from the Portuguese Competent Authority was consistent with his duties under the Regulations, and it was not for him to question the correctness of confirmations provided to him by the Portuguese Competent Authority. The court further held that, in accordance with the Regulations, the taxpayers were identified in the Notice as the beneficial owners of Taylor Fladgate resident in Portugal, and that the contention that the request was a fishing expedition was unsustainable. The court found no evidence to suggest that the Portuguese Competent Authority would breach the confidentiality provisions set out in the TIEA. Nor did it find it necessary that the Portuguese Competent Authority should inquire whether those people were in fact beneficial owners.

17. APEF Management Company Limited –v– The Comptroller of Taxes[2013] JRC 262 – Jersey Royal Court – date of decision 30th December, 2013

In June 2011, the French Competent Authority submitted various requests for information concerning the activities, assets and ownership of certain Jersey limited partnerships which together comprised a regulated Jersey private equity fund under the TIEA between France and Jersey. The request was for an investigation into whether the French resident taxpayer had an interest in the Jersey fund and thereby owed wealth tax. The taxpayer was CEO of a formerly family owned manufacturing company in which the Jersey fund had acquired a significant interest. The clear implication was that the taxpayer had transferred his shares for no value, thus giving rise to a suspicion that he must have received an interest in the Jersey fund in exchange.

The Royal Court of Jersey after examining the material on record held that the Comptroller had to consider whether the request complied with the TIEA and whether the information requested was foreseeably relevant. The Comptroller was entitled to rely on the accuracy of the primary information given, albeit after some probing for the purposes of clarification if necessary. However, he still had to evaluate it properly in deciding whether the "foreseeable relevance" test was satisfied.

The Court held that it was apparent from APEF's evidence that the request was seriously flawed and that it came nowhere near satisfying the "foreseeable relevance" test. As regards the sale and purchase of the trading business, the evidence demonstrated comprehensively that the transaction was significant and properly executed. The taxpayer was the CEO of the business with a relatively small equity interest. At the time of the transaction he had exchanged his equity interest in the trading business for an equivalent equity interest in a new French holding company in which the Jersey fund indirectly had an interest.

The Court noted that a great deal of information concerning the transaction was publically available in France. The transaction had been approved by the French Competition Authority, with detailed descriptions of the transaction having been submitted, together with confirmation that the taxpayer would have an interest in the new French holding company. Some documents had been lodged with the French tax authorities at the time and auditors appointed by the Paris court had confirmed that the value of the shares was correct. The taxpayer's share transfer was an exchange for full value. Furthermore, the taxpayer's equity interest in the new French holding company was not liable to wealth tax anyway. The Jersey fund was also a closed ended fund which had been subscribed some years before this investment had been contemplated.

The Royal Court, therefore, concluded that although the notice had been properly issued on the basis of the information in the request, it could no longer remain in force. It found that APEF's evidence "removes in its entirety the foundation upon which the French Tax Authorities had, on the face of their request, based their suspicion and given as the reason for the request."

18. Volaw Trust & Corporate Services Limited and Mr Berge Gerdt Larsen, v the Office of the Comptroller in the Court of Appeal in Jersey – [2013] JCA 239 - date of decision June, 2013

On a request received from Norway under the TIEA between Norway and Jersey, the Jersey Authorities issued a Notice to Volaw Trust & Corporate Services Limited ("Volaw") requesting it to produce certain documents said to be relevant to the tax affairs of Mr Berge Gerdt Larsen, a Norwegian citizen, for the period from 1 January 1996 to 31 December 2008.

Volaw challenged the notice which was dismissed by the Royal Court and an appeal was filed in the Court of Appeal. Appellants' key grounds of appeal can be summarised as follows:

1. the Royal Court erred in construing the Regulations as retrospectively changing the law with regard to the disclosure of documents created before the TIEA came into force, and therefore documents pre-dating 7 October 2009 cannot be obtained (the "Retrospectivity Issue");\
2. the Royal Court erred in failing to address the question as to whether there were "reasonable grounds" for suspecting that Mr Larsen was liable to income tax (the "Reasonable Grounds Issue");
3. the Royal Court failed to have sufficient regard to the Appellants' rights under Article 8 of the European Convention on Human Rights (the "Forseeability Issue"); and
4. the Royal Court erred in holding that when information was provided on the basis that it was in respect of a "criminal tax matter" it could be used for civil tax purposes (the "Use Issue").

The decision of the Court of Appeal is summarized as under:

Preliminary Issue

Prior to addressing the grounds of appeal, the Court of Appeal considered the duties of the Comptroller upon receipt of a request for information and "how far beyond assessment of the material contained in the Request itself the Comptroller should go". The Court found that the Comptroller should give the taxpayer or the third party service provider an opportunity to make representations. However, this does not mean that the Comptroller should hold a "mini-trial" and, provided that the Comptroller has "reasonable grounds" for his belief or opinion, he is empowered to act on such belief or opinion.

The Retrospectivity Issue

The Court of Appeal recognised that there is a general presumption against legislation operating retrospectively and cited the principle enunciated in Phillips v Eyre(1870) LR 6 QB 1 that legislation "ought not to change the character of past transactions carried on upon the faith of the then existing law". However, the presumption was not engaged in the present case as there was "no question of the legal character of any past transaction, act or omission by the Appellants being changed as a result of the 2008 Regulations: the basis of liability for Norwegian tax or prosecution for a Norwegian criminal offence pertaining to tax remains exactly the same as before". The Court of Appeal agreed with the Royal Court that documents generated prior to the entry into force of the TIEA on 7 October 2009 could be obtained if

the documents related to a "criminal tax matter", as a consequence of Article 10 of the TIEA, which draws a distinction between the entry into force provisions for "criminal tax matters" and "all other tax matters", and the definition of "criminal tax matters" in Article 3, which refers to intentional conduct having taken place either "before or after the entry into force of the TIEA".

The Reasonable Grounds Issue

The Court of Appeal was satisfied that there were available to the Comptroller "at the very least" reasonable grounds for believing that the Norwegian tax authorities' suspicions could be well founded, as had been set out "at considerable length in the Request", and that the tax authorities concerns were evidently shared by the Norwegian police who had issued a Bill of Indictment. The Appellants' assertion that the evidence of Mr Larsen and Volaw had to be accepted as it had not been subject to cross-examination was rejected by the Court of Appeal. Cross-examination was not a technique available to the Comptroller to test evidence and neither the Comptroller nor the Royal Court was required to determine whether or not the Appellants' evidence was truthful. Importantly, the Court of Appeal found that the Comptroller was entitled to draw inferences from Mr Larsen's failure to address the Norwegian tax authorities' suspicions in his affidavit.

The Forseeability Issue

The Appellants submitted that the Royal Court failed to have sufficient regard to their rights under Article 8 of the European Convention on Human Rights, which provides a right to respect for an individual's "private and family life, his home and his correspondence", subject to certain interferences that are "in accordance with law" and "necessary in a democratic society", and which must be grounded on accessible and foreseeable law. The Appellants said that it was not foreseeable when they created the documents sought by the Norwegian tax authorities that they would become vulnerable to information exchange under a law which post-dated their creation. The Court of Appeal dismissed the Appellants' argument as "irrelevant" and found that the Regulations are accessible and foreseeable so as "to enable a person to have it as a guide to their conduct after it came into force", and thus do not contravene Article 8.

The Use Issue

The Appellants asserted that the Royal Court erred in holding that when information was provided in respect of criminal tax matters it could be used for any of the other purposes in Article 1 of the TIEA (i.e. civil tax purposes). The Court of Appeal agreed with the Royal Court that there is nothing in the TIEA that prohibits information obtained in relation to one or more of the purposes set out in Article 1 being used for any of the other Article 1 purposes.

BIBLIOGRAPHY/INFORMATION ON INTERNET

Part A : Important Reference Material

(a) The text of the Indian tax treaties, including DTAAs, TIEAs, Multilateral Convention, SAARC Limited Multilateral Agreement etc. is available on the official website of the Indian Income Tax Department [www.incometax.gov.in]

(b) The EOI Portal of the Global Forum on Transparency and Exchange of Information for Tax Purposes [http://www.eoi-tax.org/#default] contains the text of tax treaties (DTAAs/TIEAs) entered into by the members of the Global Forum (presently 126 countries/jurisdictions). It also contains other key documents including Methodology and Terms of Reference, the Peer Review Reports and the Ratings (Compliant/Largely Compliant/Partially Compliant/Non-Compliant)

(c) The text of Mutual Legal Assistance Treaties entered into by India is available on the website of Central Bureau of Investigation at http://cbi.nic.in/interpol/mlats.php

(d) The OECD website on Exchange of Information contains the following information

(i) Text of Article 26 of OECD Model Tax Convention and its Commentary [http://www.oecd.org/ctp/exchange-of-tax-information/120718_Article%2026-ENG_no%20cover%20%282%29.pdf]

(ii) Text of Multilateral Convention on Mutual Administrative Assistance in Tax Matters, its Commentary, list of participating countries, list of declarations and reservations etc. [http://www.oecd.org/ctp/exchange-of-tax-information/conventiononmutualadministrativeassistanceintaxmatters.htm]

(iii) Text of OECD Model TIEA and its Commentary and model template for request of information [http://www.oecd.org/tax/exchange-of-tax-information/taxinformationexchangeagreementstieas.htm]

(iv) Database of Public Websites relevant to Competent Authorities [http://www.oecd.org/tax/exchange-of-tax-information/36010709.pdf]

(v) Text of the Common Reporting Standards on Automatic Exchange of Information and other relevant material on AEOI [http://www.oecd.org/ctp/exchange-of-tax-information/standard-for-automatic-exchange-of-financial-information-in-tax-matters.htm]

(vi) Keeping It Safe: The OECD Guide on the Protection of Confidentiality of Information Exchanged for Tax Purposes [http://www.oecd.org/ctp/exchange-of-tax-information/keeping-it-safe.htm]

(vii) OECD Manual on Exchange of Information [http://www.oecd.org/ctp/exchange-of-tax-information/cfaapprovesnewmanualoninformationexchange.htm]

a. Exchange of Information on Request [http://www.oecd.org/tax/exchange-of-tax-information/36647905.pdf]

b. Spontaneous Information Exchange [http://www.oecd.org/tax/exchange-of-tax-information/36647914.pdf]

c. Automatic (or Routine) Exchange of Information [http://www.oecd.org/ctp/exchange-of-tax-information/cfaapprovesnewmanualoninformationexchange.htm]

d. Industry-wide Exchange of Information [http://www.oecd.org/tax/exchange-of-tax-information/36648040.pdf]

e. Simultaneous Tax Examinations [http://www.oecd.org/tax/exchange-of-tax-information/36648057.pdf]

f. Tax Examinations Abroad [http://www.oecd.org/tax/exchange-of-tax-information/36648066.pdf]

g. Country Profiles Regarding Information Exchange [http://www.oecd.org/tax/exchange-of-tax-information/36648093.pdf]

h. Information Exchange Instruments and Models [http://www.oecd.org/tax/exchange-of-tax-information/36648135.pdf]

i. New 2010 Module on joint audits: the Forum on Tax Administration joint Audits Participants Guide [http://www.oecd.org/tax/exchange-of-tax-information/47468438.pdf]

(viii) OECD Manual on Assistance in Collection of Taxes [http://www.oecd.org/ctp/exchange-of-tax-information/oecdmanualonassistanceinthecollectionoftaxes.htm]

a. Country profiles regarding assistance in tax collection [http://www.oecd.org/ctp/exchange-of-tax-information/39261270.pdf]

b. Instruments and Models on assistance in tax collection [http://www.oecd.org/ctp/exchange-of-tax-information/39261295.pdf]

c. Model Memorandum of Understanding on Assistance in Tax collection based on Article 27 of the OECD Model Convention on Income and on Capital [http://www.oecd.org/ctp/exchange-of-tax-information/49102492.pdf]

d. Model Memorandum of Understanding on the recovery of tax claims based on the Convention on Mutual Administrative Assistance in Tax Matters [http://www.oecd.org/ctp/exchange-of-tax-information/49102501.pdf]

e. Glossary of tax collection terms used in the Manual [http://www.oecd.org/ctp/exchange-of-tax-information/41343333.pdf]

(ix) Information related to OECD Forum on Tax and Crime including effective Inter-Agency Co-operation in Fighting Tax Crimes and Other Crimes [http://www.oecd.org/ctp/crime/forumontaxandcrime.htm]

(x) Information related to OECD Work on Base Erosion and Profit Shifting [http://www.oecd.org/tax/beps.htm]

(e) On the website of United Nations, the following information is available relating to Exchange of Information

(i) Text of UN Model Convention and its Commentary [http://www.un.org/esa/ffd/wp-content/uploads/2014/09/UN_Model_2011_Update.pdf]

(ii) Proposal for updating of Article 26 of the UN Model Convention [http://www.un.org/esa/ffd/wp-content/uploads/2014/10/10STM_CRP4_UpdateArticle26.pdf]

(iii) Note on Automatic Exchange of Information [http://www.un.org/esa/ffd/wp-content/uploads/2014/09/9STM_CRP20_InformationExchange.pdf]

(f) The text of SAARC Limited Multilateral Agreement is available at [http://www.saarc-sec.org/userfiles/FinalAgreementonAvoidanceofDoubleTaxation.doc]

(g) The European Union on its website provides substantial amount of information on fight against tax fraud and tax evasion including automatic exchange of information at [http://ec.europa.eu/taxation_customs/taxation/tax_fraud_evasion/index_en.htm]

(h) Information about FATCA is available on US Treasury Website [http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx] and also on the website of US IRS [http://www.irs.gov/Businesses/Corporations/Foreign-Account-Tax-Compliance-Act-FATCA]

(i) A Practical Guide on Exchange of Information for Developing Countries prepared by the African Tax Administration Forum is available at [http://www.oecd.org/ctp/tax-global/practical_guide_exchange_of_information.pdf].

(j) Websites of regional Tax and Other Regional Organizations also contain relevant material on Exchange of Information and they may be accessed as under:

- ATAF – www.ataftax.net
- ATAIC – www.ataic8.com
- CARICOM – www.caricom.org
- CATA – www.catatax.org
- CEMAC – www.cemac.int
- CIAT – www.ciat.org
- CREDAF – www.credaf.org
- EAC – www.eac.int
- SAARC – www.sarc.org
- SADC – www.sadc.int
- UEMOA – www.uemoa.in

(k) Information about Egmont Group of FIUs can be found at its website at http://www.egmontgroup.org which includes Egmont operational guidelines and Egmont principles of Information Exchange.

(l) The G20 Communique and Declarations are available at G20 India website [http://www.g20india.gov.in]

Part B : Publicly Available Information Relevant for Drafting Requests

As stated in Para 3.5.10.1 of the Manual, before sending the request for Exchange of Information, every effort must be made to obtain the required information from publicly available sources in the other country/jurisdiction, such as public databases maintained by regulators. These public databases can provide considerable information such as registration details, ownership information, financial statements, annual reports etc. which need not be again requested from the foreign Competent Authority. The information contained in these public databases may also help in making more focussed references and may provide clues for asking the relevant questions, for example about beneficial ownership of the legal entities/arrangements which may not be publicly available. Focussed and relevant questions, rather than a long list of information some of which is publicly available, will enable the foreign Competent Authority to provide assistance in a more meaningful manner.

The websites on which the information may be publicly available for some selected countries/jurisdictions as also some general websites are listed below. This list, however, is not exhaustive, and may contain old links, and accordingly the officers concerned should try to locate similar websites by carrying out searches on Internet. Some of the information available on the websites is free and some are available on payment of a small fee. In case of paid services, the CIT/DIT concerned must make the payment rather than seeking information from foreign Competent Authority on this ground only. It must be appreciated that gathering information is a resource intensive work for both requesting as well as requested country/jurisdiction and thus payment of a small fee for getting the information on Internet would be most cost efficient.

(a) Guernsey [https://www.greg.gg/webCompSearch.aspx]

This website can be used to quickly obtain details of companies and limited partnerships registered in Guernsey. For a small fee, information such as the legal ownership of a Guernsey registered company may be obtained, as well as copies of documents such as the Memorandum of Association and Articles of Association. It should, however, be stressed that whilst the shareholders of a company may be nominees, all companies are required to have a Resident Agent, who must hold details of the beneficial ownership of the company. In order to obtain the beneficial ownership details it may, therefore, be necessary for the Director to formally require the company/resident agent to provide this information.

(b) Cayman Island [www.ciregistry.gov.ky]

On this website, verification of a Cayman Islands' company registration can be done by clicking on the "search Company" feature. Upon payment of the requisite fee, the details are provided. One may apply for a CIGnet account to pay for the service[http://www.gov.ky/portal/page?_pageid=1142,5064144&_dad=portal&_schema=PORTAL]. The website provides a list of the names of the companies that have been struck off the register during this year and there is no fee for this information. [http://www.ciregistry.gov.ky/portal/page?_pageid=3521,8625893&_dad=portal&_schema=portal]

(c) Isle of Man [http://portal.gov.im/pvi/CompanySearch.aspx]

On this website, the name of Isle of Man Company can be searched. If the company is there in the company registry, documents like annual return, change in directors, mortgage register, change in address, memorandum of satisfaction etc. related to the company can be downloaded after payment of requisite fees.

(d) Jersey [https://www.jerseyfsc.org/registry/documentsearch/]

On this website, the name of the company can be searched and then relevant documents can be downloaded after payment of requisite fees.

(e) Liechtenstein [http://www.oera.li/hrweb/ger/firmensuche_afj.htm]

Information on companies, foundations etc. registered in the Commercial Register of Liechtenstein can be found on this website.

(f) Hong Kong [http://www.icris.cr.gov.hk/csci/]

Company Name Search, Company Particulars Search, Image Record Search (including Document Index Search), Directors Index Search, Register of Charges Search, Register of Disqualification Orders Search etc. are available on this website.

(g) Singapore [https://www.acra.gov.sg/home/]

This website offers free as well as paid information regarding companies registered in Singapore. Profile of the company as well as financial statements may be obtained on payment basis.

(h) USA [https://www.sec.gov/edgar/searchedgar/companysearch.html]

The Securities Exchange Commission website gives the quarterly, annual reports filed by listed corporations, as well as reports of change in beneficial ownership are also provided. The search facility is fairly simple as it is based only on the name of the company of interest.

(i) Cyprus[http://www.mcit.gov.cy/mcit/drcor/drcor.nsf/index_en/index_en?OpenDocument#]

This website provides information of companies registered in Cyprus.

(j) U.A.E. [http://www.dfsa.ae/PublicReqister/Default.aspx]

The above website is a public register of Dubai Firms.

(k) Companies Register of Member States of European Commission [https://e-justice.europa.eu/content_business_registers_in_member_states-106-en.do]

This website contains basic details of companies registered in Member States of European Commission such as name, date of incorporation, list of directors etc. free of cost. The financial statements such as Profit and Loss Account and Balance Sheet can also be obtained by making the necessary payments.

(l) Compilation of various online Companies Registries/Government Websites, by 'Open Knowledge Foundation' (OKFN) [index.okfn.org/dataset/companies/]

The OKFN site lists out the Government Websites of various countries (100+ countries) from which their respective 'Companies Registry' may be accessed. It gives information on whether the access to

Change it to "This website provides information of companies registered in Cyprus."

company data is free ($ Sign in 'green' color) or on payment basis ($ Sign in 'red' color). Further, most of the websites, whose links are provided in the OKFN website, also provide "bulk data", for example, the entire companies' register of a particular country, that may be downloaded.

(m) Amadeus provides a database of comparable financial information for public and private companies across Europe which may be seen at https://amadeus.bvdinfo.com

(n) A detailed list of companies' registers for various countries is also complied at http://en.wikipedia.org/wiki/List_of_company_registers

(o) Financial statements, financial ratio and other business statistics is provided free of charge at http://www.bizstats.com/

(p) International white and yellow pages can be accessed at www.wayp.com

COMPETENT AUTHORITY CONTACT DETAILS

Jurisdiction: Europe and North America (including Caribbean)	
Competent Authority	Mr. Akhilesh Ranjan IRS Joint Secretary, FT&TR-I, Central Board of Direct Taxes, Department of Revenue Ministry of Finance, Government of India **Full address:** Room No 803, 8th Floor, "C" Wing, Hudco Vishala Building, Bhikaji Cama Place, New Delhi-110066 **Email:** ranjan.akhilesh@nic.in **Telephone:** + 91-11-26108402 **Fax:** + 91-11-27177990
Director	Mr. Rahul Navin IRS Director, FT&TR-III, Central Board of Direct Taxes, Department of Revenue Ministry of Finance, Government of India **Full address:** Room No 703, 7th Floor, "C" Wing, Hudco Vishala Building, Bhikaji Cama Place, New Delhi-110066 **Email:** rahul.navin@nic.in **Telephone:** + 91-11-26109827
Under Secretary	Mr. Gaurav Sharma IRS Under Secretary, FT&TR-III(1) Central Board of Direct Taxes, Department of Revenue Ministry of Finance, Government of India **Full address:** Room No 706, 7th Floor, "C" Wing, Hudco Vishala Building, Bhikaji Cama Place, New Delhi-110066 **Email:** us31eoi-dor@nic.in **Telephone:** + 91-11-26179265
	Mr. E.V. Bhaskar IRS Under Secretary, FT&TR-III(2) Central Board of Direct Taxes, Department of Revenue Ministry of Finance, Government of India **Full address:** Room No 707, 7th Floor, "C" Wing, Hudco Vishala Building, Bhikaji Cama Place, New Delhi-110066 **Email:** us32eoi-dor@nic.in **Telephone:** + 91-11-26179269

	Income Tax Overseas Units
Paris, France	Ms. Ashima Neb IRS First Secretary **Full Address :** Embassy of India,15, Rue Alfred Dehodencq, Paris, 75016 **Email :**itou.paris@mea.gov.in **Telephone** : +33-140505078 (O) +33-679121251(M)
Hague, Netherlands	Mr. Vijay Kumar Jaiswal IRS First Secretary **Full Address :** Embassy of India,Buitenrustweg 2, 2517 KD, Hague, Netherlands **Email:**vijay.jaiswal@nic.in, fst@indianembassy.nl **Telephone:**+31-703457747 (O) +31-681919291(M)
London, UK	Mr. Vijay B. Vasanta IRS First Secretary **Full Address :** High Commission of India, Indian House, Aldwych, London WC2B 4NA, UK **Email:**fs.itou@hcilondon.in **Telephone:**+44-2076323023(O) +44-7778046588(M)
Berlin, Germany	Mr. Abhijit Kundu IRS First Secretary **Full Address**: Embassy of India, Tiergartenstr. 17, 10785 Berlin Email : fsitou@indianembassy.de
Washington, USA	Mr. Gangadhar Panda IRS First Secretary **Full Address :** Embassy of India,2107, Massachusetts Avenue, NW Washington, DC 20008, USA **Email:**fsitou@indiagov.org **Telephone:**+02-9397053(O) +02-2560006 (M)

Jurisdiction: Countries other than North America and Europe	
Competent Authority	Mr. Rajat Bansal IRS Joint Secretary, FT&TR-II, Central Board of Direct Taxes, Department of Revenue Ministry of Finance, Government of India **Full address:** Room No 804, 8th Floor, "C" Wing, Hudco Vishala Building, Bhikaji Cama Place, New Delhi-110066 **Email:** rajat.bansal@nic.in **Telephone:** + 91-11-26104504 **Fax:** + 91-11-26104504
Director	Ms. Vandana Ramachandran IRS Director, FT&TR-IV, Central Board of Direct Taxes, Department of Revenue Ministry of Finance, Government of India **Full address :** Room No 701, 7th Floor, "C" Wing, Hudco Vishala Building, Bhikaji Cama Place, New Delhi-110066 **Email: vandana.r@nic.in** **Telephone:** + 91-11-26177767
Under Secretary	Mr. Anup Singh IRS Under Secretary, FT&TR-IV(1) Central Board of Direct Taxes, Department of Revenue Ministry of Finance, Government of India **Full address :** Room No 708, 7th Floor, "C" Wing, Hudco Vishala Building, Bhikaji Cama Place, New Delhi-110066 **Email:** anup.singh81@nic.in **Telephone:** + 91-11-26179275
	Ms. O.N. Supriya Rao IRS Under Secretary, FT&TR-IV(2) Central Board of Direct Taxes, Department of Revenue Ministry of Finance, Government of India **Full address :** Room No 709, 7th Floor, "C" Wing, Hudco Vishala Building, Bhikaji Cama Place, New Delhi-110066 **Email:**supriya.rao@nic.in **Telephone:** + 91-11-26179436

Income Tax Overseas Unit	
Tokyo, Japan	Mr. Sanjog Kapoor IRS First Secretary **Full Address :** Embassy of India, 2-2-11 Kundan- Minami, Chiyoda-ku, Tokyo, 102-0074, Japan **Email:**fstr@indembassy-tokyo.gov.in **Telephone:**+81-332622235(O) +81-8039301715(M)
Port Louis, Mauritius	Mr. Pankaj Jindal IRS First Secretary **Full Addres s :** 6th Floor, LIC Building, Pres John Kennedy Street, PO Box 162, Port Louis, Mauritius **Email :** pjindal_irs@yahoo.com **Telephone :** +230-2080330(O) +230-59425252(M)
Singapore	Mr. Shashi Saklani IRS First Secretary **Full Address:**31, Grange Road, Singapore- 239702 **Email:**fseco@hcisingapore.org **Telephone:**+65-62382534(O) +65-93266267(M)

APPENDIX

FORM A: REQUEST FOR INFORMATION UNDER THE PROVISIONS OF TAX TREATIES

PART I OF FORM A

Basic Information			
1.	Taxpayer under investigation/examination in India	Name	
		Full Address	
		PAN	
		Current Jurisdiction	
2.	Country/jurisdiction to whom request is being made		
3.	Contact details of Assessing Officer/ DDIT(Investigation)/ Transfer Pricing Officer	Name and Designation	
		Address	
		Email	
		Telephone and Fax	
4.	Contact details of Range/Unit Head	Name and Designation	
		Address	
		Email	
		Telephone and Fax	
5.	Contact details of Pr. CIT/CIT/Pr. DIT/DIT concerned	Name and Designation	
		Address	
		Email	
		Telephone and Fax	
6.	Name of the foreign taxpayer/holder of information if referred to in the request (Row 15 of Part II)		

PART II OF FORM A

Request for Information from – – – – – – – (name of the country/jurisdiction)			
1	To:		
2	From:		
3	Contact Point	Name:	
		Email:	
		Telephone:	
		Fax:	
4	Legal Basis:		
5	Reference numbers and related matters	Reference number:	
		Initial request:	Please check the box: ☐ Yes ☐ No
		If no, please provide reference number(s) and date(s) of any related request(s):	
		Acknowledgement needed:	Please check the box: ☐ Yes ☐ No
		Number of attachments to the request:	
		Total number of pages for all attachments:	
6	Urgency of reply	Urgent reply required due to:	Please check the box: ☐ Statute of limitation ☐ Suspected fraud ☐ Court case ☐ Other reasons (please specify):

7	Identity of person(s) under examination or investigation:	
8	Request to refrain from notifying the taxpayer(s) involved:	Please check the box: ☐ No ☐ Yes Reasons: If yes, the competent authority confirms that the requesting country would be able to refrain from notifications in similar circumstances.
9	Time period or taxable event for which or in relation to which the information is sought:	
10	Tax(es) to which the request relates:	
11	Tax purpose for which the information is requested:	Please check the box: ☐ determination, assessment and collection of taxes, ☐ recovery and enforcement of tax claims, ☐ investigation or prosecution of tax matters, ☐ other (please specify):
12	Relevant background:	
13	Information requested:	
14	Grounds for believing that the requested information is held in the requested jurisdiction or is within the possession or control or is within the possession or control of a person within its jurisdiction:	
15	Name and address of any person believed to be in possession of the information requested (to the extent known):	

16	Form, if any, in which information is requested:	For copies of documents what type of authentication, if any, is requested:	
		Other form requirements, if any:	
17	Translation of reply requested:	Please check the box: ☐ Yes ☐ No	
		Language requested:	
18	In making the request, the requesting competent authority states that: (a) All information received in relation to the request will be kept confidential and used only for the purposes permitted in the agreement which forms the basis for the request. (b) The request is in conformity with Indian laws and administrative practice and is further in conformity with the agreement on the basis of which it is made. (c) Such information would be obtainable under Indian laws and the normal course of administrative practice in similar circumstances. (d) We have pursued all means available in our own territory to obtain the information, except those that would give rise to disproportionate difficulties.		

Signature of the Pr.CIT/Pr.DIT/CIT/DIT Concerned
Name and Designation

General Instructions for filling up Form A

1. Both Parts I and Parts II of this Form should be filled up by the Pr.CIT/Pr.DIT/CIT/DIT concerned and sent to the Competent Authority, i.e., JS (FT&TR-I) and JS(FT&TR-II), as the case maybe. The request for information in this Form should not be routed through the office of Pr.CCIT/Pr.DGIT/CCIT/DGIT but a copy may be sent to that office for information, if required.

2. Part I contains basic information about the taxpayer under investigation/examination in India and the officers making the request. This Part needs to be filled up for record purposes and is not sent to foreign authorities.

3. Part II is modelled on the lines of the template formulated by the OECD and is essentially the same as Annexure-D of the Manual on Exchange of Information issued in 2013. Part II of Form A is forwarded to the foreign authorities and thus all the relevant information mentioned in covering letters, assessment orders etc. must be captured in this Part II. The background note, summary of the case, factual analysis etc. should be included in Part II and if necessary, Annexures may be added to this Part of the Form. Since the information sent is treated as confidential by the tax authorities in other jurisdictions, copies of relevant incriminating documents seized can and should be enclosed if the same are considered useful for the foreign tax administration, in order to facilitate the obtaining of information by them. Information received from other jurisdictions under tax treaties may also be mentioned, but it should be ensured that the name of the jurisdiction is not mentioned, nor any copies of the correspondence with that jurisdiction are attached.

4. Where requests fro Exchange of Information (EOI) are to be made in a group of cases under inquiry/investigation, separate Forms should be filled up for different taxpayers. Further, separate Forms need to be filled up for EOI requests to different countries/jurisdictions in the case of the same taxpayer. Thus, for instance, if three members of a family have received gifts from persons located in three different jurisdictions, the total number of Forms to be filled in would be nine.

5. Row wise instructions for filling up the Form are provided in the later part of these Instructions which must be followed by the Pr.CIT/Pr.DIT/CIT/DIT concerned. The guidelines for assistance in preparing the references have been provided in Para 3.5.1 to 3.5.21 of the Manual on Exchage of Information which should be followed by the officers concerned.

6. It shall be ensured that request for only that information is made which has demonstrable "foreseeable relevance" to the investigation carried out in India. Further, before making the request, efforts should be made to obtain information in India and this fact should be mentioned in the request. Not satisfying these conditions may result in the request being treated as "defective" and will be returned **in original** to be resubmitted again after removing these deficiencies. Further before making the requests, efforts must be made to obtain the required information from policy available sources in the other country/jurisdictin even if such information is available after paying requisite fee.

7. In time barring cases, the requests should be made at least three months before the cases are getting time barred giving sufficient time in the office of Competent Authority to process the requests and allow re-submission in cases where the original requests are found to be defective. In exceptional cases, where requests need to be made at the last moment, for instance on account of some new evidence becoming available, the reasons for the same should be clearly explained in the covering letter of the P.CIT/Pr.DIT/CIT/DIT concerned.

8. It would be responsibility of the Range/Unit Head that requests for information under the provisions of tax treaties are made in all appropriate cases including carrying out multi-level enquiry to take the investigation to their logical conclusion. They are also responsible for ensuring that clarifications and feedback and provided in a timely manner and this aspect should be monitored by the Pr.CIT/Pr.DIT/CIT/DIT concerned and appropriate action should be taken wherever required.

Instructions for filling up Part I of Form A

1. The purpose of filling up Part I of Form A is to have basic records of the taxpayer under investigation in India and the contact details of the officers making the request in the office of the Competent Authority so that the information provided by the foreign authorities or their requests for clarifications are sent to the correct jurisdiction.

2. In **Row 1**, the name, full address, PAN and the current jurisdiction of the taxpayer under investigation in India should be mentioned.

3. The country/jurisdiction to whomthe request is made should be mentioned in **Row 2**.

4. The contact details of officers handling the Investigation presently should be mentioned in **Rows 3, 4 and 5**.

5. The name of the foreign person/entity or the holder of the information in a foreign country if mentioned in the request may be stated in **Row 6** for statistical purposes.

Instructions for filling up Part II of Form A

1. Part II of Form A is essentially the same as Annexure-D of the Manual on Exchange of Information issued in 2013 and only this Part will be sent to the Competent Authority of the country/jurisdiction from where the request for information will be made. Accordingly all the information which may be useful for the foreign tax authorities for providing assistance, including copies of the documents etc., must be captured here, if necessary through Annexures.

2. Row wise instructions for filling up Part II of Form A are given below:

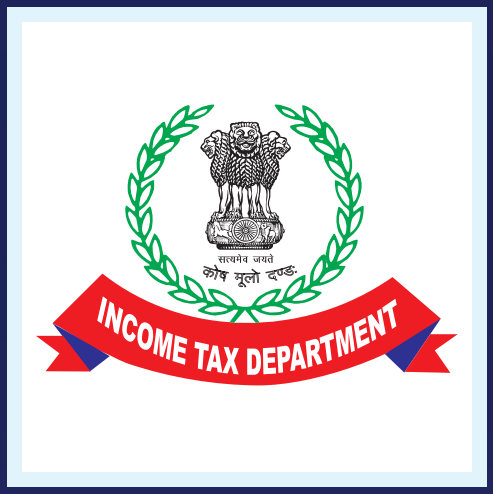
Row	Instructions
Row 1	The name of the country/jurisdiction from where the information is requested should be mentioned.
Row 2	The name and designation of the Indian Competent Authority, i.e., JS (FT&TR-I) and JS (FT&TR-II) as the case maybe needs to be mentioned here. This will be filled up by FT&TR Division and thus should be left blank.
Row 3	The contact details of the officers in the FT&TR Division needs to be mentioned in this row. This will be filled up by FT&TR Division and thus should be left blank.
Row 4	The legal basis of making the request, for instance Article 26 of the DTAA between India and ——— or Article 5 of the TIEA between India and ——— or Article 4 of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters or Article 5 of the SAARC Multilateral Limited Agreement should be mentioned here. There may be more than one legal instrument available for administrative assistance with the same country. In such situations, the instrument having the provision for particular

	administrative assistance required may be selected. If the administrative assistance required is available in more than one instrument, the one which is wider in scope should be selected.
Row 5	This row contains reference number, acknowledgment etc. These details will be filled up by FT&TR Division and should be left blank.
Row 6	The reasons for urgency of reply, if any, for example on account of statute of limitation, necessity of conducting investigation quickly on account of suspected fraud, court case etc. should be mentioned here. If in the request it is mentioned that information should be provided by a particular date, it should be added, in appropriate cases, that the information received after such date will be useful in penalty or appellate proceedings.
Row 7	Full details of the person under investigation or examination by the Indian tax authorities, including PAN, date of birth/date of incorporation, full address and other details as available in the records should be mentioned here. As explained in Para 2.2.2 of the Manual on Exchange of Information, the tax treaties do not restrict administrative assistance to residents of either Contracting States and thus information about residents of third countries can also be requested. However, relevance of the information about residents of third countries vis-a-vis the person under investigation in India must be clearly explained in the request.
Row 8	Under the laws of certain countries/jurisdictions, the taxpayer or the holder of the information has certain rights including a right to be informed or notified that a request concerning him for information under a tax treaty has been made. The requesting country, however, in certain exceptional cases can make a request that the taxpayer/holder of information may not be so notified. If a request to refrain from notifying the taxpayer(s) concerned is made, the reasons for the same must be clearly explained. Such reasons could be that the information is of a very urgent nature and the process of prior notification to the taxpayer will delay supply of information or the prior notification is likely to undermine the success of the investigation being conducted. A request to refrain from notifying the taxpayer should not be made in a routine manner and such request should be made only if it is essential and can be justified on the basis of documentary evidence. The reason that the taxpayer concerned is likely to file an appeal against the supply of information would generally not be a valid reason for making such a request.
Row 9	The time period or the taxable event (e.g. the date on which withholding tax is imposed) for which the information or in relation to which the information is sought should be mentioned. If the information is relevant for the current period, this fact should also be mentioned.
Row 10	The taxes for which the request is made should be mentioned. As stated in Para 2.2.2 of the Manual on Exchange of Information, in most of the tax treaties, requests for information regarding taxes not cover by the treaty, such as indirect taxes or taxes levied by State Government, can be made.
Row 11	The relevant box needs to be ticked and if necessary more than one box may be ticked.

Row 12	Detailed background of the case should be mentioned clearly including the fact that how the information requested is foreseeably relevant for administration and enforcement of the domestic tax laws of India. This background information should also include a brief summary of the ongoing examination or investigation and how the requested information relates to this examination or investigation. The efforts made for collecting the information in India and the results thereof should be clearly specified. Details of foreign taxpayers related to the person under investigation/examination in India, as available in the records, and which may be of the assistance to the foreign tax authorities in providing the information may be mentioned as part of the background information.
Row 13	The information which is requested from the foreign Competent Authority should be listed point-wise preferably as questions. The information sought should be specific and should be described as clearly as possible. The language should be simple and easily understandable to foreign authorities who may not be aware of India's tax laws and procedures or the terminologies used. The questions should be framed in such a manner that they can be answered directly on the basis of documents and other information available and the details requested should be specific. The information requested should be foreseeably relevant to the administration or enforcement of the Indian tax laws and their relevance should be clearly explained in light of the background information provided. Information in the form of "fishing expedition" should not be requested. In some cases, it has been observed that a large number of Questions are asked in the request for EOI even though some of the questions do not appear to emanate from the issues under investigation and the relevant questions which should actually be asked are not specifically stated. Request for voluminous information should be avoided as it may become counter-productive on account of the following reasons: ➢ The request may be considered as having been made in a casual and perfunctory manner and may be responded to accordingly by the foreign tax authorities ➢ More critical information which is actually required, may be missed by the foreign tax authorities in a request with a long list of questions and the useful information may not be received ➢ Though the foreign tax authorities may be genuinely trying to provide assistance, they may not be able to do so as they would need to collect the requested information from various sources which they may not be able to do in a timely manner ➢ Seeking unnecessary details in a casual manner without due consideration of the effort that may be required on the part of treaty partner, is likely to be viewed unfavourably and may also adversely affect the reputation of India and may also addressly impact on our ability and moral authority to seek information even in genuine cases
Row 14	The grounds for believing that the information is available in the requested jurisdiction should be mentioned.

Row 15	The name and address (to the extent known) of the person believed to be in possession of the information should be mentioned. This could be name and address of the Bank (in case of bank accounts), tax administration of the other country (in case of return of income or taxes paid), name and address of agents/service providers (in case of say financial accounts requested from offshore financial centres) etc. The purpose of this information is to assist the foreign tax authorities to locate the information quickly and should be mentioned only to the extent known.
Row 16	The form in which the information is required for evidentiary value, for example, the specific forms for deposition of witnesses or the manner in which copies of original documents are authenticated may be mentioned.
Row 17	If the information is requested in English, the same may be indicated here.
Row 18	Before making the request, it should be ensured that the four conditions mentioned here have been satisfied as before making the request undertaking to this effect needs to be given.

3. The name and designation of the Pr. CIT/Pr.DIT/CIT/DIT concerned making the request should be mentioned and he should sign and verify the content of the information contained in the request.



DIRECTORATE OF INCOME TAX (PR, PP & OL)
MAYUR BHAWAN, NEW DELHI-110001