



**DRAFT COUNCIL RECOMMENDATION ON THE USE OF THE OECD MODEL
MEMORANDUM OF UNDERSTANDING ON AUTOMATIC EXCHANGE OF INFORMATION
FOR TAX PURPOSES¹**

THE COUNCIL,

Having regard to Article 5(b) of the Convention for Economic Co-operation and Development of 14th December 1960;

Having regard to the Recommendation of the Council of 21st September 1977 on Tax Avoidance and Evasion [C(77)149/FINAL];

Having regard to the Recommendation of the Council of 11 April 1996 on the Tax Deductibility of Bribes to Foreign Public Officials [C(96)27/FINAL];

Having regard to the Recommendation of the Council of 13 March 1997 on the Use of Tax Identification Numbers in an International Context [C(97)29/FINAL];

Having regard to the Recommendation of the Council of 13 March 1997 on the use of the Revised OECD Standard Magnetic Format for Automatic Exchange of Information [C(97)30/FINAL];

Having regard to the Revised Recommendation of the Council of 23 May 1997 on Combating Bribery in International Business Transactions [C(97)123/FINAL];

Having regard to the Recommendation of the Council of 23 October 1997 concerning the Model Tax Convention on Income and Capital [C(97)195/FINAL] (hereinafter the Model Tax Convention);

Having regard to Article 13 of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions adopted by the Negotiating Conference on 21 November 1997 and entering into force on 15 February 1999;

Having regard to the Recommendation of the Council of 9 April 1998 on Counteracting Harmful Tax Competition [C(98)17 /FINAL];

Considering that most tax treaties signed by Member countries follow Article 26 of the Model Tax Convention in providing for co-operation between competent authorities of the Contracting States, in the form of exchanges of information;

1 . While taking into account the fact that the Recommendation is addressed only to Member countries wishing to engage in automatic exchange, Luxembourg refers to its tax policy concerning exchange of information and consequently does not consider itself as bound by the present Recommendation. Switzerland has entered a reservation on Article 26 of the OECD Model Convention on Income and on Capital. This reservation applies to exchange of information independently of its form.

Considering that Article 6 of the joint Council of Europe - OECD Convention on Mutual Administrative Assistance in Tax Matters, which came into force on 1 April 1995, expressly provides for automatic exchange of information;

Considering the need to improve the efficiency of automatic exchange of information between tax authorities:

- I. RECOMMENDS that Member Countries use the OECD Model Memorandum of Understanding on Automatic Exchange of Information for Tax Purposes in the appendix hereto, which is an integral part of this Recommendation, when they decide to conclude agreements on automatic exchange of information;
- II. INSTRUCTS the Committee on Fiscal Affairs to monitor the use of the Model Memorandum of Understanding and to report back to the Council as appropriate.

APPENDIX

OECD MODEL MEMORANDUM OF UNDERSTANDING BETWEEN THE COMPETENT AUTHORITIES OF (STATE X) AND (STATE Y) ON THE AUTOMATIC EXCHANGE OF INFORMATION FOR TAX PURPOSES

This Model can be used as a working basis for an agreement for those tax administrations which are able and willing to engage in automatic exchange of information:

The competent authorities of (State X) and of (State Y) having regard to the desire of both authorities to increase mutual assistance,

hereby declare as follows:

GENERAL

Article 1

On the basis of Article 6 of the Convention on Mutual Administrative Assistance in Tax Matters of 25 January 1988 (the Convention)¹ and in accordance with this Memorandum, the competent authorities of (State X) and (State Y) shall endeavour to automatically provide each other with the information referred to in Article 2 below with respect to persons resident in one or both States.

EXCHANGE OF INFORMATION

Article 2

The competent authorities shall endeavour to automatically provide each other with information in respect of the following (references to Articles in subparagraphs below are to Articles of the Model Tax Convention hereafter referred to as the “Model Convention”):

- a. a change in a person’s place of residence from one State to the other State;
- b. income from immovable property as referred to in Article 6 of the Model Convention;
- c. dividends as referred to in Article 10 of the Model Convention;
- d. interest as referred to in Article 11 of the Model Convention;
- e. royalties as referred to in Article 12 of the Model Convention;
- f. capital gains as referred to in Article 13 of the Model Convention;

1 . The Memorandum of Understanding on Automatic Exchange of Information for Tax Purposes may also be based on Article 26 of the OECD Model Tax Convention or a legal instrument other than the joint Council of Europe/OECD Convention on Mutual Assistance in Tax Matters. In such a case the wording of the Model Memorandum of Understanding would need to be amended accordingly.

- g. salaries, wages and other similar remuneration in respect of an employment as referred to in Article 15 of the Model Convention;
- h. directors' fees and other similar payments referred to in Article 16 of the Model Convention;
- i. income derived by artists and sportsmen referred to in Article 17 of the Model Convention;
- j. pensions and other similar remuneration referred to in Article 18 of the Model Convention;
- k. salaries, wages and other similar remuneration paid by a State or a political subdivision or a local authority thereof as referred to in Article 19 of the Model Convention;
- l. other income as referred to in Article 21 of the Model Convention;
- m. other items including items on indirect taxes such as VAT/sales tax and excise duties and social security payments; and
- n. commissions and other similar payments².

The competent authorities may agree by an exchange of letters to add to the list of information to be exchanged, and will, in any case, review the information being provided no less than every two years.

TERMS AND CONDITIONS

Article 3

With respect to the automatic exchange of information provided in this Memorandum, Article 21 (Protection of persons and limits to the obligation to provide assistance) and Article 22 (Secrecy) of the Convention on Mutual Administrative Assistance in Tax Matters are fully applicable.

2. If administratively feasible. In case the information on such commissions cannot be exchanged automatically, an additional paragraph could be inserted in Article 1 of the Memorandum of Understanding which would read as follows: "It is agreed that the exchange of information (spontaneous and on request) will be intensified in the case of the following categories of income: commissions, fees, brokers' fees and other remuneration paid to natural or legal persons".

Article 4

The information referred to in Article 2 of this Memorandum shall, as much as possible, be provided in a magnetic or electronic format following the Recommendation of the Council on the Use of the Revised OECD Standard Magnetic Format for Automatic Exchange of Information [C(97)30/FINAL] or any further updated format recommended by the Council. This information shall include, as much as possible, the Tax Identification Numbers in the residence and source country of the non-resident recipients of income following the OECD Recommendation on the use of Tax Identification Numbers in an International Context [C(97)29/FINAL].

Article 5

If the information provided by a State as part of the automatic exchange of information is found to be incorrect or incomplete, the competent authority shall make this known as quickly as possible to the other State. Feedback should be provided whenever useful to the sending country.

Article 6

The information shall be provided periodically, at least once per calendar year, to:

in (State X): name and address of the responsible part of the tax administration

in (State Y): name and address of the responsible part of the tax administration

Information relating to income and/or data concerning a particular calendar year shall be forwarded immediately if possible, and in any event, as soon as possible after the end of the calendar year in question.

APPLICATION AND TITLE

Article 7

This Memorandum shall enter into force on DD MM YYYY and apply to information concerning income from the calendar year YYYY and succeeding years until denounced by one competent authority by means of a notification to the other competent authority.)

Article 8

This Memorandum may be cited as the “Memorandum of Understanding between the Competent Authorities of (State X) and (State Y) on the Automatic Exchange of Information for Tax Purposes”.

Done in duplicate, in the x and y languages, each version being equally authentic.

The Competent Authority for (State X)

The Competent Authority for (State Y)

Signature Date

Signature Date