Exchange of Information on Request

HANDBOOK FOR PEER REVIEWS 2016-2020
2016 Terms of Reference

GLOBAL FORUM ON TRANSPARENCY
AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

OECD

Third Edition

2016 Terms of Reference to monitor and review progress towards transparency and exchange of information on request for tax purposes

I. Introduction

1. The Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) is the largest tax body in the world charged with monitoring tax transparency. It was profoundly restructured in 2009 following a call from the G20 Leaders to ensure a rapid implementation of the standard for exchange of information on request (EOIR) through the establishment of a rigorous and comprehensive peer review process. The Global Forum quickly established a peer review mechanism comprising Terms of Reference, a Methodology and a Schedule of Reviews to undertake that work. Considerable progress has been achieved since 2009 through the conduct of peer reviews of jurisdictions which have assessed 126 jurisdictions' compliance with the international standard of EOIR, as well as through training and technical assistance activities. The G20 leaders have consistently encouraged a rapid implementation of the standard of EOIR and in 2014 adopted a new standard for automatic exchange of information (AEOI). The AEOI standard will be evaluated in accordance with its own dedicated Terms of Reference, Methodology and Schedule of Reviews.

2. At its plenary meeting in Jakarta, in November 2013, the Global Forum agreed that a new round of reviews for compliance with the EOIR standard would be initiated from 2016 following the completion of the initial Schedule of Reviews. On 26-27 October 2014 in Berlin, the Global Forum agreed to extend its mandate to the end of 2020 and adopted a series of proposals to amend the Terms of Reference with a view to adapt them to the evolving international environment in transparency for tax matters. The revised Terms of Reference constitute the basis for the next round of peer reviews starting from 2016 (2016 Terms of Reference), which will monitor and review progress made towards full and effective EOIR since the first round of reviews started in 2010.

3. The hallmarks of a good peer review system are open procedures coupled with a clear statement of the standards against which subjects are being reviewed. The 2016 Terms of Reference describe the EOIR standard and break it down into 10 essential elements to be assessed through the monitoring and peer reviews.

II. The standard of transparency and exchange of information on request for tax purposes

4. The principles of transparency and effective information exchange on request for tax purposes are primarily reflected in the 2002 OECD's Model Agreement on Exchange of Information on Tax Matters (the OECD Model TIEA) and its commentary and in Article 26 of the OECD Model Tax Convention on Income and on Capital ("the OECD Model Tax Convention") and its commentary as updated in 2012 (and approved by the OECD Council on 17 July 2012). The 2012 revision to Article 26 and its commentary aimed at reflecting the international developments in tax transparency since the previous revision in 2005[1]. The standard of EOIR is now virtually universally accepted. All Global Forum members have committed to implement the standard and undergo a peer review to assess its implementation.

5. The standard provides for exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard. The 2012 revision to Article 26 further developed the interpretation of the standard of "foreseeable relevance", notably spelling out the circumstances in which "group requests" meet the standard of "foreseeable relevance" and when they do not, and adding new examples regarding foreseeable relevance.

6. In addition to the primary authoritative sources of the standard, there are a number of documents which have provided guidance in how the standard should be applied, in particular as regards transparency. For instance, in connection with ensuring the availability of reliable accounting information the Joint Ad Hoc Group on Accounts ("JAHGA")[2] developed guidance on accounting transparency. Other secondary sources include the OECD and

1. United Nations Model Double Taxation Convention between Developed and Developing Countries ("the UN Model Tax Convention") continues to reflect the 2005 version of the OECD Model Tax Convention and its Commentary.
2. The JAHGA was set up in 2003 under the auspices of the Global Forum. For the standards developed by the JAHGA see "Enabling Effective Exchange of

Global Forum Manuals on Exchange of Information (2006 and 2013), the 2004 Guidance notes developed by the Forum on Harmful Tax Practices, and the 2012 Financial Action Task Force (FATF) recommendations and guidance on transparency and beneficial ownership (see Annex 1). In this regard it should be noted that the G20's declaration at the Saint Petersburg Summit stated that "We invite the Global Forum to draw on the work of the FATF with respect to beneficial ownership".[3]

7. Exchange of information for tax purposes is effective when reliable information, foreseeably relevant to the tax requirements of a requesting jurisdiction is available, or can be made available, in a timely manner and there are legal mechanisms that enable the information to be obtained and exchanged.[4] It is helpful, therefore, to conceptualise transparency and exchange of information as embracing three basic components:

- availability of information
- appropriate access to the information, and
- the existence of exchange of information mechanisms

8. In other words, the information must be **available**, the tax authorities must have **access** to the information, and there must be a basis for **exchange**. If any of these elements are missing, information exchange will not be effective.

9. The remainder of this section breaks down the principles of transparency and effective exchange of information into their essential elements. In order for assessors to be able to evaluate whether a jurisdiction has implemented the standard or not, they will have to be in the position to understand each of the key principles and what a jurisdiction must do to satisfy that requirement. The sections are divided as discussed above into availability of information (Part A), access to information (Part B) and finally information exchange (Part C).

A. Availability of information: Essential elements

10. Effective exchange of information requires the availability of reliable information. In particular, it requires that adequate, accurate and up to date information on the identity of the legal and beneficial owners (and the identity of other relevant persons as identified in essential element A.1) of

---

Information: Availability Standard and Reliability Standard," (the JAHGA Report).

3. Para. 51 of the G20 Leaders' Declaration, September, 2013.
4. JAHGA Report, para. 1.

relevant entities and arrangements[5] is available to competent authorities in a timely manner, as well as accounting information for these entities and arrangements. In addition, it is crucial for effective exchange of information that banking information is available.

11. Regarding beneficial ownership information applicable under elements A.1 and A.3, it is recognised that the purposes for which the FATF standards have been developed (combatting money-laundering and terrorist financing) are different from the purpose of the standard on EOIR (ensuring effective exchange of information for tax purposes). Hence, in applying and interpreting the FATF materials[6] regarding "beneficial owner", care should be taken that such application and interpretation do not go beyond what is appropriate for the purposes of ensuring effective exchange of information for tax purposes.

12. This Part A of the 2016 Terms of Reference requires jurisdictions to ensure that ownership, identity, accounting and banking information is available. Such information may be kept for tax, anti-money laundering, regulatory, commercial or other reasons. If such information is not kept or the information is not maintained for a reasonable period of time, a jurisdiction's competent authority may not be able to obtain and provide it when requested. Not only should jurisdictions require that this information be maintained but also that it be kept for at least 5 years[7], even in cases where the relevant entity or legal arrangement has ceased to exist. Also, effective enforcement provisions to ensure the availability of information must be in place, including adequate monitoring for non-compliance, as well as sufficiently strong compulsory powers. These aspects are an inherent requirement under each of the elements in Part A.

---

5. The term "Relevant Entities and Arrangements" includes: (i) a company, foundation, Anstalt and any similar structure, (ii) a partnership or other body of persons, (iii) a trust or similar arrangement, (iv) a collective investment fund or scheme, (v) any person holding assets in a fiduciary capacity and (vi) any other entity or arrangement deemed relevant in the case of the specific jurisdiction assessed.
6. See Annex 2, letter D.
7. The minimum period of five years applies from the end of the period to which the information (ownership and identity, accounting and banking information) relates in all cases and would generally relate either to a taxable year, a calendar year, or an accounting period. The period to which the information relates depends on the type of rule being applied (e.g. tax law, accounting law), the person subject to the requirement (e.g. a third-party information holder or a taxpayer) and the type of information requested.

A.1 Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners[8], for all relevant entities and arrangements is available to their competent authorities.

A.1.1. Jurisdictions[9] should ensure that information is available to their competent authorities that identifies the owners of companies and any bodies corporate.[10] Owners include legal owners and beneficial owners (including, in any case where a legal owner acts on behalf of any other person as a nominee or under a similar arrangement, that other person), as well as persons in an ownership chain.

A.1.2. Where jurisdictions permit the issuance of bearer shares they should have appropriate mechanisms in place that allow the owners of such shares to be identified. One possibility among others is a custodial arrangement with a recognised custodian or other similar arrangement to immobilise such shares.

---

8. FATF defines the term "beneficial owner" as the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement. Reference to ultimate ownership or control and ultimate effective control refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control.
9. It is the responsibility of the jurisdiction under whose laws companies or bodies corporate are formed to ensure that legal and beneficial ownership information in relation to those entities is available. In addition, where a company or body corporate has a sufficient nexus to another jurisdiction, including being resident there for tax purposes (for example by reason of having its place of effective management or administration there), or, where the concept of residence for tax purposes is not relevant in that other jurisdiction, one possible alternative nexus is that the company has its headquarters there, that other jurisdiction will also have the responsibility of ensuring that legal ownership information is available. Typically, the headquarters of a company would be the place where the majority of the senior management and key functions of the company are located, or in other words, the place from which operations of the company are directed. Finally, where a foreign company has a sufficient nexus then the availability of beneficial ownership information is also required to the extent the company has a relationship with an AML-obligated service provider that is relevant for the purposes of EOIR.
10. OECD Model TIEA Article 5(4) (please note, however, exceptions for publicly-traded companies or public collective investment funds or schemes) and JAHGA Report paragraph 1.

A.1.3. Jurisdictions should ensure that information is available to their competent authorities that identifies the partners in, and the beneficial owners of, any partnership that (i) has income, deductions or credits for tax purposes in the jurisdiction, (ii) carries on business in the jurisdiction or (iii) is a limited partnership formed under the laws of that jurisdiction.[11]

A.1.4. Jurisdictions should take all reasonable measures to ensure that beneficial ownership information[12] is available to their competent authorities in respect of express trusts (i) governed by the laws of that jurisdiction[13], (ii) administered in that jurisdiction, or (iii) in respect of which a trustee is resident in that jurisdiction.[14]

A.1.5. Jurisdictions that allow for the establishment of foundations should ensure that information is available to their competent authorities for foundations formed under those laws to identify the founders, members of the foundation council, and beneficiaries (where applicable), as well any beneficial owners of the foundation or persons with the authority to represent the foundation[15].

A.2 Jurisdictions should ensure that reliable accounting records[16] are kept for all relevant entities and arrangements.

A.2.1. Accounting records should (i) correctly explain all transactions, (ii) enable the financial position of the Entity or Arrangement to be determined with reasonable accuracy at any time and (iii) allow financial statements to be prepared.

11. OECD Model TIEA Article 5(4).
12. Beneficial ownership information includes information on the identity of the settlor, trustee(s), protector (if any), all of the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust.
13. It is not expected that a trust law jurisdiction would be required to enforce such requirements globally on every trust governed by their law. See Assessment Criteria Note, para. 85 as well as FATF Guidance on Transparency and Beneficial Ownership (October 2014) paras. 59-62 for more information.
14. OECD Model TIEA Article 5(4). See also commentary on express trusts in the appendix to the JAHGA Report, para. 6.
15. OECD Model TIEA Article 5(4).
16. See JAHGA Report.

A.2.2. Accounting records should further include underlying documentation, such as invoices, contracts, etc. and should reflect 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.

A.3 Banking information should be available for all account-holders.

A.3.1. Banking information should include all records pertaining to the accounts as well as to related financial and transactional information[17], including information regarding the legal and beneficial owners of the accounts.

B. Access to bank, ownership, identity and accounting information: Essential elements

13. A variety of information may be needed in a tax enquiry and jurisdictions should have the authority to obtain all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities.

14. The peer review process shall assess whether the access powers in a given jurisdiction cover the right types of persons and information and whether rights and safeguards are compatible with effective exchange of information.

B.1. Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control[18] of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).[19]

B.1.1. Competent authorities should have the power to obtain and provide information held by banks, other financial

17. See B.1.

18. In the context of availability of information a person might be said to have possession of records or information if he/she has physical control over it. Control is broader and includes situations where a person has the legal right or authority, or the ability to obtain documents or information in the possession of another person.

19. See, however, section C.4.

institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees, as well as information regarding the legal and beneficial owners of companies, partnerships, trusts, foundations, and other relevant entities including, to the extent that it is held by the jurisdiction's authorities or is within the possession or control of persons within the jurisdiction's territorial jurisdiction, and legal ownership information on all such persons in an ownership chain[20].

B.1.2. Competent authorities should have the power to obtain and provide accounting records for all relevant entities and arrangements.[21]

B.1.3. Competent authorities should use all relevant information-gathering measures to obtain the information requested, notwithstanding that the requested jurisdiction may not need the information for its own tax purposes (e.g. information should be obtained whether or not it relates to a taxpayer that is currently under examination by the requested jurisdiction).

B.1.4. Jurisdictions should have in place effective enforcement provisions to compel the production of information.[22]

B.1.5. Jurisdictions should not decline on the basis of its secrecy provisions (e.g. bank secrecy, corporate secrecy) to respond to a request for information made pursuant to an exchange of information mechanism.

B.2 The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

B.2.1. Rights and safeguards should not unduly prevent or delay effective exchange of information.[23] For instance, notification rules should permit exceptions from prior notification (notably, 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 jurisdiction) and time-specific post-exchange notification (e.g. when such notification is likely

20. See OECD Model TIEA Article 5(4).
21. See JAHGA Report paragraphs 6 and 22.
22. See JAHGA Report paragraph 22.
23. See OECD Model TIEA Article 1.

to undermine the chance of success of the investigation conducted by the requesting jurisdiction[24]).

C. Exchanging information: Essential elements

15. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. The legal authority to exchange information may be derived from bilateral or multilateral mechanisms (e.g. double tax conventions, tax information exchange agreements, the Joint Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters) or arise from domestic law. Within particular regional groupings information exchange may take place pursuant to exchange instruments applicable to that grouping (e.g. within the EU, the directives and regulations on mutual assistance). The peer review process shall assess whether the network of information exchange mechanisms that a jurisdiction has is adequate in their particular circumstances.

C.1. Exchange of information mechanisms should provide for effective exchange of information and should:

C.1.1. allow for exchange of information on request where it is foreseeably relevant[25] to the administration and

24. A requested jurisdiction should provide for an exception from time-specific, post-exchange notification in cases where notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction and the requesting jurisdiction has made a request for the application of such an exception on this basis that is founded on reasonable grounds.

25. See Articles 1 and 5(5) OECD Model TIEA and accompanying commentary and paragraphs 5, 5.1 and 5.2 (relating to group requests) of the commentary to Article 26 of the OECD Model Convention. It is incumbent upon the requesting state to demonstrate that the information it seeks is foreseeably relevant to the administration and enforcement of its tax laws. Article 5(5) of the OECD Model TIEA contains a checklist of items that a requesting state should provide in order to demonstrate that the information sought is foreseeably relevant. The addition to paragraph 5 of the Commentary, which was made in the 2012 update, specifies that a request may 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. Paragraph 5.1 specifies that a) in the absence of a name and address, sufficient information is required to identify the taxpayer and b) similarly, that it is not necessarily required that the request includes the name and/or address of the person believed to be in possession of the information. Finally, paragraph 5.2 specifies that, in the case of group requests, the foreseeable relevance of a group request should be sufficiently demonstrated.

enforcement of the domestic tax laws[26] of the requesting jurisdiction.[27]

C.1.2. provide for exchange of information in respect of all persons (e.g. not be restricted to persons who are resident in one of the contracting states for purposes of a treaty or a national of one of the contracting states).

C.1.3. not permit the requested jurisdiction to decline to supply information solely because the information is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.[28]

C.1.4. provide that information must be exchanged without regard to whether the requested jurisdiction needs the information for its own tax purposes.[29]

C.1.5. not apply dual criminality principles to restrict exchange of information.

C.1.6. provide exchange of information in both civil and criminal tax matters.[30]

C.1.7. allow for the provision of information in specific form requested (including depositions of witnesses and production of authenticated copies of original documents) to the extent possible under the jurisdiction's domestic laws and practices.

C.1.8. be in force; where agreements have been signed, jurisdictions must take all steps necessary to bring them into force expeditiously.

It should also be demonstrated that the requested information would assist in determining compliance by the taxpayers in the group.

26. See paragraph 15 of the Commentary to Article 26 of the OECD Model Convention.
27. See Article 1 of the OECD Model TIEA, paragraph 5.4 of the Revised Commentary (2008) to Article 26 of the UN Model Convention and paragraph 9 of the Commentary to Article 26 of the OECD Model Convention.
28. OECD and UN Model Tax Conventions, Art. 26(5); OECD Model TIEA, Art. 5(4)(a).
29. OECD and UN Model Tax Conventions, Art. 26(4); OECD Model TIEA, Art. 5(2).
30. Article 4(1) (o) of the OECD Model TIEA.

C.1.9. be given effect by the enactment of legislation necessary for the jurisdiction to comply with the terms of the mechanism.[31]

C.2 The jurisdictions' network of information exchange mechanisms should cover all relevant partners.[32]

C.3 The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received.

C.3.1. Information exchange mechanisms should provide that any information received should be treated as confidential and, unless otherwise agreed by the jurisdictions concerned, may 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 exchange of information clause. Such persons or authorities shall use the information only for such purposes unless otherwise agreed between the parties and in accordance with their respective laws[33]. Jurisdictions should ensure that

31. OECD Model TIEA, Art. 10.

32. The standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement. Jurisdictions are expected to enter into an EOI agreement that conforms to the EOIR standard if requested without insisting on additional conditions. Where the party seeking an EOI mechanism is itself a party to the multilateral Convention on Mutual Administrative Assistance then the requested party would satisfy the requirement of element C.2 by also becoming party to that agreement. However, the standard does not require a jurisdiction to enter a multilateral instrument. Similarly, an exchange of information relationship can be established also based on other types of EOI agreements such as Double Tax Conventions if the conclusion of such an agreement is agreeable by both jurisdictions. Agreements cannot be concluded only with counterparties without economic significance. If it appears that a jurisdiction is refusing to enter into agreements or negotiations with partners, in particular ones that have a reasonable expectation of requiring information from that jurisdiction in order to properly administer and enforce its tax laws, this should be drawn to the attention of the Peer Review Group, as it may indicate a lack of commitment to implement the standard.

33. See Article 8 OECD Model TIEA; Article 26(2), OECD and UN Model Tax Conventions. Information exchanged may be used for other purposes (other than

safeguards are in place to protect the confidentiality of information exchanged.[34]

C.3.2. In addition to information directly provided by the requested to the requesting jurisdiction, jurisdictions should treat as confidential in the same manner as information referred to in C.3.1 all requests for such information, background documents to such requests, and any other document reflecting such information, including communications between the requesting and requested jurisdictions and communications within the tax authorities of either jurisdiction[35].

C.4 The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties.

C.4.1. Requested jurisdictions should not be obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or information which is the subject of attorney client privilege or information the disclosure of which would be contrary to public policy.[36]

C.5 The jurisdiction should request and provide information under its network of agreements in an effective manner.

C.5.1. Jurisdictions should be able to respond to requests within 90 days of receipt by providing the information requested or providing an update on the status of the request.[37]

C.5.2. Jurisdictions should have appropriate organisational processes and resources in place to ensure quality of requests and quality and timeliness of responses.

C.5.3. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions.

---

tax purposes) provided that the written consent is given or it is authorised by the competent authority of the requested jurisdiction.

34. See B.2.
35. See paragraph 11 of the Commentary to Article 26 OECD Model Tax Convention.
36. See OECD and UN Model Tax Conventions Article 26(3)(b) and commentary and OECD Model TIEA Article 7.
37. See Article 5(6)(b) of the OECD Model TIEA.

III. Output of the peer review process

16. All Global Forum members have agreed to be assessed by a peer review for their implementation of the standard of EOIR, as articulated in the 2016 Terms of Reference. In addition, non-members that are relevant to the Global Forum's work are also subject to review. Each jurisdiction is assessed for the implementation of the legal and regulatory framework and the implementation of that framework in practice. The final result is a rating for each of the essential elements and an overall rating. The first round of reviews was conducted in accordance with the Schedule of Reviews first agreed in 2010, and has been completed for nearly all members. The Global Forum has agreed that all members and relevant non-members should be subject to a second round of review starting in 2016, to ensure continued compliance with and implementation of the standard. Where the first round of reviews was generally conducted as separate reviews for Phase 1 and Phase 2, the reviews commencing in 2016 will combine both Phase 1 and Phase 2 into one review. The reviews are conducted in accordance with the 2016 Methodology and Schedule of Reviews. Final review reports are published and reviewed jurisdictions are expected to follow up on any recommendations made.

Annex 1

Sources of the internationally agreed standard on transparency and effective exchange of information for tax purposes on request (the standard)

1. This annex briefly describes the authoritative sources setting out standard on transparency and effective EOIR for tax purposes as well as additional sources that may be useful to assessors, the Peer Review Group and the Global Forum in applying the standard in the monitoring and peer review process. The internationally agreed standard on transparency and effective exchange of information for tax purposes may be divided into a primary authoritative source and a number of complementary sources.

2. The primary authoritative source contains:

- The 2002 Model Agreement on Exchange of Information on Tax Matters and its Commentary ("Model Agreement");
- Article 26 of the OECD Model Tax Convention on Income and on Capital ("Model Tax Convention") and its Commentary, as updated in 2012.[38]

3. This primary authoritative source is complemented by a number of secondary documents which give elements of context for the understanding and interpretation of the standard. These documents have been developed by the relevant OECD bodies or by the Global Forum. Finally, as work on standard-setting and evaluation closely relates to areas covered by other international bodies, and in particular the FATF, the principles developed by the FATF may be taken into consideration to interpret and apply the standard where appropriate.

38. United Nations Model Double Taxation Convention between Developed and Developing Countries ("the UN Model Tax Convention") continues to reflect the 2005 version of the OECD Model Tax Convention and its Commentary.

I. Primary Authoritative Source

A. Model Agreement and Commentary

4. In 2002, the Global Forum created a Working Group on Effective Exchange of Information (the Global Forum Working Group). It included representatives from several OECD countries and Aruba, Bermuda, Bahrain, Cayman Islands, Cyprus, the Isle of Man, Malta, Mauritius, the Netherlands Antilles, the Seychelles and San Marino. The Working Group developed the 2002 Model Agreement which has been used as the basis for the negotiation of over 1600 Tax Information Exchange Agreements (TIEAs).

5. The Model Agreement and Commentary is an authoritative source of the Global Forum standard on transparency and effective EOIR for tax purposes. It addresses the standard for exchange of information in detail including with regard to the obligation to provide all information that is foreseeably relevant to the administration or enforcement of the domestic laws of the contracting parties concerning taxes, the narrow acceptable grounds for declining a request, the format of requests, confidentiality, attorney-client privilege and other matters.

6. The Model Agreement and Commentary also address the scope of information that must be available to be accessed and exchanged. The scope is primarily determined by the foreseeable relevance standard, i.e. all information that is foreseeably relevant to the administration or enforcement of the domestic laws of the contracting parties concerning taxes.

7. In addition to establishing the general foreseeable relevance standard, the Model Agreement and Commentary identify specific types of information that the requested jurisdictions must have the authority to obtain and provide, including bank information and ownership and identity information.

8. The specific examples in the Model Agreement and Commentary are not exhaustive of the scope of information that must be available, accessible and reliable under the foreseeable relevance standard. They do not refer, for example, to accounting information. The scope of accounting information that is foreseeably relevant to the administration or enforcement of the domestic laws of the contracting parties concerning taxes is addressed specifically in the JAHGA paper (see below).

9. The Model Agreement and Commentary contains standard on access to information. For example, it provides that where the required review by the requested party of information in its possession proves inadequate to provide the requested information, it must take all "relevant information gathering measures" in order to be able to provide the requested information.

10. The Model Agreement Commentary recognises that the standard it establishes can be implemented in several ways, including through double taxation agreements. Most double taxation agreements are based on the OECD Model Tax Convention.

B. Article 26 of the Model Tax Conventions and their Commentary

11. The Model Tax Convention is the most widely accepted legal basis for double taxation agreements. More than 3000 bilateral treaties are based on the Model Tax Convention. Article 26 of the Model Tax Convention in turn provides the most widely accepted legal basis for bilateral exchange of information for tax purposes.

12. On 17 July 2012, the OECD approved and published changes to Article 26 of the OECD Model Tax Convention and its Commentary. The previous update was published in 2005, and was also incorporated into the 2008 version of Article 26 of the UN Model Tax Convention. The 2012 amendments to Article 26 reflect recent developments in respect of tax transparency and further elaborated on the interpretation of certain provisions of the Article. On 26-27 October 2014, the Global Forum approved the incorporation of the 2012 update to Article 26 into the terms of reference.

13. Article 26 provides for the same standard as the Model Agreement. Both use the standard of "foreseeable relevance" to define the scope of the obligation to provide information. Both require information exchange to the widest possible extent, but do not allow "fishing expeditions", i.e. speculative requests for information that have no apparent nexus to an open inquiry or investigation.[39]

14. Although Article 26 is generally very similar in approach to the Model Agreement, some aspects of Article 26 are beyond the scope of the standard of EOIR. For example, Article 26 allows for automatic and spontaneous exchange of information which is not included in the standard.

39. The text of Article 26(1) was modified in 2005 to provide for the same basic "foreseeable relevance" standard as under the Model Agreement. The previous version of Article 26 used the standard of "necessary". The Commentary explains that the change from "necessary" to "foreseeably relevant" was not intended to alter the effect of the provision but was made to better express the balance between requiring information exchange to the widest possible extent while excluding fishing expeditions, and to achieve consistency with the Model Agreement. The 2012 update to Article 26(1) further expands on the "foreseeable relevance" standard. See Commentary paras. 4.1 and 5.3.

II. Complementary authoritative sources

A. The Joint Ad Hoc Group on Accounts (JAHGA) Report

15. Accounting information comes under the general foreseeably relevant standard established by the Model Agreement and Article 26 of the Model Tax Convention. However, the source of detailed standards with regard to the requirements for available, accessible and reliable accounting records is the JAHGA Report. Before being approved by the Global Forum in 2005, it was developed jointly by representatives of OECD and non-OECD countries through their co-operation in the JAHGA.[40]

16. The JAHGA Report sets out the standards with regard to requiring the maintenance of reliable accounting records, the necessary accounting record retention period and the accessibility to accounting records.

B. The 2006 OECD and the 2013 Global Forum Manuals on Information Exchange

17. In 2006, the CFA approved a Manual on Information Exchange[41] (the "OECD Manual"). The OECD Manual provides practical assistance to officials dealing with exchange of information for tax purposes and may also be useful in designing or revising national manuals. It was developed with the input of both member and non-member countries of the OECD.

18. In 2013, the Global Forum approved its own Manual on Information Exchange. It has been developed as a guide to the internal processes and procedures within the Exchange of Information Unit of a tax administration, in so far as they concern EOIR and spontaneous exchanges of information.

40. The JAHGA participants consisted of representatives from Antigua and Barbuda, Aruba, Bahamas, Bahrain, Belize, Bermuda, British Virgin Islands, Canada, Cayman Islands, Cook Islands, France, Germany, Gibraltar, Grenada, Guernsey, Ireland, Isle of Man, Italy, Japan, Jersey, Malta, Mauritius, Mexico, Netherlands, Netherlands Antilles, New Zealand, Panama, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Seychelles, Slovak Republic, Spain, Sweden, United Kingdom, and the United States.

41. The Manual is available at: www.oecd.org/document/5/0,3343,en_2649_33767_36647621_1_1_1_1,00.html.

C. The 2004 Guidance Notes developed by the Forum on Harmful Tax Practices

19. In 2004, the Forum on Harmful Tax Practices, a subsidiary body of the CFA, developed guidance notes on the issue of Transparency and Effective Exchange of Information.[42] The Introduction notes that the guidance notes, while providing useful guidance to jurisdictions that have made commitments to transparency and effective exchange of information, should not be understood as expanding the standard to which the jurisdictions had agreed to adhere (§ 13). The notes provide important guidance with regard to standard in the area of the availability of relevant and reliable information, including with regard to the identity of legal and beneficial owners and other persons.

D. FATF recommendations and guidance on transparency and beneficial ownership[43]

20. In addition to tax-specific materials addressed above, it is important to recognise that efforts to improve on transparency and effective exchange of information for tax purposes take place in a broader context. This is particularly the case with regard to the work of FATF relating to issues of domestic institutional measures to provide information, mutual legal assistance, and transparency with regard to information about ownership and the identity of owners and other stakeholders.

21. These are key components of the foreseeably relevant information that jurisdictions must be able to provide under the Global Forum standard. FATF concepts may provide useful guidance and be taken into consideration to interpret and apply the standards where appropriate. In particular, The 2012 FATF standards include a concept of beneficial owner that has been incorporated into elements A.1, A.3 and B.1. To the extent they deal with the concept of beneficial ownership as that concept applies to the standard set out in the terms of reference, the following FATF materials[44] are relevant for carrying out EOIR assessments:

- General Glossary (e.g. definition of "beneficial owner");

42. The guidance notes are available at www.oecd.org/ctp/harmful/30901132.pdf. They were published under the title Consolidated Application Note: Guidance in Applying the 1998 Report to Preferential Tax Regimes, and also addressed a variety of other preferential tax regimes. The notes on transparency and exchange of information are at pp. 9-19.
43. FATF recommendations are available in Part III of this Handbook.
44. International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation, the FATF Recommendations, February 2012.

- Recommendation 10 on Customer due diligence and its accompanying interpretative note, in particular, regarding the method of identifying the beneficial ownership of a legal person or arrangement set out in 5(b)(i) and (ii) of Recommendation 10;
- Recommendation 24 on Transparency and beneficial ownership of legal persons and its accompanying interpretative note;
- Recommendation 25 on Transparency and beneficial ownership of legal arrangements and its accompanying interpretative note;
- Methodology for assessing technical compliance with the FATF Recommendations and the Effectiveness of AML/CFT systems (FATF Methodology); and
- Guidance note on Transparency and Beneficial Ownership, issued in October 2014.

22. The above list is not exhaustive; it highlights the areas of the FATF materials that are most directly related to the interpretation and application of the concept of beneficial ownership. Other recommendations or guidance may be relevant depending on the facts and circumstances of a particular case and to the extent that they have a specific connection with the implementation of the standard in the assessed jurisdiction. It is noted that the purpose for which the FATF materials have been produced (combatting money-laundering and terrorist financing) are different from the purpose of the standard on EOIR (ensuring effective exchange of information for tax purposes), and care should be taken to ensure that assessments under the terms of reference do not evaluate issues that are outside the scope of the Global Forum's mandate.

E. Keeping it safe: Global Forum guide on the protection of confidentiality of information exchanged for tax purposes

23. The Global Forum guide on the protection of confidentiality of information exchanged for tax purposes published in 2012 sets out the best practices related to confidentiality and provides practical guidance, including recommendations and a checklist, on how to meet an adequate level of protection while recognising that different tax administrations may have different approaches to ensuring that in practice they achieve the level required for the effective protection of confidentiality.