MANUAL ON THE IMPLEMENTATION OF
EXCHANGE OF INFORMATION PROVISIONS FOR TAX PURPOSES

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MODULE 2 ON SPONTANEOUS EXCHANGE OF INFORMATION

The complete manual currently consists of the following Modules:

General Module - General and legal aspects of exchange of information

Module 1 - Exchange of information on request

Module 2 - Spontaneous exchange of information

Module 3 - Automatic (or routine) exchange of information

Module 4 - Industry-wide exchange of information

Module 5 - Simultaneous tax examinations

Module 6 - Tax examinations abroad

Module 7 - Country profiles regarding information exchange

Module 8 - Information exchange instruments and models

The purpose of the Manual is to provide tax officials dealing with exchange of information for tax purposes with an overview of the operation of exchange of information provisions and some technical and practical guidance to improve the efficiency of such exchanges.

The manual can be used for training and to design or update domestic manuals. The modular approach allows countries to choose only the parts that are relevant to their specific exchange programs.

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MODULE ON SPONTANEOUS EXCHANGE OF INFORMATION

1. Introduction – What is Spontaneous Exchange of Information?

1. Spontaneous exchange of information is the provision of information to another contracting party that is forseeably relevant to that other party and that has not been previously requested. Because of its nature, spontaneous exchange of information relies on the active participation and co-operation of local tax officials (e.g. tax auditors, etc). Information provided spontaneously is usually effective since it concerns particulars detected and selected by tax officials of the sending country during or after an audit or other type of tax investigation.

2. Encouraging and Promoting the Use of Spontaneous Exchange of Information

2. The effectiveness and efficiency of spontaneous exchange very much depends on the motivation and the initiative of the officials in the supplying country. It is therefore important that local tax officials have the reflex to pass on to their competent authority information which would potentially be of use to a tax treaty partner. In this context, tax administrations should consider developing strategies that aim to encourage and promote the use of spontaneous exchange of information. Such strategies might include the mandatory publishing of spontaneous exchange statistics in annual reports and carrying out comprehensive, regular and properly targeted awareness training to local tax officials. Countries should also consider negotiating Memoranda of Understanding and other similar instruments that seek to encourage, promote and facilitate effective spontaneous exchange of information. It should be borne in mind that sending useful information to another country will increase the likelihood of receiving useful information in return.

3. When to Consider a Spontaneous Exchange of Information

3. Several circumstances may arise that could prompt a spontaneous exchange of information. The list below provides examples of where a spontaneous exchange of information should be considered:

- Grounds for suspecting that there may be a significant loss of tax in another country;
- Payments made to residents of another country where there is suspicion that they have not been reported;
- A person liable to tax obtains a reduction in or an exemption from tax in one country which could give rise to an increase in tax liability to tax in another country;
- Business dealings between a person liable to tax in a country and a person liable to tax in another country are conducted through one or more countries in such a way that a saving in tax may result in one of the other countries or in both;
- A country has grounds for suspecting that a saving of tax may result from artificial transfers of profits within groups of enterprises; and
- Where there is likelihood of a particular tax avoidance or evasion scheme being used by other taxpayers.

4. Checklist of what to include when providing information spontaneously

1. The checklist below provides guidance on what to include when providing information spontaneously. It should be noted that other relevant information may be added, exchanges should not be delayed by endeavouring to obtain every item on the checklist and that abbreviations or acronyms should not be used. The reference to the article in the relevant treaty or other legal basis upon which the information is provided.

2. The identity of the person(s) to whom the information relates: name, date of birth (for individuals), marital status (if relevant), Tax Identification Number (TIN) and address (including email or internet addresses, if known).

3. The identify of person from whom the information was obtained and, if relevant, their relationship to the person(s) to whom the information relates: name, marital status (if relevant), TIN (if known), addresses (including email or internet addresses if known), registration number in case of a legal entity (if known), charts, diagrams or other documents illustrating the relationships between the persons involved.

4. If the information involves a payment or transaction via an intermediary mention the name, addresses of the intermediary, including, where bank information is involved, the name and address of the bank branch as well as the bank account number.

5. The information which was gathered and an explanation why the information is thought to be of interest to the other competent authority (for money amounts indicate the currency and whether a tax has been withheld and if so the rate and amount).

6. Mention how the information was obtained and identify the source of the information provided, e.g. tax return, third party information etc.

7. Mention whether the taxpayer or a third person has been notified about the exchange.

8. Mention whether there are any objections to notifying the taxpayer of the receipt of the information.

9. Mention whether there are any objections to disclosing all or certain parts of the information provided (e.g. the transmittal letter).

10. Mention whether feedback is requested on the usefulness of the information.

11. A reminder that the use of the information provided is subject to the applicable confidentiality rules (e.g. by stamping a reference to the applicable confidentiality rule on the information provided).

12. The name, phone, fax number and e-mail address of the tax official who may be contacted if needed, if that person is a delegate of the competent authority.

5. Receiving information provided spontaneously

4. When receiving information spontaneously the competent authority of the receiving country should evaluate it and, if warranted, refer it to the appropriate investigative authorities for action.

5. The competent authority receiving spontaneous information should always request feedback from the investigative authorities on the usefulness of the information and forward this information to the competent authority that spontaneously provided the information. Feedback to the competent authority that spontaneously provided the information may include details of, for example, additional tax revenue raised, tax evasion methods detected and an overall assessment of how useful the information was to the tax administration. Regular, timely and comprehensive feedback between competent authorities is important as it enables quality improvements to be made for future spontaneous information exchanges.

6. Scenarios where a spontaneous exchange of information may be useful:

6. The examples below demonstrate where information detected by a local tax official could be of use to a tax treaty partner:

- An audit of company X in country A reveals a payment of €40,000 for management fees paid to an unrelated company Y in country B. An examination of the invoices indicates this amount was paid to company Y but an examination of the company X bank account shows two deposits made on the same day, one for an amount of €25,000, the other for €15,000. The auditor observes an entry made in the managing director's diary that states, "Bill Z (the individual who provided the management services) requests payment of €25,000 into the company Y bank account and €15,000 into the Bill Z bank account". Suspecting the second amount may not be disclosed in the accounts of company Y and believing the information could therefore be of use to the tax administration in country B, the auditor initiates a spontaneous exchange of information with country B via the competent authority.

- Information provided anonymously to the tax administration in country A reveals that John X, a resident of country A, has been in receipt of substantial sums of cash deposited into his bank account from his father in country B, who owns a restaurant. John X has told people that his father sends the cash for two reasons: (1) so his father can avoid paying tax on his restaurant business income by sending significant cash takings offshore, and, (2) so he can provide some financial assistance to his son in country A. An audit of John X reveals that he has never lodged a tax return in country A although his bank statements show he has derived large amounts of taxable interest income derived from the cash deposited by his father. The auditor calculates that €50,000 has been periodically deposited into John X's bank account throughout the 2003 tax year. The auditor believes the information gathered throughout the audit would be of use to the tax administration of country B because he suspects the income may not have been reported in that country. The auditor therefore discusses the matter with his competent authority with the view to providing a spontaneous exchange of information to country B. The spontaneous information exchange will include, among other things, a copy of the auditors report, copies of relevant bank statements and the name of John X's father.

- Country A uses the exemption method for the purposes of avoiding double tax on employment income. Maria, a resident in country A, was exempted from tax in country A because she was employed for more than 183 days in country B during the 2003 tax year. Because the Convention between country A and country B assigns taxing rights on Maria's employment income to country B, country A spontaneously informs country B that it granted a tax exemption to Maria for the 2003 tax year.