

Cross-border exchange of information procedures: what to expect

Vox Tax

This Dentons global tax report has been prepared with contributions from Arendt & Medernach, Loyens & Loeff and Lenz & Staehelin

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Notes from the Editors

Dear Reader,

The increased mobility of capital, facilitated by developments in technology, has affected the ability of many States to tax cross-border capital.

Over the past few years, as States have been hit with a recession, many tax authorities have stepped-up international cooperation between national tax authorities in the form of tax information sharing.

A particular focus has been put on taxpayers that are out of the 'tax radar' of those countries, most often than not, for perfectly legitimate business reasons, but who are presumed to commit tax evasion by the mere choice of location.

Full transparency being the ultimate tool to combat tax evasion, the introduction of mandatory compliance obligations such as the forthcoming Country-by-Country reporting for MNEs has also accelerated.

According to the general principles of international taxation, the need for taxpayer-specific information arises from the Residence principle that prevails in the taxation of cross-border capital and income. Under the Residence principle, income tax is ultimately payable to the country in which a taxpayer (natural person or company) resides, generally with some credit or deduction for taxes paid in the country of source (where the income is generated).

To be able to enforce the Residence principle, tax authorities must have information on their residents' income (and potentially assets) which are sourced or located abroad. Many States require taxpayers to disclose (through a system of self-assessment) the details of such income and assets to the tax authorities of their country of residence, but the likelihood of erroneous or no declaration is increased by the fact that tax legislation is often difficult to understand and under constant changes.

Tax information-sharing between national tax authorities lies at the heart of important recent policy initiatives. In 1998, the OECD launched the "Harmful Tax Practices" project (cf. OECD, 1998), which considered for the first time the lack of effective information sharing as one of the key criteria identifying harmful tax practices. Since then, the arsenal of treaties detailing exchange of information rules, whether bilateral or multilateral, has been ever increasing and has developed into an internationally agreed standard that is progressively being adopted by the majority of States across the globe. Since 2010, the OECD Global Forum on transparency is conducting peer reviews of 121 members to check their ability to co-operate with foreign tax administrations. Standards imposed include ability to obtain information and existence of mechanisms allowing such exchange.

The stated objective is to reach seamless and automatic exchange of information. On February of this year Automatic Exchange of Financial Account Information was released by the OECD after being endorsed by G20 leaders. However, this new automatic standard should not replace but only complement the "upon request" standard.

As regards the latter, in practical terms, it is agreed that this type of information sharing is characterized by a considerable degree of reciprocity. But little is known about countries' actual experiences in terms of the size and nature of information, and even less is known about the effectiveness of information sharing.

Dentons' Global Tax Group has acquired the experience to help our clients to manage tax information communication in an intelligent and coherent way, at the same time preserving their rights.

By reading the following pages, we trust you will be able to receive an overview of the legal environments governing Exchanges of

Information (“EOI”) in your State of business or residence. When facing an EOI request, however, it appears necessary to take a deeper analysis, weighing the advantages and drawbacks of the available options.

On the basis of our experience, some of the questions that taxpayers facing an exchange of information request should raise with the support of their advisors include:

- When can one consider that an information request is premature or out of context?
- What are the territoriality rules that govern international EOI requests?
- Should you provide information upon request when the data is stored in a server located abroad?
- Can civil laws be a means of defense against an EOI request? Can other procedural rights and safeguards, constitutional principles, international agreements or human rights be an effective source of defense?
- Can a State request information on a foreign company that has no trade relations with the requesting State? Can information be demanded when the requested information is not needed by the requested State for domestic tax purposes?
- Which State’s laws are to govern the period beyond which a tax claim cannot be enforced: the requesting State or the requested State?
- What happens when the statute of limitations for recovering taxes in the requesting State expires after the request has been made?

- When the requesting and requested States are parties both to a bilateral EOI treaty and a multilateral treaty (EU, US/EU, etc.), can they simultaneously apply more than one instrument to a given case?

In conclusion, the tax reforms that most countries are currently facing are numerous and difficult, and temptation is high to reinforce strongly the legal means given to tax administrations to seek and collect information aimed at increasing much needed tax collections. However, the interaction between tax administrations and the taxpayer needs to be balanced and neutral from unjustified suspicion. The new powers granted to tax administrations cannot be limitless or go beyond the higher principles that govern our democracies.

Common sense indicates that this balance is the basis needed to reinstate trust in our economies and hopefully respond to the basic question of “What would it take for taxes to not matter in business and personal decisions”.

We hope you will enjoy this paper and look forward to doing business together soon!

Yours sincerely,

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Comparative table

Requirements	Canada	Czech Republic	France	Germany	Kazakhstan	Luxembourg	The Netherlands
What is the scope of information that may be exchanged under a foreign Exchange of Information request							
Income covered by the relevant Tax Treaty	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Local rulings and Transfer Pricing documentation	No	Yes	Yes	Yes	No	Yes	Yes
Can "cost accounts" be requested	Yes	Yes	Yes	Yes	Yes	Yes	Yes
All taxes covered by the request (if such tax exists in the country)	Yes	No	Yes	Yes	No	Yes	No
Do foreign-initiated EOI requests require the opening of an examination or audit in your country of residence?							
	No	No	N/A	No	N/A	No	N/A
What rights and safeguards are applied by your local tax authorities upon reception of an EOI request?							
Relevance test on EOI received (to prevent fishing expeditions)	N/A	Yes	N/A	N/A	N/A	Yes	Yes
Mandatory time-frame to respond to the foreign tax authority	Yes	Yes	No	N/A	N/A	No	Yes
Application of the Reciprocity test (1)	No	No	Yes	No	No	No	No
Application of the Domestic Tax interest test (2)	No	No	Yes	No	No	No	No
Direct Connection test (3)	No	No	No	No	No	Yes	No
How is a foreign EOI relayed to the Target company/individual?							
Are there penalties / fines / criminal sanctions if no answer is provided	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Notification to the target that a foreign EOI request has been received	No	No	No	Yes	No	No	No
Is client privileged information protected (4)	Yes	Yes	Yes	N/A	Yes	No	N/A
Disclosure of the EOI results to the taxpayer	No	No	No	N/A	No	No	No
How is a domestically-initiated EOI managed?							
Is the taxpayer informed when an EOI request is sent abroad	No	No	Yes	No	Yes	No	No
Is the taxpayer informed of the questions asked (during / after EOI request)	No	No	No	Yes	No	No	No
Impact on the statute of limitation (extended/ interrupted)	Yes	Yes	Yes	No	Yes	No	No
Can information be transferred spontaneously to a foreign authority							
	Yes	Yes	Yes	Yes	Yes	Yes	Yes

(1) Or "dual criminality principle", i.e. information given by the country only if the presumed tax offense constitutes an offense in both the requesting and requested states

(2) Information only sent if its also needed locally for tax purposes

(3) A response will be made only if there is a connection between the entities/individual audited in the requesting country and the entity/individual on whom the information is requested.

Poland	Romania	Russia	Slovakia	Spain	Switzerland	Ukraine	US
sent to your Country?							
Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
No	No	Yes	Yes	No	Yes	No	Yes
Yes	No	Yes	Yes	Yes	Yes	No	Yes
	Yes	Yes	No	Yes		No	Yes
No	No	N/A		No	No	N/A	No
No	N/A	N/A	N/A	Yes	Yes	N/A	N/A
Yes	No	N/A	Yes	Yes	No	Yes	No
No	Yes	No	No	No	No	No	No
No	No	No	No	No	No	No	No
No	No	No	No	No	No	No	No
Yes	Yes	Yes	N/A	Yes	Yes	N/A	Yes
No	No	No	No	Yes	Yes	No	No
Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
No	No	No	No	No	Yes	No	No
No	No	No	No	No	No	No	No
Yes	No	No	No	No	N/A	Yes	No
Yes	No	No	Yes	Yes	Yes	No	No
Yes	No	No	Yes	Yes	No	Yes	Yes

(a) with the kind contribution of Arendt & Medernach
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Canada



Canada

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Foreign Initiated EOI request received by your country of residence:

1. What is the scope of information that may be exchanged:

Interest payments	✓
Dividends paid	✓
Sales proceeds	✓
Gross/net, costs & charges	✓
Local tax rulings	✗
Transfer pricing documentation	✓
Contracts	✓
Payroll & pay slips	✓
Rental payments	✓
Corporate documents	✓
Statutory accounts	✓
Cost accounts	✓
Other	

Comments:

As of March 2014, Canada has entered into close to 90 income tax treaties, most or all of which contain Articles permitting exchanges of information between Canada and the other Contracting States, as well as 19 Tax Information Exchange Agreements ("TIEAs"). The scope of information that can be exchanged under the treaties varies from treaty to treaty. Generally, the scope is limited to information that is "necessary", "relevant" or "foreseeably relevant" to the carrying out of the provisions of the treaty or the domestic tax laws of either state. The TIEAs generally refer to information that is "foreseeably relevant" to the administration and enforcement of taxes covered by the TIEA.

Canada's powers to issue demands for information (known as "requirements") and to conduct audits under the Income Tax Act (Canada) ("ITA") are subject to the condition that the powers must be exercised for the purpose of the administration or enforcement of the ITA. A similar condition is imposed with respect to requirements issued under the Excise Tax Act (Canada).

In the case of a requirement issued by Canada for information related to unnamed persons, the information must be required for an audit "conducted in good faith". This standard is applicable even where the requirement is issued in support of an information request from a treaty or TIEA partner. The standard applicable to requirements issued by Canada in respect of a named person is not as clear. Some courts have stated that the requirement must be issued in respect of a taxpayer who is the subject of a "genuine and serious inquiry".

2. What is the scope of taxes covered by EOI requests?

Direct	✓
Indirect	✓
Wealth tax (N/A)	
Local taxes	✓
State	✓
Federal	✓
Social security contributions	✓
Estate or inheritance	✓
Gift tax (N/A)	✓

Comments:

The scope depends on the taxes covered under the applicable treaty or TIEA. Many treaties provide that the information exchange obligations apply in respect of all taxes imposed by each Contracting State. Some TIEAs also extend to all taxes imposed by each State, while others are restricted to taxes on income and capital and, in some cases, goods and services taxes.

For example, Canada's treaty with Luxembourg permits information exchanges in respect of taxes "of every kind and description" imposed by either State. Similarly, Canada's TIEA with the Bahamas applies to all taxes imposed by the States. On the other hand, Canada's treaty with the Philippines restricts the application of the EOI provisions to taxes on income only, while Canada's TIEA with Bermuda applies in respect of taxes on income and capital only.

3. Do foreign-initiated EOI requests require the opening of an examination or audit in your country of residence? If not, is an examination launched in practice?

There is no requirement for the opening of an examination or audit. Whether one is opened in practice depends on whether the information requested is relevant to a Canadian tax liability. If not then no audit will be started.

4. Fishing expeditions: does your country apply a relevance test on foreign EOI requests? If so, what are the criteria?

Canada's powers to conduct audits and issue requirements must be exercised in good faith and for a purpose related to the administration or enforcement of the ITA. In the case of any requirements that are issued by Canada pursuant to a request from a treaty or TIEA partner, Canada is limited to exercising its powers for a purpose related to the administration or enforcement of the treaty or the TIEA.

5. Can your domestic administration make a reservation to respond to an EOI request? If so, please provide with examples.

Yes. For example, the Bahamian TIEA provides that Canada may decline a request to provide information if:

- (i) Canada is unable to obtain the information for the purpose of the administration or enforcement of its own tax laws;
- (ii) the information would disclose any trade, business, industrial, commercial or professional secret or trade process;
- (iii) the information would reveal confidential solicitor-client communications;
- (iv) the disclosure of the information would be contrary to public policy, including national security; or
- (v) the information is requested to administer or enforce a provision of the tax laws of the requesting state, which discriminates against a national of Canada as compared with a national of the requesting state in the same circumstances.



6. Is there a maximum time frame to respond? What is the standard practice in terms of delays to respond?

Under most TIEAs Canada must respond to the request, or provide a status update, within 90 days of receipt of the request. In practice, Canada has had difficulty meeting this deadline due to its internal processes for accessing information after an EOI request is received.

Specifically, Canada divides all EOI requests into “simple” or “complex” requests. The categorization is based on the type of information sought and whether the information is readily available to Canada. Where the requested information is available within Canada’s own records or through public registries, the request should be responded to within 30 days of receipt. Otherwise, the request is referred to a Tax Services Office, and it will be allocated a time frame for response according to its characterization as a “simple” or “complex” request. Simple requests are allocated a 6-month time frame for response and complex requests are allocated a 12-month time frame for response.

7. Before responding to an EOI request:

Does your country apply a reciprocity test (also called the “dual criminality principle”), i.e. information would be given by your country outwards only if the presumed tax offense constitutes an offense in both the requesting and requested states? x

Is a “domestic tax interest” required by your country to respond to a foreign EOI request? (i.e. could your country refuse to send information if such information is not needed locally for its own tax purposes?) x

Is there a connection requirement between the entities/individual audited in the foreign country and the entity/individual to whom information is requested? x

Foreign EOI requests relayed to local taxpayers in your country

8. Enforcement provisions: when your local tax administration relays foreign EOI requests to a local taxpayer, what are the penalties in the absence of a response? Fines? Criminal sanctions? Tax searches? Please elaborate.

Failure to comply with a requirement to provide information or to grant access to any information, books and records pursuant to Canada’s powers under the ITA is punishable by a fine of up to \$2,500. In addition, it is a criminal offence to fail to comply with an obligation to provide access or comply with a requirement, pursuant to the powers granted to Canada under the ITA. If convicted, a person may be liable to a fine of up to \$25,000, or to both a fine and imprisonment for a maximum term of 12 months.

In addition to the criminal sanctions available under the ITA, Canada may obtain a compliance order, by a court application, to compel a person to provide any access, assistance, information or document sought by Canada. A person who fails to comply with a compliance order could be held to be in contempt of court and fined or sent to prison.

9. Rights and safeguards :

Are there any threshold amounts below which information does not have to be reported?

x

Are there any notification requirements to taxpayers in your country when a foreign EOI request is received?

x

What are the general rights and safeguards attached to EOI request?

The general rights and safeguards include:

(i) a statutory limitation on Canada's exercise of its information-gathering powers, as described in questions 1 and 4 above, to protect against "fishing expeditions";

(ii) certain statutory review and appeal rights of persons under the ITA, in circumstances where Canada has issued a requirement to a third party to provide information respecting an unnamed person, or a requirement to provide foreign-based information;

(iii) the statutory right of the person whose affairs are being investigated by way of an inquiry, and the person giving evidence on an inquiry, to be present and legally represented at the inquiry;

(iv) certain measures to preserve the confidentiality of tax information, as discussed under the next question; and

(v) the protection from disclosure of information that is subject to solicitor-client privilege.

What are the rules on confidentiality over the information collected: is client-privileged information protected?

The ITA prohibits officials and other persons from using or providing taxpayer information obtained pursuant to Canada's information-gathering powers under the ITA, unless a specific statutory exception is applicable.

Disclosure is authorized for EOI purposes under a treaty or TIEA.

Canada may decline an EOI request if the requested information is: covered by solicitor-client privilege, a trade, business, commercial, or professional secret, or the disclosure of which would be contrary to public policy.

Is there a connection requirement between the entities/individual audited in the foreign country and the entity/individual to whom information is requested?

x

Is the EOI request provided to taxpayers subject to EOI requests?

Is the draft response of your local authority provided to the taxpayer for prior approval? For information only?

x

Is the draft response of your local authority provided to the taxpayer for information only?

x

Have any inwards EOI provisions been included in your domestic tax legislation?

✓

Domestically initiated EOI requests relayed abroad:

10. Rights and safeguards:

When your local tax administration launches an EOI request abroad, is the statute of limitations extended? Interrupted?



Does an EOI request made by your country need to be issued during a local tax audit or examination?



Are domestic taxpayers in your jurisdiction required to receive notice that an EOI request has been sent abroad which may concern them?



Does your domestic administration need to disclose the information that has been requested?



Have any outwards EOI provisions been included in your domestic tax legislation?



Comments:

The normal reassessment period in Canada for individuals and Canadian-controlled private corporations is three years from the date of the original assessment. For corporations that are not CCPCs it is four years.

The limitation period may be extended if Canada asserts negligence or carelessness on the taxpayer's part or if the taxpayer has entered into a transaction with a non-arm's length, non-resident person. The EOI request may be connected to an assertion of negligence or a non-resident transaction, but the mere fact that an EOI request is made does not extend (or stop) the limitation period.

It is difficult to see a situation where Canada would make an EOI request about a taxpayer in a situation where it was not auditing that taxpayer.

Canada need not disclose the information the moment it receives it. However, if Canada uses the information to assess a taxpayer, then generally the taxpayer will have a right to obtain the information.

Spontaneous transfers of Information:

11. Rights and safeguards:

Can your country provide to a tax treaty partner, without a previous EOI request, information it may have discovered during a tax examination or other procedure which suggests or establishes noncompliance with the tax laws of a Tax Treaty partner?



Can your country use information received by a tax treaty partner that was provided outside the scope of a specific EOI request?



Czech Republic



Czech Republic

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Foreign Initiated EOI request received by your country of residence:

1. What is the scope of information that may be exchanged:

Interest payments	✓
Dividends paid	✓
Sales proceeds	✓
Gross/net, costs & charges	✓
Local tax rulings	✓
Transfer pricing documentation	✓
Contracts	✓
Payroll & pay slips	✓
Rental payments	✓
Corporate documents	✓
Statutory accounts	✓
Cost accounts	✓
Other	

2. What is the scope of taxes covered by EOI requests?

Direct	✓
Indirect	✓
Wealth tax (N/A)	✓
Local taxes	✓
State	✓
Federal	✗
Social security contributions	✓
Estate or inheritance	✓
Gift tax (N/A)	✓

3. Do foreign-initiated EOI requests require the opening of an examination or audit in your country of residence? If not, is an examination launched in practice?

Foreign-initiated EOI requests do not require the opening of an examination or audit. An examination is usually launched after the tax authority finds anything during the obtaining of information requested by EOI request which could be used as grounds for the opening of an examination or audit.

4. Fishing expeditions: does your country apply a relevance test on foreign EOI requests? If so, what are the criteria?

The information has to be foreseeably relevant for the purposes of the tax administration.

5. Can your domestic administration make a reservation to respond to an EOI request? If so, please provide with examples.

Yes, if the requesting authority has not exhausted the usual sources of information which it could have used in the circumstances for obtaining the information requested, without running the risk of jeopardizing the achievement of its objectives, or if the requesting authority is not allowed to request such information according to its domestic law. However, it is unlikely that the domestic authority will know that the requesting authority's request is not in accordance with that requesting authority's domestic law, except if such requesting authority's domestic law is known to the domestic authority from its own operation.

6. Is there a maximum time frame to respond? What is the standard practice in terms of delays to respond?

Yes, two months, if the information is available, or six months if the information is not immediately available, unless it is agreed otherwise between the responding and the requesting authorities.

7. Before responding to an EOI request:

Does your country apply a reciprocity test (also called the "dual criminality principle"), i.e. information would be given by your country outwards only if the presumed tax offense constitutes an offense in both the requesting and requested states? ✘

Is a "domestic tax interest" required by your country to respond to a foreign EOI request? (i.e. could your country refuse to send information if such information is not needed locally for its own tax purposes?) ✘

Is there a connection requirement between the entities/individual audited in the foreign country and the entity/individual to whom information is requested? ✘

Foreign EOI requests relayed to local taxpayers in your country

8. Enforcement provisions: when your local tax administration relays foreign EOI requests to a local taxpayer, what are the penalties in the absence of a response? Fines? Criminal sanctions? Tax searches? Please elaborate.

Local taxpayers may face a fine up to CZK 50,000 if they fail to meet the request of the tax authority without a reasonable excuse, and this fine may be imposed repeatedly. It is possible that the tax authorities will initiate a tax examination or audit of a local taxpayer if it fails to meet the information request of the tax authorities. In addition, if the local tax payer fails to meet its reporting duty to the tax authority under the law and endangers in the larger extent orderly and timely tax assessment of another taxpayer, it may be punished by imprisonment of up to 2 years and ban to undertake activities, or imprisonment in the range of 1-4 years or pecuniary punishment if such act is done in a substantial extent. Please note that this criminal offence is also attributable to legal entities.

9. Rights and safeguards :

- | | |
|--|---|
| Are there any threshold amounts below which information does not have to be reported? | X |
| Are there any notification requirements to taxpayers in your country when a foreign EOI request is received? | X |
| What are the general rights and safeguards attached to EOI request? | X |

Comment:

There are no specific rights and safeguards attached to EOI request under Czech law. Nevertheless, the provision of information may be refused where it would lead to the disclosure of a commercial secret or of information the disclosure of which would be contrary to public policy or security of the Czech Republic, or to a breach of a non-disclosure duty imposed by law.

- | | |
|---|---|
| What are the rules on confidentiality over the information collected: is client-privileged information protected? | ✓ |
| Is the EOI request provided to taxpayers subject to EOI requests? | ✓ |
| Is the draft response of your local authority provided to the taxpayer for prior approval? For information only? | X |
| Is the draft response of your local authority provided to the taxpayer for information only? | X |
| Have any inwards EOI provisions been included in your domestic tax legislation? | ✓ |

Domestically initiated EOI requests relayed abroad:

10. Rights and safeguards:

When your local tax administration launches an EOI request abroad, is the statute of limitations extended? Interrupted?



Does an EOI request made by your country need to be issued during a local tax audit or examination?



Are domestic taxpayers in your jurisdiction required to receive notice that an EOI request has been sent abroad which may concern them?



Does your domestic administration need to disclose the information that has been requested?



Have any outwards EOI provisions been included in your domestic tax legislation?



Comments:

The general statute of limitation for tax assessment is 3 years. This time period may be suspended and reinstated based on certain circumstances, however, it may never exceed 10 years after the day on which the tax was due. If the domestic authority launches an EIO request abroad, then the statute of limitation is suspended until the receipt of the requested information or until a notification on termination of the international cooperation in the matter in question is dispatched by the domestic authority.

Spontaneous transfers of Information:

11. Rights and safeguards:

Can your country provide to a tax treaty partner, without a previous EOI request, information it may have discovered during a tax examination or other procedure which suggests or establishes noncompliance with the tax laws of a Tax Treaty partner?



Can your country use information received by a tax treaty partner that was provided outside the scope of a specific EOI request?



France



France

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Foreign Initiated EOI request received by your country of residence:

1. What is the scope of information that may be exchanged:

Interest payments	✓
Dividends paid	✓
Sales proceeds	✓
Gross/net, costs & charges	✓
Local tax rulings	✓
Transfer pricing documentation	✓
Contracts	✓
Payroll & pay slips	✓
Rental payments	✓
Corporate documents	✓
Statutory accounts	✓
Cost accounts	✓
Other (see comments)	

Comments:

The EOI can only apply to a request within the scope defined in the tax treaty signed with the requesting state. All documents needed to determine a tax basis can be requested by the French tax authorities.

The information effectively exchanged for tax purposes relates to (i) owners or shareholders (ii) transactions or arrangements (iii) financial or accounting information.

Please note that French tax administration can obtain this information through different means (i) directly via its databases (ii) from the taxpayer concerned by the EOI (iii) or from third parties such as public authorities, private companies or individuals who may or may not deal with the taxpayer.

2. What is the scope of taxes covered by EOI requests?

Direct	✓
Indirect	✓
Wealth tax (N/A)	✓
Local taxes	✓
State	✓
Federal	✓
Social security contributions	✓
Estate or inheritance	✓
Gift tax (N/A)	✓
VAT	✓

Comments:

The scope of taxes covered by an EOI depends on the applicable taxation treaty or agreement signed with the requesting state. Therefore, the scope of certain treaties does not cover all the taxes above.

3. Do foreign-initiated EOI requests require the opening of an examination or audit in your country of residence? If not, is an examination launched in practice?

Not necessarily. It depends on whether the tax authorities have the information requested in their databases or not. If not, they can use their right to question the concerned taxpayer or third parties, who have 30 days to provide them with the information.

4. Fishing expeditions: does your country apply a relevance test on foreign EOI requests? If so, what are the criteria?

In principle, according to the OCDE article relating to the exchange of information, France should require only information that “may be relevant” to determine a tax basis.

However, French law has recently been changed by the last financial bill entered into force on 29 December 2013. Indeed, before this law, **French tax authorities EOI requests were bordered**. Thus, the EOI could (i) concern only a limited category of information; and (ii) involve only taxpayers having a certain relationship with other taxpayers located in the country concerned by the request or owning assets or properties in that country.

In the case that the EOI concerned does not fulfill these conditions and the French tax authorities did not show the interest of their application, they could not use information obtained and benefit from the extension of the limitation period to draw conclusions from the results of their researches adjusting the taxpayer taxes.

Currently the French tax authorities do not have to demonstrate the interest of an EOI, and the scope of the request is very large as it can concern any taxpayer and any information.

5. Can your domestic administration make a reservation to respond to an EOI request? If so, please provide with examples.

Yes. French tax authorities can make a reservation or not answer at all to an EOI request in case (i) the information would reveal a commercial, industrial or professional secret, (ii) the information could not be used to establish or recover French taxes or (iii) the information could not be obtained by the other country according to its own legislation or practice.



6. Is there a maximum time frame to respond? What is the standard practice in terms of delays to respond?

French tax law does not set forth a time frame in which to respond to an EOI comprehensively.

However, French tax authorities should inform the requesting state within six months of the reception of an EOI that France refuses to answer or open investigations to obtain the requested information. It seems that the delays to obtain the complete information are longer and France was criticized on that point by the other countries.

According to The French Global Forum Peer-Review report:

“France is also going to introduce a system which will allow it to keep requesting jurisdictions systematically updated on the progress of requests being processed once a period of 90 days has elapsed.”

7. Before responding to an EOI request:

Does your country apply a reciprocity test (also called the “dual criminality principle”), i.e. information would be given by your country outwards only if the presumed tax offense constitutes an offense in both the requesting and requested states? ✓

Is a “domestic tax interest” required by your country to respond to a foreign EOI request? (i.e. could your country refuse to send information if such information is not needed locally for its own tax purposes?) ✓

Is there a connection requirement between the entities/individual audited in the foreign country and the entity/individual to whom information is requested? ✗

Foreign EOI requests relayed to local taxpayers in your country

8. Enforcement provisions: when your local tax administration relays foreign EOI requests to a local taxpayer, what are the penalties in the absence of a response? Fines? Criminal sanctions? Tax searches? Please elaborate.

The refusal to disclose information or documents submitted to the tax administration’s right of communication is punishable by a fine of €1,500 per document.

Sanctions based on the absence of responses depends on the procedure implemented by the French tax administration and the information concerned. It can consist of penalties and also criminal sanction.

9. Rights and safeguards :

Are there any threshold amounts below which information does not have to be reported?	x
Are there any notification requirements to taxpayers in your country when a foreign EOI request is received?	x
Are there general rights and safeguards attached to EOI request?	x
Are there rules on confidentiality over the information collected: is client-privileged information protected?	✓
Is the EOI request provided to taxpayers subject to EOI requests?	x
Is the draft response of your local authority provided to the taxpayer for prior approval or for information only?	x
Is the draft response of your local authority provided to the taxpayer for information only?	x
Have any in-wards EOI provisions been included in your domestic tax legislation?	✓

Domestically initiated EOI requests relayed abroad:

10. Rights and safeguards:

When your local tax administration launches an EOI request abroad, is the statute of limitations extended? Interrupted?



Does an EOI request made by your country need to be issued during a local tax audit or examination?



Are domestic taxpayers in your jurisdiction required to receive notice that an EOI request has been sent abroad which may concern them?



Does your domestic administration need to disclose the information that has been requested?



Have any outwards EOI provisions been included in your domestic tax legislation?



Comments:

Statutes of limitations are extended for one year after the response reception and up to three years after the initial delay of tax administration control and recovery.

Not necessarily. However, French tax administration may raise a point or detail that catches its attention during an audit or examination. It could then use an EOI request to have details or to compare the information obtained to those given by the taxpayer.

French tax authorities should inform the local taxpayer of the EOI request shipment and the reception of the foreign tax administration response within 60 days. If the taxpayer notification or the delay is not respected then the statute of limitation cannot be extended.

No. French tax authorities do not have any obligation to disclose the details of the request. They must only inform taxpayers that an EOI was requested to benefit the statute of limitation.

Spontaneous transfers of Information:

11. Rights and safeguards:

Can your country provide to a tax treaty partner, without a previous EOI request, information it may have discovered during a tax examination or other procedure which suggests or establishes noncompliance with the tax laws of a Tax Treaty partner?



France can exchange information with all countries that have concluded a treaty on administrative assistance to contend tax evasion and avoidance and with Member states of the European Union. However, automatic information exchange depends on the scope of the double taxation treaty.

According to The French Global Forum Peer-Review report

“An automatic information exchange programme already in place transmits 2 million items of information to 20 or so jurisdictions every year and also makes spontaneous exchanges, albeit to a lesser extent.”

Can your country use information received by a tax treaty partner that was provided outside the scope of a specific EOI request?



In principle, such information can be used to recover taxes if it is obtained legally and if the state of limitation is not exceeded.

However, if the information was provided to the French tax authorities pursuant to a tax treaty, the use of that information must be compliant with the applicable rules of the treaty.

Germany



Germany

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Foreign Initiated EOI request received by your country of residence:

1. What is the scope of information that may be exchanged:

Interest payments	✓
Dividends paid	✓
Sales proceeds	✓
Gross/net, costs & charges	✓
Local tax rulings	✓
Transfer pricing documentation	✓
Contracts	✓
Payroll & pay slips	✓
Rental payments	✓
Corporate documents	✓
Statutory accounts	✓
Cost accounts	✓
Other (see comments)	

Comments:

In general, every kind of information may be exchanged if it falls within the scope of the applicable EOI provisions. These provisions, e.g. in double taxation treaties, typically require that the requested information (a) is necessary for the application of the double taxation treaty or (b) is either required for the application of the double taxation treaty or for the application of the requesting country's national tax law.

2. What is the scope of taxes covered by EOI requests?

Direct	✓
Indirect	✓
Wealth tax (N/A)	✓
Local taxes	✓
State	✓
Federal	✓
Social security contributions	✓
Estate or inheritance	✓
Gift tax (N/A)	✓

Comments:

Social security contributions (depends on whether or not there is a treaty on social security in place with the respective country.)

Depends on whether or not the respective treaty covers estate / inheritance or gift tax.

3. Do foreign-initiated EOI requests require the opening of an examination or audit in your country of residence? If not, is an examination launched in practice?

No examination or audit is required.

In general, no examination is launched in practice unless this is necessary to collect the requested information.

4. Fishing expeditions: does your country apply a relevance test on foreign EOI requests? If so, what are the criteria?

Fishing expeditions are not allowed. The criteria are not exactly defined. In general, an EOI request is not considered to be a fishing expedition, if the requested information is "presumably relevant for the assessment of taxes."

5. Can your domestic administration make a reservation to respond to an EOI request? If so, please provide with examples.

Yes, in case the exchange is contrary to legitimate interest of the tax payer (e.g. in case of trade secrets or if the requesting country has not exhausted all available means in such other country to collect the requested information locally).

6. Is there a maximum time frame to respond? What is the standard practice in terms of delays to respond? This depends on the applicable provisions.

There is no general time frame set in German tax law and double taxation treaties usually do not provide for such a time frame. As a result, EOI requests may only be answered within several months or even years. Requests under EU Council Directive 2011/16/EU for example have to be answered within six months, although in practice this time frame has proven to be hard to keep.

7. Before responding to an EOI request:

Does your country apply a reciprocity test (also called the "dual criminality principle"), i.e. information would be given by your country outwards only if the presumed tax offense constitutes an offense in both the requesting and requested states? x

Is a "domestic tax interest" required by your country to respond to a foreign EOI request? (i.e. could your country refuse to send information if such information is not needed locally for its own tax purposes?) x

Is there a connection requirement between the entities/individual audited in the foreign country and the entity/individual to whom information is requested? x



Foreign EOI requests relayed to local taxpayers in your country

8. Enforcement provisions: when your local tax administration relays foreign EOI requests to a local taxpayer, what are the penalties in the absence of a response? Fines? Criminal sanctions? Tax searches? Please elaborate.

In general, the tax authorities may enforce their request to the local taxpayer by way of fines (up to €25,000 per fine, but the fine may be posed multiple times) as well as by way of tax searches. If a fine is not paid and its payment cannot be enforced, the taxpayer may even be imprisoned (maximum 14 days).

9. Rights and safeguards :

Are there any threshold amounts below which information does not have to be reported?	x
Are there any notification requirements to taxpayers in your country when a foreign EOI request is received? (the tax payer has to be heard, but exceptions apply)	✓
What are the general rights and safeguards attached to EOI request?	
What are the rules on confidentiality over the information collected: is client-privileged information protected?	✓ x
This is at the discretion of the tax authorities. Practically, the EOI request is often provided to the taxpayer.	
Is the draft response of your local authority provided to the taxpayer for prior approval or for information only?	✓ x
The taxpayer does not have to approve the response, but he may take legal action to prevent the information from being provided to the foreign tax authorities.	
Is the draft response of your local authority provided to the taxpayer for information only?	✓ x
This is at the discretion of the tax authorities. The taxpayer is usually informed about what information is supposed to be provided to the foreign tax authorities, but it is not required to provide the taxpayer with the draft of the response.	
Have any inwards EOI provisions been included in your domestic tax legislation?	✓

Domestically initiated EOI requests relayed abroad:

10. Rights and safeguards:

When your local tax administration launches an EOI request abroad, is the statute of limitations extended? Interrupted?

x

Does an EOI request made by your country need to be issued during a local tax audit or examination?

x

Are domestic taxpayers in your jurisdiction required to receive notice that an EOI request has been sent abroad which may concern them?

x

Does your domestic administration need to disclose the information that has been requested?

✓

Have any outwards EOI provisions been included in your domestic tax legislation?

✓

Comments:

In case such EOI request is being launched e.g. in the frame of a tax audit or a criminal investigation, the limitation period is interrupted.

The information that has been received has to be disclosed in case the taxation is being based on this information

Spontaneous transfers of Information:

11. Rights and safeguards:

Can your country provide to a tax treaty partner, without a previous EOI request, information it may have discovered during a tax examination or other procedure which suggests or establishes noncompliance with the tax laws of a Tax Treaty partner?

✓

Can your country use information received by a tax treaty partner that was provided outside the scope of a specific EOI request?

✓

Kazakhstan



Kazakhstan

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Foreign Initiated EOI request received by your country of residence:

1. What is the scope of information that may be exchanged:

Interest payments	✓	<p>Comments:</p> <p>If relevant to income taxes</p> <p>Not available under the Kazakhstan Tax Code</p> <p>Within the member countries of the Eurasian Economic Community and the Customs Union¹</p> <p>The Kazakhstan Tax Code allows the tax authorities to request such information from taxpayers</p> <p>The Kazakhstan Tax Code allows the tax authorities to request such information from taxpayers. Such information might be provided if it relates to taxation of personal income.</p> <p>It is not likely that corporate documents might be available to the tax authorities. Most double taxation treaties signed by Kazakhstan and other international agreements do not require provision of corporate documents.</p> <p>Other information that may be requested includes data on accrued tax obligations and payments to the state budget.</p> <p>The Kazakhstan Tax Code allows the tax authorities to request such information from taxpayers. Such information might be provided if relevant to income taxes.</p> <p>Kazakhstan law does not provide for a specific procedure with regard to exchange of information with the foreign tax authorities. The key principles for exchange of information regarding tax issues are provided by the double taxation treaties signed and ratified by Kazakhstan (currently treaties with 46 countries have been ratified by Kazakhstan and have entered into force) and several international agreements on exchange of information related to tax, customs and transfer pricing issues concluded between member countries of the Eurasian Economic Community and the Customs Union.</p> <p>In November 2013 Kazakhstan signed a Multilateral Convention On Mutual Administrative Assistance In Tax Matters and became the 64th signatory of this Convention. To enter into force, the Convention must now be ratified by Kazakhstan.</p> <p>The Kazakhstan Tax Code allows the tax authorities to exchange information relevant to tax matters on an international scale, however the Tax Code also obliges the tax authorities to protect "tax secrecy". The term "tax secrecy" as</p>
Dividends paid	✓	
Sales proceeds	✓	
Gross/net, costs & charges	✓	
Local tax rulings	✗	
Transfer pricing documentation	✓	
Contracts	✓	
Payroll & pay slips	✓	
Rental payments	✓	
Corporate documents	✓	
Statutory accounts	✓	
Cost accounts	✓	
Other		

defined by the Tax Code is any information received by the tax authority from a taxpayer excluding the following information:

- Amounts of taxes paid to the state budget
- Amounts of VAT refunded from the state budget
- Amount of tax liability of a taxpayer
- Taxpayers recognized as inactive or fraudulent entities
- Submission by a taxpayer of an application for liquidation tax audit
- Amounts of taxes assessed to a taxpayer
- Amount of land, vehicle and property tax assessed to an individual taxpayer
- Sanctions applied to a taxpayer for the breach of the tax legislation
- Presence of tax registration with the tax authorities of a foreign entity acting through a permanent establishment in Kazakhstan
- Taxpayers' registration details (identity number, name, date of the state registration, tax residency, periods of suspension of business activity, details of a cash machine)
- Tax audit schedule
- Failure to submit tax declarations
- Not considered as a confidential information under the Law on Bankruptcy.

However the "tax secrecy" information might be provided by the tax authorities upon confirmation obtained from the taxpayer, or without such confirmation if this information is requested by the Kazakhstan law enforcement authorities, courts, and tax or law enforcement agencies of foreign countries, international organizations, in accordance with international treaties ratified by Kazakhstan.

2. What is the scope of taxes covered by EOI requests?

Direct	✓
Indirect	✗
Wealth tax (N/A)	✗
Local taxes	✓
State	✗
Federal	✗
Social security contributions	✗
Estate or inheritance	✗
Gift tax (N/A)	✗

3. Do foreign-initiated EOI requests require the opening of an examination or audit in your country of residence? If not, is an examination launched in practice?

The procedure is not provided by Kazakhstan law. The tax authorities might send a request to a taxpayer for provision of information requested by the foreign tax authority. If the information provided by the taxpayer contains an evidence of understatement of Kazakhstan taxes, then the tax authorities might initiate a tax audit of this taxpayer.

4. Fishing expeditions: does your country apply a relevance test on foreign EOI requests? If so, what are the criteria?

Fishing expeditions are not allowed. The criteria are not exactly defined. In general, an EOI request is not considered to be a fishing expedition, if the requested information is "presumably relevant for the assessment of taxes."

5. Can your domestic administration make a reservation to respond to an EOI request? If so, please provide with examples.

The relevance test is implied by the double taxation treaties: "The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention."

Under the Tax Code, taxpayers are not obliged to provide information irrelevant to the taxable objects, except for information provision of which is expressly required by the Law on Transfer Pricing and the legislation on state regulation of turnover of goods subject to licensing (oil products, tobacco, alcohol, etc.).

Therefore, in practice the tax authorities might apply the relevance test and refuse to provide information relevant to taxes not covered by the applicable international agreement.



6. Is there a maximum time frame to respond? What is the standard practice in terms of delays to respond?

The standard term for provision of response is not specified by the tax legislation. Due to the absence of clear guidelines in respect of EOI it might take a long time for the tax authorities to respond to EOI request (from several months to several years).

7. Before responding to an EOI request:

Does your country apply a reciprocity test (also called the “dual criminality principle”), i.e. information would be given by your country outwards only if the presumed tax offense constitutes an offense in both the requesting and requested states? x

Is a “domestic tax interest” required by your country to respond to a foreign EOI request? (i.e. could your country refuse to send information if such information is not needed locally for its own tax purposes?) x

Comments:

Some of the double taxation treaties expressly require provision of requested information regardless of the fact that it might not be required for Kazakhstan tax purposes.

For instance the KZ-Canada DTT specifies that “If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall endeavor to obtain the information to which the request relates in the same way as if its own taxation were involved notwithstanding the fact that the other State does not, at that time, need such information.”

Similar provisions are included in double taxation treaties concluded by Kazakhstan with Armenia, Spain, Luxemburg, UAE, USA, Finland, Switzerland and Japan.

Is there a connection requirement between the entities/individual audited in the foreign country and the entity/individual to whom information is requested? x

Foreign EOI requests relayed to local taxpayers in your country

8. Enforcement provisions: when your local tax administration relays foreign EOI requests to a local taxpayer, what are the penalties in the absence of a response? Fines? Criminal sanctions? Tax searches? Please elaborate.

The tax authorities request necessary information from a taxpayer by sending a notification. Usually such a notification allows for 30 business days for provision of information or a written reply. Failure to fulfill the requirements of the tax authorities entails imposition of administrative fines (approximately from €60 to €220 depending on circumstances).

9. Rights and safeguards:

Are there any threshold amounts below which information does not have to be reported?	X
Are there any notification requirements to taxpayers in your country when a foreign EOI request is received? [specific form of notification is not provided by the tax legislation]	X
What are the general rights and safeguards attached to EOI request? tax secrecy criteria (as described above), [relevance test]	✓
What are the rules on confidentiality over the information collected: is client-privileged information protected? [please see above]	✓
Is the EOI request provided to taxpayers subject to EOI requests? [specific form of request is not provided by the tax legislation]	X
Is the draft response of your local authority provided to the taxpayer for prior approval or for information only? [It depends on the situation; it might be provided by request of a taxpayer; taxpayer's approval might be required in respect of information containing confidential or personal data.]	X
Is the draft response of your local authority provided to the taxpayer for information only? [It depends on the situation; might be provided by request of a taxpayer.]	X
Have any in-wards EOI provisions been included in your domestic tax legislation?	X

Domestically initiated EOI requests relayed abroad:

10. Rights and safeguards:

When your local tax administration launches an EOI request abroad, is the statute of limitations extended? Interrupted?



Does an EOI request made by your country need to be issued during a local tax audit or examination?



Are domestic taxpayers in your jurisdiction required to receive notice that an EOI request has been sent abroad which may concern them?



Does your domestic administration need to disclose the information that has been requested?



Have any outwards EOI provisions been included in your domestic tax legislation?



Comments:

The statute of limitation for Kazakhstan tax purposes is five years. The Tax Code allows the statute of limitation to be extended for a period of mutual agreement procedure or request of information relevant to transfer pricing issues. The Tax Code does not contain any provisions limiting the period of the mutual agreement procedure, nor is the duration of the mutual agreement procedure specified by double taxation treaties.]

The Tax Code allows EOI requests in course of the tax audit that should be postponed until receipt of reply to such EOI request. However, the tax authorities are not prevented from making EOI request in the absence of the full scope tax audit.

The tax authorities are obliged to provide a taxpayer with the notification on suspension of a tax audit if in course of such audit an EOI request was sent to a foreign tax authority. However, such a notification would not disclose information that has been requested.

The obligation to disclose this information is not required by the Tax Code. Depending on circumstances we assume that the tax authorities might provide this information upon taxpayer's request.

Spontaneous transfers of Information:

11. Rights and safeguards:

Can your country provide to a tax treaty partner, without a previous EOI request, information it may have discovered during a tax examination or other procedure which suggests or establishes noncompliance with the tax laws of a Tax Treaty partner? ✓

[We believe that provision of information without EOI request is possible, but it has not appeared in our practice.]

Can your country use information received by a tax treaty partner that was provided outside the scope of a specific EOI request? ✓

Luxembourg



Luxembourg

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Preliminary remark:

We understand that questions 1 to 10 are only related to **exchange of information (“EOI”) upon request**, and not to the automatic exchange of information.

With regard to automatic EOI, the Luxembourg government recently announced that it has decided to end the transitional period foreseen in the EU Savings Directive 2003/48/EC and introduce the automatic exchange of information under the Savings Directive as currently drafted, as of 1 January 2015. Under the EU Savings Directive, the automatic exchange will, however, be limited to interest income as defined under Article 6 of the current version of the Savings Directive as implemented in Luxembourg.

The date of 1 January 2015 will also be the date of entry into force of the mandatory automatic exchange of information procedure provided for under Article 8 of the Council Directive 2011/16/EU on administrative cooperation in the field of taxation (the bill of law no 6632 implementing Article 8 of the Directive 2011/16/EU is currently under discussion in the Luxembourg Parliament). Kindly note that under the Directive 2011/16/EU the automatic EOI will be limited (initially) to three categories of income, i.e. employment income, pensions and director’s fees.

Conversely, the EOI upon request is not limited to certain types of information or income, but is however limited to the information that is “foreseeably relevant” (by application of the OECD standards). The foreseeable relevance of the foreign EOI request is in practice assessed by the Luxembourg tax authorities (“LTA”).

Exchange of information requests can be sent by foreign authorities to the LTA on the grounds of (i) a double tax treaty concluded with Luxembourg that foresees the EOI upon request in conformity with Article 26 of the OECD Model Tax Convention, or (ii) the Directive 2011/16/EU on administrative cooperation (which has been implemented into Luxembourg domestic law by the law of 29 March 2013 for EOI upon request and spontaneous EOI purposes only). In both cases, a specific procedure applies in Luxembourg, in accordance with the Luxembourg law of 31 March 2010.

Foreign Initiated EOI request received by your country of residence:

1. What is the scope of information that may be exchanged:

Interest payments	✓
Dividends paid	✓
Sales proceeds	✓
Gross/net, costs & charges	✓
Local tax rulings	✓
Transfer pricing documentation	✓
Contracts	✓
Payroll & pay slips	✓
Rental payments	✓
Corporate documents	✓
Statutory accounts	✓
Cost accounts	✓
Other	

2. What is the scope of taxes covered by EOI requests?

Direct	✓
Indirect	✓
Wealth tax (N/A)	✓
Local taxes	✓
State	✓
Federal	
Social security contributions	✓
Estate or inheritance	✓
Gift tax (N/A)	✓

3. Do foreign-initiated EOI requests require the opening of an examination or audit in your country of residence? If not, is an examination launched in practice?

No. The Luxembourg domestic law of 31 March 2010 has created a specific procedure for EOI upon requests, which is different from the one applicable to tax examinations and audits.

4. Fishing expeditions: does your country apply a relevance test on foreign EOI requests? If so, what are the criteria?

According to the Luxembourg domestic law of 31 March 2010, the director of the relevant LTA (the "Director") receiving the foreign EOI request is held to examine whether the latter meets certain legal requirements.

Nevertheless, the Luxembourg law does not in itself point out any requirement to be satisfied, but refers to the criteria of foreseeable relevance contained in (i) the relevant tax treaties, protocols and/or exchange of letters, and (ii) the OECD guidelines (i.e. OECD Manual, Model Convention and related commentaries).

Thus, the Director of the LTA verifies that the EOI request concerns foreseeably relevant information, and he decides whether the request is accepted or declined in an administrative decision.

In general, the Director has to verify that the foreign EOI request mentions certain data such as e.g. the identity of the person subject to investigation, the nature or form of the information sought, the tax purpose of the information request, the grounds for believing that the information is held in Luxembourg, the name and address of any person believed to be in possession of the requested information.

As a general rule, the requesting State must also prove that the request is in full conformity with its domestic laws and administrative practice, and that all means available in its territory to obtain the information have been used (except those that would give rise to disproportionate difficulties).

If the foreign EOI request is considered foreseeably relevant, a summons is served to the holder of the information requested or in certain cases directly to the taxpayer to disclose the information requested (such administrative decision remains however subject to review by the administrative courts).

5. Can your domestic administration make a reservation to respond to an EOI request? If so, please provide with examples.

The Director of the LTA which receives the EOI request must verify the criteria of foreseeable relevance.

If the foreign EOI request fulfills such criteria, the Director accepts it without being authorized to make any reservation.

Also, the information disclosed by the holder of the information / the taxpayer, must be forwarded by the LTA to the requesting foreign authorities.



6. Is there a maximum time frame to respond? What is the standard practice in terms of delays to respond? This depends on the applicable provisions.

No maximum timeframe exists for the response.

In practice, Luxembourg responds to the majority of the foreign EOI requests within three to six months from the date of receipt.

7. Before responding to an EOI request:

Does your country apply a reciprocity test (also called the “dual criminality principle”), i.e. information would be given by your country outwards only if the presumed tax offense constitutes an offense in both the requesting and requested states? x

Is a “domestic tax interest” required by your country to respond to a foreign EOI request? (i.e. could your country refuse to send information if such information is not needed locally for its own tax purposes?) x

Is there a connection requirement between the entities/individual audited in the foreign country and the entity/individual to whom information is requested? x

Foreign EOI requests relayed to local taxpayers in your country

8. Enforcement provisions: when your local tax administration relays foreign EOI requests to a local taxpayer, what are the penalties in the absence of a response? Fines? Criminal sanctions? Tax searches? Please elaborate.

A fine of up to €250,000 can be imposed on the holder of information if the required information is not delivered.

9. Rights and safeguards:

Are there any threshold amounts below which information does not have to be reported?	x
Are there any notification requirements to taxpayers in your country when a foreign EOI request is received?	x
What are the general rights and safeguards attached to EOI request?	x
A first safeguard is the initial control of the request made by the Director of the LTA, who checks that the applicable criteria for the foreseeable relevance of the EOI request are fulfilled in each case, i.e. that the EOI request does not constitute a fishing expedition.	
A second control is also made by the administrative courts in case of a claim lodged by the taxpayer (or in certain cases the holder of the information if he demonstrates a legitimate personal interest) against the decision of the Director of the LTA. The judgment of the first instance tribunal is subject to appeal before the higher administrative court.	
What are the rules on confidentiality over the information collected: is client-privileged information protected?	✓
No information that would disclose a trade, business or professional secret can be exchanged with foreign tax authorities in the framework of EOI upon request.	
Moreover, it has to be noted that the information collected is protected by confidentiality between the tax authorities of both the requesting and requested State.	
Is the EOI request provided to taxpayers subject to EOI requests?	x
Within the framework of the administrative court proceedings, the tax payer can ask to be provided with the foreign request, so as to ensure the right to a fair trial is protected.	
Is the draft response of your local authority provided to the taxpayer for prior approval or for information only?	x
Is the draft response of your local authority provided to the taxpayer for information only?	x
Have any in-wards EOI provisions been included in your domestic tax legislation?	✓

Domestically initiated EOI requests relayed abroad:

10. Rights and safeguards:

When your local tax administration launches an EOI request abroad, is the statute of limitations extended? Interrupted?	X
Does an EOI request made by your country need to be issued during a local tax audit or examination?	X
Are domestic taxpayers in your jurisdiction required to receive notice that an EOI request has been sent abroad which may concern them?	X
Does your domestic administration need to disclose the information that has been requested?	X
Have any outwards EOI provisions been included in your domestic tax legislation?	X

Spontaneous transfers of Information:

11. Rights and safeguards:

Can your country provide to a tax treaty partner, without a previous EOI request, information it may have discovered during a tax examination or other procedure which suggests or establishes noncompliance with the tax laws of a Tax Treaty partner? ✓

Luxembourg applies a spontaneous EOI in situations where (i) grounds exist for supposing that there may be a loss of tax in another EU Member State or (ii) a person liable to tax obtains a reduction in or an exemption from, tax in Luxembourg which would give rise to an increase in tax or liability to tax in the other EU Member State, or (iii) business dealings between a person liable to tax in Luxembourg and a person liable to tax in the other EU Member State are conducted through one or more countries in such a way that a saving in tax may result in one or the other EU Member State or in both, or (iv) the LTA have grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises; or (v) information forwarded to Luxembourg by the competent authority of the other EU Member State has enabled information to be obtained which may be relevant when assessing liability in the latter EU Member State.

Can your country use information received by a tax treaty partner that was provided outside the scope of a specific EOI request. ✓

The Netherlands



The Netherlands

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Foreign Initiated EOI request received by your country of residence:

1. What is the scope of information that may be exchanged:

Interest payments	✓
Dividends paid	✓
Sales proceeds	✓
Gross/net, costs & charges	✓
Local tax rulings	✓
Transfer pricing documentation	✓
Contracts	✓
Payroll & pay slips	✓
Rental payments	✓
Corporate documents	✓
Statutory accounts	✓
Cost accounts	✓
Other	

2. What is the scope of taxes covered by EOI requests?

Direct	✓
Indirect ¹	✓
Wealth tax (N/A)	✓
Local taxes	✓
State	✓
Federal	✓
Social security contributions	✗
Estate or inheritance	✓
Gift tax	✓

Comments:

¹Indirect taxes as such are not excluded from the scope of the International Assistance Act (which covers exchange of information requests). However, VAT (covered by EU Council Regulation 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (recast)) and excise duties (covered by EU Council Regulation 389/2012 of 2 May 2012 on administrative cooperation in the field of excise duties and repealing Regulation (EC) No 2073/2004) are excluded from the scope of the International Assistance Act.

3. Do foreign-initiated EOI requests require the opening of an examination or audit in your country of residence? If not, is an examination launched in practice?

The Dutch International Assistance (Levying of Taxes) Act ('IAA') distinguishes between information that the Dutch Tax Authorities already possess and information that requires an administrative inquiry in order to obtain the information.

The rules on administrative inquiries following an exchange of information request are the same as those that apply to 'domestic' tax inquiries. Those rules are laid down in the General Tax Act and make a distinction between a general category of taxpayers and a more specific category of persons who are obliged to keep books and records. The latter category mainly includes entities and individuals that carry on a business enterprise. Taxpayers that are not obliged to keep books and records are only bound to provide the Dutch Tax Authorities with information that pertains to their own tax levy. Persons that are obliged to keep records also have to provide information that pertains to the levying of taxes from third parties. In practice, this means that individuals who are not obliged to keep books and records will rarely be subject to an inquiry following an exchange of information request, as those individuals are not obliged to provide third party information to the Dutch Tax Authorities.

In an inquiry, the Dutch Tax Authorities may in principle request all information, copies of documents and data carriers that could be relevant to the inquiry or exchange of information request. Officers from the Dutch Tax Authorities may enter premises if that is necessary to conduct the inquiry. In practice, the Dutch tax authorities often visit the offices of the taxpayer from which information is requested in order to review the administration.

Limitations that apply to domestic inquiries based on law, policy or case law, also apply to inquiries resulting from exchange of information requests. Formal and informal rights of non-disclosure apply in the context of (third party) inquiries as a result of an exchange of information request (see below). In addition, based on Supreme Court case law,² tax advisers have an informal right of non-disclosure, meaning that they do not need to provide advice and correspondence to the Dutch Tax Authorities that deal with the tax (legal) position of a taxpayer (see also below under 9).

The IAA provides for inquiries that are carried out simultaneously with an inquiry in the state that has requested the exchange of information. The IAA also allows, subject to conditions, a representative of the competent authority of the foreign state to be present during the inquiry by the Dutch Tax Authorities.

As from 1 January 2014 an important change was introduced to the IAA with respect to companies whose activities consist primarily (i.e. 70 percent or more) of group financing, leasing and licensing activities. In determining whether a taxpayer falls in the above category, holding activities are disregarded. This means that a major holding company with small group financing activities falls within the scope. Companies that fall within this category have to satisfy a number of substance requirements. If such a company does not satisfy the substance requirements, it is obliged to report in its annual tax return (i) which substance requirements it does not meet, (ii) provide all necessary information for the Dutch Tax Authorities to determine which of the substance requirements are not met and (iii) provide an overview of all interest, royalty and similar payments which fall within the scope of a double tax convention or the EU Interest and Royalty Directive.³ The Dutch tax authorities will spontaneously exchange this information with the relevant treaty partner or EU Member State by the Netherlands.



4. Fishing expeditions: does your country apply a relevance test on foreign EOI requests? If so, what are the criteria?

The IAA only allows the exchange of information at the request of the competent authority of a foreign state if that information is foreseeably relevant for the administration and enforcement of the domestic tax laws of that foreign state. This requires that a request needs to relate to a specific case. Hence, fishing expeditions are not allowed under the IAA.

Secondly, the foreign state must have a sufficient tax interest in relation to the information requested. However, based on case law, the Dutch Tax Authorities review this criterion only marginally and perform their review based on information provided by the foreign state.

5. Can your domestic administration make a reservation to respond to an EOI request? If so, please provide with examples.

The IAA sets a number of limitations to the administrative assistance provided by the Netherlands to competent authorities of foreign states. The first limitation is that the exchange of information has to be based on either EU directives or on international law.

Furthermore, the IAA stipulates a number of reasons based on which the Dutch Tax Authorities may deny exchange of information.

- (i) The exchange of information would be contrary to public policy of the Netherlands.
- (ii) The requested information cannot be obtained under Dutch law or administrative practice.
- (iii) It is likely that the foreign state has not pursued all reasonable measures it has under its domestic law to obtain the information. This could be relevant when e.g. the French tax authorities under the EOI request information from the Dutch taxpayer on a Belgian subsidiary whereas the French tax authorities have not directly contacted Belgium to obtain this information.
- (iv) The competent authority of the foreign state is de jure not allowed to provide or de facto not capable of providing similar information to the Netherlands (e.g. a foreign state cannot exchange information because its domestic legislation requires a domestic tax interest).
- (v) The exchange of information would disclose a commercial, industrial or professional secret.
- (vi) The exchange of information would be contrary to generally accepted taxation principles or limitations stemming from international law.

These reservations do not apply to exchange of information under the EU Savings Directive.⁷

In addition, the Netherlands does not exchange information with a foreign State if the domestic legislation of that state does not impose on officers of the tax administration of that state a duty of confidentiality in relation to the exchanged information.

6. Is there a maximum time frame to respond? What is the standard practice in terms of delays to respond?

The IAA obliges the Dutch Tax Authorities to confirm the receipt of a request for exchange of information within seven days. If the request from the competent authority of the foreign State is incomplete or requires further information, the Netherlands will notify that competent authority within one month after receipt.

Information that is already in the possession of the Dutch Tax Authorities has to be exchanged within two months following the (completed) request by the foreign State. If an inquiry needs to be launched in order to obtain the information, then the Netherlands' competent authority has to respond to a request for exchange of information as soon as possible, but in any case within six months. The IAA allows for an extended term only in special cases.

These terms are extended with the time it took the competent authority of the foreign State to complete an incomplete request or to provide additional information.

In practice, it generally takes a number of months before the Netherlands' authorities formally exchange the information to the requesting country.

7. Before responding to an EOI request:

Does your country apply a reciprocity test (also called the "dual criminality principle"), i.e. information would be given by your country outwards only if the presumed tax offense constitutes an offense in both the requesting and requested states? ✘

Is a "domestic tax interest" required by your country to respond to a foreign EOI request? (i.e. could your country refuse to send information if such information is not needed locally for its own tax purposes?) ✘

Is there a connection requirement between the entities/individual audited in the foreign country and the entity/individual to whom information is requested? ✘

Foreign EOI requests relayed to local taxpayers in your country

8. Enforcement provisions: when your local tax administration relays foreign EOI requests to a local taxpayer, what are the penalties in the absence of a response? Fines? Criminal sanctions? Tax searches? Please elaborate.

If an obligation to provide information following a request for exchange of information is not complied with by a taxpayer, the Dutch Tax Authorities often instigate (civil) preliminary proceedings in which the court is requested to impose on the taxpayer an order to comply subject to a penalty for non-compliance.

The penal consequences of non-compliance with an inquiry by the Dutch Tax Authorities depend on the obligation not satisfied by a taxpayer. Non-compliance with a number of supporting obligations of the taxpayer (e.g. to allow officers of the Dutch Tax Authorities to access a premises or to allow them to take photocopies of documents) is an administrative offence which carries a maximum administrative fine of €4,920 (2014 maximum). This fine is imposed by the Dutch Tax Authorities.

Failure to comply with the obligation to provide complete and accurate information and any relevant data carrier in an inquiry constitutes a criminal offence. Prosecution falls under the authority of the Public Prosecution Service.

A group financing, leasing or licensing company that is subject to the reporting obligations relating to substance requirements (see 3 above) and that does not comply with those obligations can be fined with an amount up to €19,500 (2014 maximum).

9. Rights and safeguards:

Are there any threshold amounts below which information does not have to be reported?⁸ ✘

Are there any notification requirements to taxpayers in your country when a foreign EOI request is received? ✘

What are the general rights and safeguards attached to EOI request?

Comments:

Until 2014, the competent authority of the Netherlands could only exchange information after the person from whom the information was obtained had been notified of the intent to exchange the information (except in urgent cases). That person then had a period of ten days to object to the exchange of information. The purpose of this procedure was to ensure that the information was accurate and related to the right person. It also provided an opportunity to cite one of the reservations listed above.

However, this notification requirement has been abolished as of 1 January 2014. As a result, the IAA currently does not provide for any means for taxpayers to prevent an exchange of information or to amend the information that is to be exchanged. Furthermore, the taxpayer is not informed when and to what extent information is exchanged.

What are the rules on confidentiality over the information collected: is client-privileged information protected? ✔

First of all, the Netherlands only exchanges information with a foreign State if the domestic legislation of that State imposes on officers of the tax administration of that state a duty of confidentiality in relation to the exchanged information.

Certain professionals may deny providing information to the Dutch Tax Authorities in third party inquiries based on a formal right of non-disclosure. Those professionals include attorneys, civil law notaries and medical doctors. Tax advisers and accountants do not have a formal right of non-disclosure. Based on case law,⁹ however, tax advisers and accountants do have an informal right of non-disclosure which entails that tax advisers do not need to provide advice or correspondence that deals with the tax (legal) position of a taxpayer. Similarly, taxpayers can decline providing such advice or correspondence as well. If a document from or correspondence with a tax adviser (or part of it) relates to factual information, such document or correspondence has to be provided to the Dutch Tax Authorities in an inquiry.

Is the EOI request provided to taxpayers subject to EOI requests? ✘

Is the draft response of your local authority provided to the taxpayer for prior approval or for information only? ✘

Is the draft response of your local authority provided to the taxpayer for information only? ✘

Have any in-wards EOI provisions been included in your domestic tax legislation? ✔

Domestically initiated EOI requests relayed abroad:

10. Rights and safeguards:

When your local tax administration launches an EOI request abroad, is the statute of limitations extended? ¹⁰ Interrupted?	x
Does an EOI request made by your country need to be issued during a local tax audit or examination?	x
Are domestic taxpayers in your jurisdiction required to receive notice that an EOI request has been sent abroad which may concern them?	x
Does your domestic administration need to disclose the information that has been requested?	x
Have any outwards EOI provisions been included in your domestic tax legislation?	✓

Spontaneous transfers of Information:

11. Rights and safeguards:

Can your country provide to a tax treaty partner, without a previous EOI request, information it may have discovered during a tax examination or other procedure which suggests or establishes noncompliance with the tax laws of a Tax Treaty partner? ¹¹	✓
Can your country use information received by a tax treaty partner that was provided outside the scope of a specific EOI request?	✓

²Netherlands Supreme Court 23 September 2005, no. 38.810, BNB 2006/21.

³EU Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States, as amended by EU Council Directive 2004/76/EC of 29 April 2004 and EU Council Directive 2006/96/EC of 20 November 2006.

⁴Judicial Division of the Netherlands Council of State 22 June 1993, R01.92 0053, V-N 1993/3771.

⁵EU Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC or EU Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments.

⁶Joint Council of Europe and OECD Convention on Mutual Administrative Assistance in Tax Matters, or bilateral tax information exchange agreements and (exchange of information clauses in) double taxation conventions.

⁷EU Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments.

⁸See also under 4. above.

⁹Netherlands Supreme Court 23 September 2005, no. 38.810, BNB 2006/21.

¹⁰The statute of limitations period is not extended. However, a longer statute of limitations period applies to information that relates to a foreign jurisdiction.

¹¹See also under 3. above.

Poland



Poland

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Foreign Initiated EOI request received by your country of residence:

1. What is the scope of information that may be exchanged:

Interest payments	✓
Dividends paid	✓
Sales proceeds	✓
Gross/net, costs & charges	✓
Local tax rulings ¹	✓
Transfer pricing documentation ²	✓
Contracts ³	✗
Payroll & pay slips ⁴	✗
Rental payments	✓
Corporate documents ⁵	✓
Statutory accounts	✓
Cost accounts	✓
Other	

2. What is the scope of taxes covered by EOI requests?

Direct	✗
Indirect ⁶	✓
Wealth tax ⁷	✗
Local taxes ⁸	✓
State ⁹	✗
Federal ¹⁰	✗
Social security contributions ¹¹	✓
Estate or inheritance ¹²	✓
Gift tax ¹³	✓

3. Do foreign-initiated EOI requests require the opening of an examination or audit in your country of residence? If not, is an examination launched in practice?

Foreign-initiated EOI does not open an examination or audit but tax authorities usually open a proceeding with respect to an EOI request. There is a remote risk of launching an examination as the EOI proceeding result.

4. Fishing expeditions: does your country apply a relevance test on foreign EOI requests? If so, what are the criteria?

Poland does not implement any relevance test on foreign EOI request.

5. Can your domestic administration make a reservation to respond to an EOI request? If so, please provide with examples.

Polish tax authorities can submit a call to the authority that issued a request to make good formal deficiencies, such as the scope of information requested or indication that the requesting authority exhausted the possibility of obtaining such information under the provisions of domestic regulations. In certain cases, such as a situation in which requested information is covered by a business secret of an enterprise, industrial or professional secret or secret of a production process, the Polish tax authority can refuse to answer an EOI request.

6. Is there a maximum time frame to respond? What is the standard practice in terms of delays to respond?

In the case of an EOI request under DTT rules there is no time frame to respond. In the case of an EOI request from the tax administration of EU Member States, Polish tax authorities as a rule should respond within six months. In the case of information requested which is currently in the possession of the Polish tax authority (e.g. information in a tax return), the maximum time frame is two months. Usually the response is sent within two months.

7. Before responding to an EOI request:

- | | |
|--|---|
| Does your country apply a reciprocity test (also called the “dual criminality principle”), i.e. information would be given by your country outwards only if the presumed tax offense constitutes an offense in both the requesting and requested states? | x |
| Is a “domestic tax interest” required by your country to respond to a foreign EOI request? (i.e. could your country refuse to send information if such information is not needed locally for its own tax purposes?) | x |
| Is there a connection requirement between the entities/individual audited in the foreign country and the entity/individual to whom information is requested? | x |

Foreign EOI requests relayed to local taxpayers in your country

8. Enforcement provisions: when your local tax administration relays foreign EOI requests to a local taxpayer, what are the penalties in the absence of a response? Fines? Criminal sanctions? Tax searches? Please elaborate.

A tax authority is entitled to fine a tax payer in the absence of a response (up to PLN 2800 / €600). There are no criminal sanctions or tax searches.

9. Rights and safeguards:

- | | |
|--|---|
| Are there any threshold amounts below which information does not have to be reported? | x |
| Are there any notification requirements to taxpayers in your country when a foreign EOI request is received? | x |
| What are the general rights and safeguards attached to EOI request? | x |
| What are the rules on confidentiality over the information collected: is client-privileged information protected? | ✓ |
| Is the EOI request provided to taxpayers subject to EOI requests? | x |
| Is the draft response of your local authority provided to the taxpayer for prior approval or for information only? | x |
| Is the draft response of your local authority provided to the taxpayer for information only? | x |
| Have any inwards EOI provisions been included in your domestic tax legislation? | ✓ |

Domestically initiated EOI requests relayed abroad:

10. Rights and safeguards:

When your local tax administration launches an EOI request abroad, is the statute of limitations extended? Interrupted? ¹⁵	✓
Does an EOI request made by your country need to be issued during a local tax audit or examination?	✗
Are domestic taxpayers in your jurisdiction required to receive notice that an EOI request has been sent abroad which may concern them?	✗
Does your domestic administration need to disclose the information that has been requested? ¹⁶	✓
Have any outwards EOI provisions been included in your domestic tax legislation? ¹⁷	✓

Spontaneous transfers of Information:

11. Rights and safeguards:

Can your country provide to a tax treaty partner, without a previous EOI request, information it may have discovered during a tax examination or other procedure which suggests or establishes noncompliance with the tax laws of a Tax Treaty partner?	✓
Can your country use information received by a tax treaty partner that was provided outside the scope of a specific EOI request? ¹⁸	✓

¹⁵Subject to it not containing information covered by a business secret of an enterprise, industrial or professional secret or secret of a production process.

²Subject to it not containing information covered by a business secret of an enterprise, industrial or professional secret or secret of a production process.

³Subject to the tax authority receiving the contract in an examination or audit.

⁴As a rule, tax authorities do not have any access to payroll or pay slips outside of a tax audit, but they do have access to declarations on the amount of income derived in a tax year (tax returns).

⁵Only the Articles of Association of the company that are submitted to the tax authorities.

⁶Exempt regarding EOI request from the EU.

⁷Poland has not implemented any wealth tax regulations.

⁸Subject to DTT provisions.

⁹Poland has not implemented any State tax regulations.

¹⁰Poland has not implemented any Federal tax regulations.

¹¹Exempt regarding an EOI request from the EU.

¹²Subject to DTT provisions.

¹³Subject to DTT provisions.

¹⁴Polish Tax Ordinance Act.

¹⁵The limitation period shall be suspended for a maximum period of three years.

¹⁶Since there is no regulation that there might be a practical issue with the execution of disclosure.

¹⁷Polish Tax Ordinance Act.

¹⁸We expect that tax authorities might want to use information collected spontaneously but there are some procedural rules that might prevent this use, such as the obligation of informing the taxpayer of the source of information or the intent to use it. Case by case, usage will depend on the context: there may be an official examination launched, or a pending audit in which the information will be used.

Romania



Romania

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Foreign Initiated EOI request received by your country of residence:

1. What is the scope of information that may be exchanged:

Interest payments	✓
Dividends paid	✓
Sales proceeds	✓
Gross/net, costs & charges	✓
Local tax rulings	✓
Transfer pricing documentation	✓
Contracts	✓
Payroll & pay slips	✓
Rental payments	✓
Corporate documents	✗
Statutory accounts	✗
Cost accounts	✗
Other	

2. What is the scope of taxes covered by EOI requests?

Direct	✓
Indirect	✓
Wealth tax (N/A)	✓
Local taxes	✓
State	✓
Federal	✓
Social security contributions	✓
Estate or inheritance	✓
Gift tax	✓

3. Do foreign-initiated EOI requests require the opening of an examination or audit in your country of residence? If not, is an examination launched in practice?

Not as such. There is little case law on the matter and, to this date, we have not met such situations in practice.

4. Fishing expeditions: does your country apply a relevance test on foreign EOI requests? If so, what are the criteria?

N/A

5. Can your domestic administration make a reservation to respond to an EOI request? If so, please provide with examples.

Refusal to supply information can happen in the event such information regards/ triggers disclosure of commercial, industrial or professional secrets or endangers the national security or similar information cannot be supplied in the requesting state.

6. Is there a maximum time frame to respond? What is the standard practice in terms of delays to respond?

No, the general 30 days administrative deadline should be considered.

7. Before responding to an EOI request:

Does your country apply a reciprocity test (also called the “dual criminality principle”), i.e. information would be given by your country outwards only if the presumed tax offense constitutes an offense in both the requesting and requested states? ✓

Is a “domestic tax interest” required by your country to respond to a foreign EOI request? (i.e. could your country refuse to send information if such information is not needed locally for its own tax purposes?) ✗

Is there a connection requirement between the entities/individual audited in the foreign country and the entity/individual to whom information is requested? ✗

Foreign EOI requests relayed to local taxpayers in your country

8. Enforcement provisions: when your local tax administration relays foreign EOI requests to a local taxpayer, what are the penalties in the absence of a response? Fines? Criminal sanctions? Tax searches? Please elaborate

Fines and criminal sanctions may be applied.

Fines may range up to 8000 RON for natural persons and up to 27000 RON for juridical persons while criminal sanctions may consist of criminal fines or jail time.

9. Rights and safeguards:

Are there any threshold amounts below which information does not have to be reported? 1,500 Euro	✓
Are there any notification requirements to taxpayers in your country when a foreign EOI request is received?	✗
What are the general rights and safeguards attached to EOI request?	✓
What are the rules on confidentiality over the information collected: is client-privileged information protected?	✓
Is the EOI request provided to taxpayers subject to EOI requests?	✗
Is the draft response of your local authority provided to the taxpayer for prior approval or for information only?	✗
Is the draft response of your local authority provided to the taxpayer for information only?	✗
Have any in-wards EOI provisions been included in your domestic tax legislation?	✓

Domestically initiated EOI requests relayed abroad:

10. Rights and safeguards:

When your local tax administration launches an EOI request abroad, is the statute of limitations extended? Interrupted? The statute of limitation is 5 years. However, if white collar crime is involved, 10 years.	✓
Does an EOI request made by your country need to be issued during a local tax audit or examination?	✗
Are domestic taxpayers in your jurisdiction required to receive notice that an EOI request has been sent abroad which may concern them?	✗
Does your domestic administration need to disclose the information that has been requested?	✗
Have any outwards EOI provisions been included in your domestic tax legislation?	✗

Spontaneous transfers of Information:

11. Rights and safeguards:

Can your country provide to a tax treaty partner, without a previous EOI request, information it may have discovered during a tax examination or other procedure which suggests or establishes noncompliance with the tax laws of a Tax Treaty partner?	✗
Can your country use information received by a tax treaty partner that was provided outside the scope of a specific EOI request?	✗

Russia



Russia

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Preliminary remark:

The exchange of information clauses are provided for in double tax treaties (“DTTs”) and mutual assistance/ tax information exchange agreements. While specific mutual assistance/ tax information exchange agreements cover mostly former USSR countries (e.g. Armenia, Belorussia, Kazakhstan, Moldova, Ukraine, Uzbekistan etc.), the exchange of information provisions are included in the wide range of Russian DTTs. Currently Russia is in the process of updating the exchange of information clauses in its tax treaties to keep them in line with the latest OECD trends. DTTs with Cyprus, Czech Republic, Germany, Italy, Switzerland and Luxembourg could be mentioned as examples of such update.

Once ratified, DTTs become part of Russian law overriding domestic tax rules.

It should be noted that Russian domestic tax law does not provide for cross-border exchange of information.

However, the law allows exchange of information with other jurisdictions where such exchange of information is performed in accordance with DTTs. Yet the law provides no procedure for it. In practice today Russian tax authorities use information obtained in other jurisdictions both in their tax audits and in courts more and more often.

The exchange of information is currently considered one of the cornerstones of Russian fiscal policy, so we expect dramatic development of the legislation in this respect. The fiscal authorities are keen to conclude bilateral exchange of information agreements with low tax jurisdictions, and we know that some discussions with the governments of the most popular tax havens are underway. The Russian Federation is also planning to ratify the OECD International Convention on Mutual Administrative Assistance in Tax Matters.

Foreign Initiated EOI request received by your country of residence:

1. What is the scope of information that may be exchanged:

Interest payments	✓
Dividends paid	✓
Sales proceeds	✓
Gross/net, costs & charges	✓
Local tax rulings	✓
Transfer pricing documentation	✓
Contracts	✓
Payroll & pay slips	✓
Rental payments	✓
Corporate documents	✓
Statutory accounts	✓
Cost accounts	✓
Other	

Comments:

In principle, any information the tax authorities may need to perform their controlling functions could be requested. Particular DTTs may potentially limit the scope of exchange of information, but the current wordings of DTTs do not impose any significant limitations on exchange of information.

2. What is the scope of taxes covered by EOI requests?

Direct (profit tax, assets tax, personal income tax, etc.)
Indirect (VAT, excise tax, etc.)
Federal taxes (profit tax, excise tax, personal income tax, mineral extraction tax)
Regional taxes (corporate assets tax, transportation tax, gambling tax)
Local taxes (individual assets tax, land tax)
Social security contributions
Estate or inheritance N/A
Gift tax N/A

Comments:

As mentioned above, Russian domestic tax law does not provide for exchange of information procedure. Thus it does not specify the scope of information and taxes that could be covered by foreign EOI requests.

Most Russian DTTs allow exchange of information with regard to any taxes applicable in a requesting state. Some DTTs may outline the taxes to which exchange of information applies. For example the Russia – Switzerland DTT extends exchange of information to taxes to which the DTT applies and VAT, thus leaving other taxes outside the scope of exchange of information.

3. Do foreign-initiated EOI requests require the opening of an examination or audit in your country of residence? If not, is an examination launched in practice?

As a general rule, the Russian tax authorities may request documents/ information related to the activity of the taxpayer in the course of field or in-house tax audit. This information could be requested from the taxpayer subject to such audit or its contracting party/ any other person that possesses required documentation/ information. Beyond the scope of a tax audit — in case of reasonable necessity — the Russian tax authorities may request documentation/ information regarding a particular transaction from the parties of such transaction or other persons that possess above documentation/ information.

Also, the Russian tax authorities may request information regarding (i) accounts/ deposits (including balances and statements) and (ii) monetary wire transfers from the banks. This information could be requested in relation to the banks' clients on the basis of the Russian tax authorities' decision on collection of the taxes, suspension (cancellation of the suspension) of the operations on bank accounts or suspension (cancellation of suspension) of the electronic funds' transfers. The foreign EOI request could also potentially be served as the ground for such query.

In practice it is unlikely that Russian tax authorities will launch a formal audit to obtain information requested by its DTT counter party (unless the courts develop case law prohibiting the collection of information outside the ambit of tax audits).

4. Fishing expeditions: does your country apply a relevance test on foreign EOI requests? If so, what are the criteria?

5. Can your domestic administration make a reservation to respond to an EOI request? If so, please provide with examples.

6. Is there a maximum time frame to respond? What is the standard practice in terms of delays to respond?

Questions 4, 5 and 6: Russian domestic law does not lay down the procedural framework for exchange of information with other countries. There is no substantial administrative or court practice with regard to exchange of information under DTTs or specific exchange of information agreements. It is expected that special rules regarding the exchange of information procedure will be developed in the short term.

The level of specification of the “exchange of information” clauses in DTTs may significantly vary, and many of the clauses do not provide satisfactory guidance in respect of the procedural matters. Some DTTs elaborate on the subject and cover at least basic points. For example, DTTs with Switzerland and Luxembourg (as recently amended) contain specific provisions aimed at ensuring that exchange of information is foreseeably relevant to the correct application of DTTs and for facilitating the administration and enforcement of domestic tax laws of the contracting states. They prescribe that a requesting state should demonstrate the foreseeable relevance of the requested information including indication of purpose of collection of the requested information. In addition, these DTTs require that the requesting state exhaust domestic means to obtain requested information before filing the request. Some DTTs (e.g. Russia - Switzerland DTT) directly prohibit fishing expeditions.

7. Before responding to an EOI request:

Does your country apply a reciprocity test (also called the “dual criminality principle”), i.e. information would be given by your country outwards only if the presumed tax offense constitutes an offense in both the requesting and requested states? ✘

Is a “domestic tax interest” required by your country to respond to a foreign EOI request? (i.e. could your country refuse to send information if such information is not needed locally for its own tax purposes?) ✘

Is there a connection requirement between the entities/individual audited in the foreign country and the entity/individual to whom information is requested? ✘

Foreign EOI requests relayed to local taxpayers in your country

8. Enforcement provisions: when your local tax administration relays foreign EOI requests to a local taxpayer, what are the penalties in the absence of a response? Fines? Criminal sanctions? Tax searches? Please elaborate.

The amount of administrative monetary penalty that could be imposed on the entities and private entrepreneurs for failure to provide documentation/ information requested by Russian tax authorities does not exceed RUB 10,000 (approx. €200), RUB 1 000 (approx. €50) – for individuals.

Banks and financial institutions could be subject to administrative penalty in the amount of RUB 20,000 (approx. €400) for failure to provide information about the bank accounts of their clients (please see above Q3).

9. Rights and safeguards :

Are there any threshold amounts below which information does not have to be reported? ✘

Are there any notification requirements to taxpayers in your country when a foreign EOI request is received? ✘

What are the general rights and safeguards attached to EOI request?

What are the rules on confidentiality over the information collected: is client-privileged information protected? ✔

Is the EOI request provided to taxpayers subject to EOI requests? ✘

Is the draft response of your local authority provided to the taxpayer for prior approval or for information only? ✘

Is the draft response of your local authority provided to the taxpayer for information only? ✘

Have any inwards EOI provisions been included in your domestic tax legislation? ✘

Domestically initiated EOI requests relayed abroad:

10. Rights and safeguards:

When your local tax administration launches an EOI request abroad, is the statute of limitations extended? Interrupted? ⁴	X
Does an EOI request made by your country need to be issued during a local tax audit or examination? ⁵	X
Are domestic taxpayers in your jurisdiction required to receive notice that an EOI request has been sent abroad which may concern them?	X
Does your domestic administration need to disclose the information that has been requested?	X
Have any outwards EOI provisions been included in your domestic tax legislation?	X

Spontaneous transfers of Information:

11. Rights and safeguards:

Can your country provide to a tax treaty partner, without a previous EOI request, information it may have discovered during a tax examination or other procedure which suggests or establishes noncompliance with the tax laws of a Tax Treaty partner?

Can your country use information received by a tax treaty partner that was provided outside the scope of a specific EOI request?



¹The concept of “domestic tax interest” is not envisaged in the Russian domestic law. However, many DTTs address this issue containing an “anti-domestic tax interest” clause specifying that contracting state cannot refuse a request for information solely because it has no domestic tax interest (for instance, DTTs with Armenia, Cyprus, Czech Republic, Germany, Italy, Switzerland, Luxembourg and Latvia).

²Since Russian domestic tax law does not provide for any specific rules concerning cross-border exchange of information with other jurisdictions, no specific rights and safeguards are available.

³As a general rule, the DTTs concluded between Russia and the foreign states contain the provision on confidentiality with regard to EOI requests. Where information is exchanged it is subject to strict confidentiality rules: information communicated must be treated as secret and may only be used for the purposes provided for in the DTT. Additional protection in case of exchange of personal data is provided under DTT between Russia and Germany. It is not clear whether the attorney-client privilege could stop Russian tax authorities from collecting information under EOI from a treaty state.

⁴However, if the EOI request is initiated in the course of the field tax audit, the term of the audit could be extended by nine months.

⁵If the tax authorities want to rely on this information in the course of the audit the EOI request should not generally be sent after the tax audit is complete.

⁶Formally speaking, Russian domestic tax law does not authorize Russian tax authorities to provide spontaneous exchange of information but simply refers to DTTs in this respect. Thus, one can derive that spontaneous exchange of information could be legal, if envisaged by an applicable DTT.

Slovakia



Slovakia

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Foreign Initiated EOI request received by your country of residence:

1. What is the scope of information that may be exchanged:

Interest payments	✓
Dividends paid	✓
Sales proceeds	✓
Gross/net, costs & charges	✓
Local tax rulings	✓
Transfer pricing documentation	✓
Contracts	✓
Payroll & pay slips	✓
Rental payments	✓
Corporate documents	✓
Statutory accounts	✓
Cost accounts	✓
Other	

2. What is the scope of taxes covered by EOI requests?

Direct	✓
Indirect	✓
Wealth tax (N/A)	✓
Local taxes	✓
State	✓
Federal	✗
Social security contributions	✓
Estate or inheritance	✓
Gift tax	✓

3. Do foreign-initiated EOI requests require the opening of an examination or audit in your country of residence? If not, is an examination launched in practice?

Generally, foreign-initiated EOI requests do not require the opening of an examination or audit. An examination is usually launched after the tax authority finds anything during the obtaining of information requested by EOI request which could be used as grounds for opening an examination or audit.

Please note that EOI are covered by various legal provisions of Slovak law, EU law and international law. For that reason, there could be different rules for EOI depending on respective applicable law. For the purposes of this questionnaire, we refer only to EOI applicable with respect to taxes other than indirect, excise taxes and social security contributions.

4. Fishing expeditions: does your country apply a relevance test on foreign EOI requests? If so, what are the criteria?

Information requested shall be relevant for the purposes of the tax administration; however there is no test with respect to relevance. Generally speaking, requests relating to areas other than taxes are not subject to EOI.

5. Can your domestic administration make a reservation to respond to an EOI request? If so, please provide with examples.

Yes, if for instance the requesting authority has not exhausted the usual sources of information which it could have used in the circumstances for obtaining the information requested, without running the risk of jeopardizing the achievement of its objectives, or if the requesting authority is not allowed to request such information according to its domestic law.

6. Is there a maximum time frame to respond? What is the standard practice in terms of delays to respond?

Yes, two months, if the information is available, or six months if the information is not immediately available, unless it is agreed otherwise between the responding and the requesting authorities.

7. Before responding to an EOI request:

Does your country apply a reciprocity test (also called the "dual criminality principle"), i.e. information would be given by your country outwards only if the presumed tax offense constitutes an offense in both the requesting and requested states? ✘

Is a "domestic tax interest" required by your country to respond to a foreign EOI request? (i.e. could your country refuse to send information if such information is not needed locally for its own tax purposes?) ✘

Is there a connection requirement between the entities/individual audited in the foreign country and the entity/individual to whom information is requested? ✘

Foreign EOI requests relayed to local taxpayers in your country

8. Enforcement provisions: when your local tax administration relays foreign EOI requests to a local taxpayer, what are the penalties in the absence of a response? Fines? Criminal sanctions? Tax searches? Please elaborate

Generally, there are no statutory sanctions in respect of non-compliance with EOI regulation in the Slovak republic. This is without prejudice to internal sanction mechanism on which we do not opine herein.

9. Rights and safeguards:

Are there any threshold amounts below which information does not have to be reported?	X
Are there any notification requirements to taxpayers in your country when a foreign EOI request is received?	X
What are the general rights and safeguards attached to EOI request?	X
What are the rules on confidentiality over the information collected: is client-privileged information protected?	✓
Is the EOI request provided to taxpayers subject to EOI requests?	✓
Is the draft response of your local authority provided to the taxpayer for prior approval or for information only?	X
Is the draft response of your local authority provided to the taxpayer for information only?	X
Have any in-wards EOI provisions been included in your domestic tax legislation?	✓

Domestically initiated EOI requests relayed abroad:

10. Rights and safeguards:

When your local tax administration launches an EOI request abroad, is the statute of limitations extended/ Interrupted?	✓
Does an EOI request made by your country need to be issued during a local tax audit or examination?	X
Are domestic taxpayers in your jurisdiction required to receive notice that an EOI request has been sent abroad which may concern them?	X
Does your domestic administration need to disclose the information that has been requested?	X
Have any outwards EOI provisions been included in your domestic tax legislation?	✓

Spontaneous transfers of Information:

11. Rights and safeguards:

Can your country provide to a tax treaty partner, without a previous EOI request, information it may have discovered during a tax examination or other procedure which suggests or establishes noncompliance with the tax laws of a Tax Treaty partner? ✓

Can your country use information received by a tax treaty partner that was provided outside the scope of a specific EOI request? ✓

Spain



Spain

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Foreign Initiated EOI request received by your country of residence:

1. What is the scope of information that may be exchanged:

Interest payments	✓
Dividends paid	✓
Sales proceeds	✓
Gross/net, costs & charges	✓
Local tax rulings	✗
Transfer pricing documentation	✓
Contracts	✓
Payroll & pay slips	✓
Rental payments	✓
Corporate documents	✓
Statutory accounts	✓
Cost accounts	✓
Other	

2. What is the scope of taxes covered by EOI requests?

Direct	✓
Indirect	✓
Wealth tax	✓
Local taxes	✓
State	✓
Federal (N/A in Spain)	✓
Social security contributions	✓
Estate or inheritance	✓
Gift tax	✓

3. Do foreign-initiated EOI requests require the opening of an examination or audit in your country of residence? If not, is an examination launched in practice?

Not necessarily. It is normal practice that Spanish Tax Authorities do not initiate a tax audit or an examination when the information is already available on their files. In consequence, an examination or audit would only be opened when the information is held by the local taxpayer.

4. Fishing expeditions: does your country apply a relevance test on foreign EOI requests? If so, what are the criteria?

Yes. Broadly, If Spanish Tax Authorities request information, such information must be considered as foreseeably relevant according to Spanish laws.

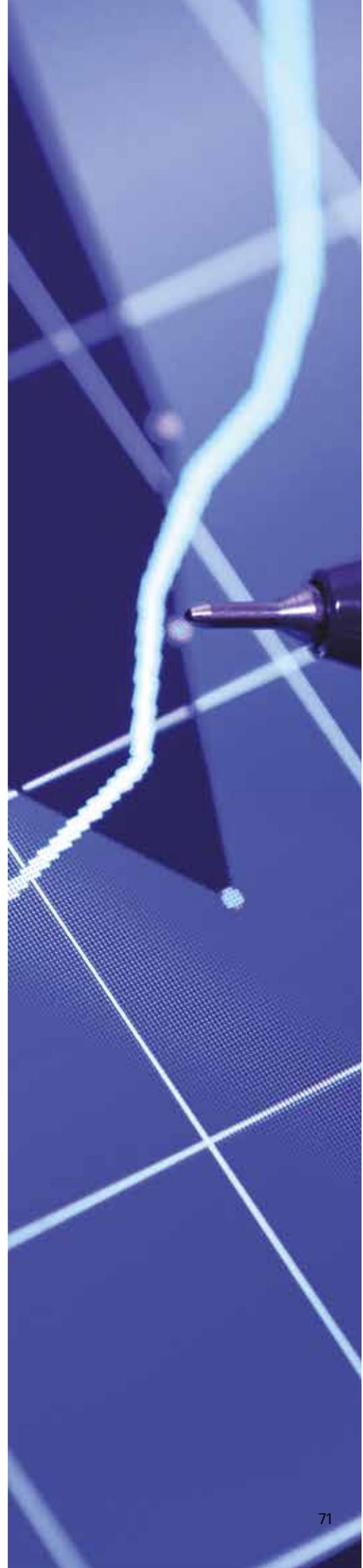
In practice, it is very rare that Spanish Tax Authorities receive an EOI request that may qualify as a "fishing expedition." We are aware that Spain once rejected an EOI request because the requesting jurisdiction had not explained the purpose of the request and asked for information on a category of persons, rather than identifying the target persons on a nominative basis.

5. Can your domestic administration make a reservation to respond to an EOI request? If so, please provide with examples.

Yes, for example in case of an EOI request issued according to EU Directive 2011/16 provisions:

- i. A requesting authority hasn't exhausted the usual sources of information which it could have used in the circumstances for obtaining the information requested.
- ii. Carrying out enquiries or communicate information is against its own legislation.
- iii. The requesting state is unable, for legal reasons, to provide similar information as the requested one.
- iv. Request of information may be refused where it would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to public policy.

Double Tax Treaties (DTCs) signed by Spain ensure that the parties are not obliged to provide information according to abovementioned example iv. Tax Exchange of Information Agreements signed by Spain contain similar provisions.



6. Is there a maximum time frame to respond? What is the standard practice in terms of delays to respond?

Yes. For example, if an EU Member State requires information from Spanish Tax Authorities, they shall provide the information as quickly as possible and no later than six months from the date of receipt of the request.

However, if Spanish Tax Authorities are already in possession of that information, the information shall be transmitted within two months of that date.

Response time varies depending on the complexity of the request; however, Spain is considered a diligent country on these EOI requests.

7. Before responding to an EOI request:

Does your country apply a reciprocity test (also called the “dual criminality principle”), i.e. information would be given by your country outwards only if the presumed tax offense constitutes an offense in both the requesting and requested states? ✘

Is a “domestic tax interest” required by your country to respond to a foreign EOI request? (i.e. could your country refuse to send information if such information is not needed locally for its own tax purposes?) ✘

Is there a connection requirement between the entities/individual audited in the foreign country and the entity/individual to whom information is requested? ✘

Foreign EOI requests relayed to local taxpayers in your country

8. Enforcement provisions: when your local tax administration relays foreign EOI requests to a local taxpayer, what are the penalties in the absence of a response? Fines? Criminal sanctions? Tax searches? Please elaborate.

In general terms, according to new developments in the Spanish General Tax Law, in connection with this issue, a taxpayer involved in a request of exchange of information is subject to the Spanish tax penalty system.

Spanish General Tax Law establishes that the action of resisting, obstructing, excusing from or refusing tax proceedings, which includes not replying to a formal request from Tax authorities (e.g. an exchange of information request), is considered a tax infringement. Tax penalties range between €150 and €600,000. This depends on different factors such as: (i) the requested taxpayer is an entity/person conducting economic activities, (ii) type of information not provided, (iii) total amount of the turnover, (iv) if the information is requested under a tax audit or not, etc.

On the other hand, providing false or incomplete non-monetary information is punishable by a fine of €200 per false data.

9. Rights and safeguards:

Are there any threshold amounts below which information does not have to be reported?	x
Are there any notification requirements to taxpayers in your country when a foreign EOI request is received?	x
What are the general rights and safeguards attached to EOI request?	
Please, see answer to question 5.	
Moreover, answering a request of exchange of information is not mandatory when it involves professional secrecy or attorney secrecy.	
What are the rules on confidentiality over the information collected: is client-privileged information protected?	✓
Section 93.5 of the Spanish General Tax Law provides: "the obligation of other professionals to supply information having tax significance to the tax authorities does not extend to non-economic private data known by them in the frame of their business and when the disclosure would violate the right to honor or personal and family privacy." Therefore, professional secrecy is lifted vis-à-vis the tax administration for economic data (e.g. assets transactions and wealth) and form non-economic data that would not violate the right to honor or personal and family privacy. In this sense, for instance Spanish tax authorities can ask the auditors of a company to provide the audit report they have prepared on a company but not the working papers (e.g. informal communications with the client, documented personal opinions in non-official papers, etc.).	
Same provisions apply with regard to the attorney-client privilege: the obligation of professionals to supply information having tax significance does not "extend to such of their clients' confidential data as were revealed to them as a result of the provision of professional services of legal advice or defense"	
Is the EOI request provided to taxpayers subject to EOI requests?	x
Is the draft response of your local authority provided to the taxpayer for prior approval or for information only?	x
Is the draft response of your local authority provided to the taxpayer for information only?	x
Have any in-wards EOI provisions been included in your domestic tax legislation?	✓

Domestically initiated EOI requests relayed abroad:

10. Rights and safeguards:

When your local tax administration launches an EOI request abroad, is the statute of limitations extended? Interrupted?	✓
Does an EOI request made by your country need to be issued during a local tax audit or examination?	✓
Are domestic taxpayers in your jurisdiction required to receive notice that an EOI request has been sent abroad which may concern them?	x
Does your domestic administration need to disclose the information that has been requested?	x
Have any outwards EOI provisions been included in your domestic tax legislation?	✓

Spontaneous transfers of Information:

11. Rights and safeguards:

Can your country provide to a tax treaty partner, without a previous EOI request, information it may have discovered during a tax examination or other procedure which suggests or establishes noncompliance with the tax laws of a Tax Treaty partner? ✓

Can your country use information received by a tax treaty partner that was provided outside the scope of a specific EOI request? ✓

Switzerland



Switzerland

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Foreign Initiated EOI request received by your country of residence:

1. What is the scope of information that may be exchanged:

Interest payments	✓	Comments: The DTCs determine the scope of information that may be exchanged. These are usually broadly defined as “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 covered by the treaty.”
Dividends paid	✓	
Sales proceeds	✓	
Gross/net, costs & charges	✓	
Local tax rulings	✓	
Transfer pricing documentation	✓	
Contracts	✓	
Payroll & pay slips	✓	
Rental payments	✓	
Corporate documents	✓	
Statutory accounts	✓	
Cost accounts	✓	
Other		

2. What is the scope of taxes covered by EOI requests?

Direct	✓	Comments: The scope of taxes that may be covered by EOI depends on the definition of the DTC.
Indirect	✗	
Wealth tax	✓	Usually, the information that may be exchanged covers direct, wealth, local, state and federal taxes. However, there are exceptions. For instance, the DTC between Switzerland and France specifically provides for an application of EOI to any type of taxes.
Local taxes	✓	
State	✓	Some DTC on estate and inheritance tax also mention the possibility of using EOI.
Federal (N/A in Spain)	✓	
Social security contributions	✗	
Estate or inheritance	✗	
Gift tax	✗	

3. Do foreign-initiated EOI requests require the opening of an examination or audit in your country of residence? If not, is an examination launched in practice?

The foreign-initiated EOI request does not require the opening of an examination or audit in Switzerland even if the person aimed at by the request is a Swiss resident or related to a Swiss resident. In practice, there is no examination or audit that is launched by the Swiss authorities.

4. Fishing expeditions: does your country apply a relevance test on foreign EOI requests? If so, what are the criteria?

Switzerland does not exchange any information in presence of a “fishing expedition,” and a request which is not based on clear concrete elements will be denied.

Due to a recent change in domestic law, a request targeting a group of people may be accepted in the future, on the condition that such request provides a detailed description of the group as well as information on facts and circumstances which led to the request, an explanation of the applicable laws and the reasons why the requesting State believes that the taxpayers of the group targeted have acted in breach of said law. These conditions must be proven by mean of a clear factual basis.

5. Can your domestic administration make a reservation to respond to an EOI request? If so, please provide with examples.

The FTA can typically specify to the requesting State that the information transferred may only be used in the frame of the particular tax procedure in relation to which it was issued.

6. Is there a maximum time frame to respond? What is the standard practice in terms of delays to respond?

The time frame between the request from the foreign State and the actual transfer of information by the FTA depends on specific circumstances of each case.

To that date, there is only little practice in relation to an EOI, and it is not possible to predict any timing.



7. Before responding to an EOI request:

- Does your country apply a reciprocity test (also called the “dual criminality principle”), i.e. information would be given by your country outwards only if the presumed tax offense constitutes an offense in both the requesting and requested states? ✘
- Is a “domestic tax interest” required by your country to respond to a foreign EOI request? (i.e. could your country refuse to send information if such information is not needed locally for its own tax purposes?) ✘
- Is there a connection requirement between the entities/individual audited in the foreign country and the entity/individual to whom information is requested? ✘

Upon receipt of an EOI request, the federal tax administration (hereafter FTA) will first examine if the request is admissible in connection with the DTC's scope and provisions.

In cases where exchange of information is related to the application of domestic tax law of the requesting State, the FTA will also carry out a preliminary examination of the request. On that occasion, the FTA will check whether the request complies with essential values of Swiss law, respects the principle of good faith, and is not based on information obtained through unlawful actions with regard to Swiss law. In cases where the preliminary examination shows a breach of one of these conditions, the FTA will deny the exchange of information. However, the requesting State can make a new request, which will be accepted provided that it complies with the three standards described above.

Foreign EOI requests relayed to local taxpayers in your country

8. Enforcement provisions: when your local tax administration relays foreign EOI requests to a local taxpayer, what are the penalties in the absence of a response? Fines? Criminal sanctions? Tax searches? Please elaborate.

The amount of administrative monetary penalty that could be imposed on the entities and private entrepreneurs for failure to provide documentation/ information requested by Russian tax authorities does not exceed RUB 10,000 (approx. €200), RUB 1 000 (approx. €50) – for individuals.

Banks and financial institutions could be subject to administrative penalty in the amount of RUB 20,000 (approx. €400) for failure to provide information about the bank accounts of their clients (please see above Q3).

9. Rights and safeguards:

Are there any threshold amounts below which information does not have to be reported? ✗
There is no mention of a minimal amount in the law. However, a request asking for the transfer of information in relation to an unreasonably small amount will be denied for lack of pertinence and because it will be considered contrary to the principle of proportionality.

Are there any notification requirements to taxpayers in your country when a foreign EOI request is received? ✓

What are the general rights and safeguards attached to EOI request? ✓

In usual cases, the subject of the request has the right to be informed of the fact that an EOI request has been introduced against him. He also must be heard in the frame of the proceedings and will be given the possibility to consult the file. Finally, he can appeal the decision of the FTA regarding whether an exchange will take place and what piece of information will be transferred.

New legislation now provides for an “exceptional procedure,” in which the subject of the request will not be informed of the existence of an EOI request until after the information has been transferred. The requesting State however needs to demonstrate credibly that the conditions for this exceptional proceeding are fulfilled in the specific case.

What are the rules on confidentiality over the information collected: is client-privileged information protected? ✓

In cases where the DTC states that banking and/or business secrecy should not prevent the exchange of information, such secrets are not protected.

However, solicitor-client privilege is protected, provided that the solicitor has been given knowledge of the relevant piece of information in the frame of his professional activities as a solicitor.

Is the EOI request provided to taxpayers subject to EOI requests? ✗

Swiss law allows the authority to provide only the essential parts of the request to the taxpayer subject to EOI. In addition, in some exceptional cases, no information is provided (see above “exceptional procedure”).

Is the draft response of your local authority provided to the taxpayer for prior approval or for information only? ✓ ✗

The taxpayer is notified. The latter has 30 days to approve.

Is the draft response of your local authority provided to the taxpayer for information only? ✗

The draft answer may be provided to the subject of the request for information, and to allow for an appeal against the decision before information is transferred.

In some cases (exceptional procedure), the answer will be transferred directly to the foreign authorities, and the taxpayer subject to EOI will only be given knowledge of the request and the content of the information transferred after its transfer. In these cases, it is not possible to obtain the annulment of the forwarding of information. However, the subject will be entitled to compensation from the State in cases where it can be proved that such exchange of information was illegal.

Have any in-wards EOI provisions been included in your domestic tax legislation? ✓

Yes, but domestic tax legislation is exclusively implementing provisions of a DTC. No EOI is possible in the absence of a DTC including an EOI provision.

Domestically initiated EOI requests relayed abroad:

10. Rights and safeguards:

When your local tax administration launches an EOI request abroad, is the statute of limitations extended? Interrupted?



Does an EOI request made by your country need to be issued during a local tax audit or examination?



Are domestic taxpayers in your jurisdiction required to receive notice that an EOI request has been sent abroad which may concern them?



Does your domestic administration need to disclose the information that has been requested?

Have any outwards EOI provisions been included in your domestic tax legislation?



Comments:

An EOI may have the effect of extending the statute of limitation up to 15 years.

It depends on the specificities of the case.

Usually, when the authority wants to use a piece to the detriment of the taxpayer, the taxpayer has the right to consult the file and the relevant piece of evidence of information. If the authority denies this right to the taxpayer, the evidence cannot be used against him unless the authority has given him knowledge of the essential content of the evidence and has allowed him to express himself and bring his own piece of contrary evidence.

Spontaneous transfers of Information:

11. Rights and safeguards:

Can your country provide to a tax treaty partner, without a previous EOI request, information it may have discovered during a tax examination or other procedure which suggests or establishes noncompliance with the tax laws of a Tax Treaty partner?



It depends on whether the DTC provides for spontaneous exchange of information or not. Currently there is no treaty signed by Switzerland providing for the spontaneous exchange of information.

Can your country use information received by a tax treaty partner that was provided outside the scope of a specific EOI request?



Ukraine



Ukraine

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Foreign Initiated EOI request received by your country of residence:

1. What is the scope of information that may be exchanged:

Interest payments	✓
Dividends paid	✓
Sales proceeds	✓
Gross/net, costs & charges	✓
Local tax rulings	✓
Transfer pricing documentation	✓
Contracts	✓
Payroll & pay slips	✓
Rental payments	✓
Corporate documents	✗
Statutory accounts	✗
Cost accounts	✗
Other (see comments)	

Comments:

In accordance with Convention on mutual administrative assistance in tax matters ratified by Ukraine on 17 December 2008 and effective in Ukraine from 1 July 2009, Ukraine shall exchange any information that is foreseeably relevant to (a) the assessment and collection of tax, and the recovery and enforcement of tax claims, and (b) the prosecution before an administrative authority or the initiation of prosecution before a judicial body.

2. What is the scope of taxes covered by EOI requests?

Direct	✓
Indirect	✓
Wealth tax	✗
Local taxes	✗
State	✓
Federal	✗
Social security contributions	✓
Estate or inheritance	✗
Gift tax	✗

3. Do foreign-initiated EOI requests require the opening of an examination or audit in your country of residence? If not, is an examination launched in practice?

The Ukrainian legislation does not directly foresee that an examination or audit is opened in case of receipt of foreign-initiated EOI request. In practice, upon receipt of foreign-initiated EOI request the Ukrainian tax authorities initiate internal examination involving local tax authorities.

4. Fishing expeditions: does your country apply a relevance test on foreign EOI requests? If so, what are the criteria?

After receiving a foreign-initiated EOI request from the competent authorities of foreign countries such EOI request is being considered by the Ukrainian tax authorities. While taking a decision on acceptance of a foreign-initiated EOI request, the following factors are taken into account:

- Whether a foreign country who initiated such a request and Ukraine have entered into or are parties to an international treaty (double tax treaty on avoidance of double taxation, treaty on administration assistance in tax matters and other documents) which contain provisions on exchange of information and restrictions on the information provided, taking into account the principle of reciprocity in relations between the two countries to provide certain information;¹
- Completeness of data indicated in a foreign-initiated EOI request

5. Can your domestic administration make a reservation to respond to an EOI request? If so, please provide with examples.

The Ukrainian tax authorities may refuse to respond to a foreign-initiated EOI request in the following cases:

- If Ukraine has no international treaty (double tax treaty on avoidance of double taxation, treaty on administration assistance in tax matters and other documents) which contain provisions on exchange of information with a foreign country initiated EOI request;
- EOI request was sent by the authority not authorized to send such EOI request;
- If activities required for obtaining the requested information are not foreseen by the respective international agreement;
- If the requested information extends beyond the respective international agreement and the provisions of Law of Ukraine "On Ratification of Convention on mutual administrative assistance in tax matters" No.677-VI dated 17 December 2008 or competence of the Ukrainian tax authorities.



6. Is there a maximum time frame to respond? What is the standard practice in terms of delays to respond?

The Ukrainian legislation provides that EOI request shall be replied within 45 days from the date of receipt of EOI request. This term can be prolonged in case of existence of difficulties with obtaining the requested information. In this case, the maximum term of reply to EOI request cannot be more than four months from the date of receipt of EOI request by the tax authorities of Ukraine.

7. Before responding to an EOI request:

- | | |
|--|---|
| Does your country apply a reciprocity test (also called the “dual criminality principle”), i.e. information would be given by your country outwards only if the presumed tax offense constitutes an offense in both the requesting and requested states? | X |
| Is a “domestic tax interest” required by your country to respond to a foreign EOI request? (i.e. could your country refuse to send information if such information is not needed locally for its own tax purposes?) | X |
| Is there a connection requirement between the entities/individual audited in the foreign country and the entity/individual to whom information is requested? | X |

Foreign EOI requests relayed to local taxpayers in your country

8. Enforcement provisions: when your local tax administration relays foreign EOI requests to a local taxpayer, what are the penalties in the absence of a response? Fines? Criminal sanctions? Tax searches? Please elaborate.

The Tax Code of Ukraine provides for the possibility to request tax information from Ukrainian taxpayers in case the Ukrainian tax authorities identify the facts of violation of tax, currency legislation and money laundering legislation as a result of analysis of tax information received in accordance with the law or in case of cross-checks if the Ukrainian tax authorities want to confirm relationships of the taxpayer with its counterparties. Absence of the response to the request of the Ukrainian tax authorities serves the basis for unscheduled tax audit of the Ukrainian tax payer.

- | | |
|---|---|
| Are there any threshold amounts below which information does not have to be reported? | X |
| Are there any notification requirements to taxpayers in your country when a foreign EOI request is received? | X |
| What are the general rights and safeguards attached to EOI request? | X |
| What are the rules on confidentiality over the information collected: is client-privileged information protected? | ✓ |
| Is the EOI request provided to taxpayers subject to EOI requests? | X |
| Is the draft response of your local authority provided to the taxpayer for prior approval? for information only ? | X |
| Is the draft response of your local authority provided to the taxpayer for information only ? | X |
| Have any in-wards EOI provisions been included in your domestic tax legislation? | ✓ |

9. Rights and safeguards:

When your local tax administration launches an EOI request abroad, is the statute of limitations extended? Interrupted? ✘

The standard statute of limitations in Ukraine is three years for tax collection matters.

Does an EOI request made by your country need to be issued during a local tax audit or examination ✘

Are domestic taxpayers in your jurisdiction required to receive notice that an EOI request has been sent abroad which may concern them? ✘

Are domestic taxpayers in your jurisdiction required to receive notice that an EOI request has been sent abroad which may concern them? ✔

Does your domestic administration need to disclose the information that has been requested ✔

Have any in-wards EOI provisions been included in your domestic tax legislation? ✔

Domestically initiated EOI requests relayed abroad:

10. Rights and safeguards:

Can your country provide to a tax treaty partner, without a previous EOI request, information it may have discovered during a tax examination or other procedure which suggests or establishes noncompliance with the tax laws of a Tax Treaty partner? ✔

Can your country use information received by a tax treaty partner that was provided outside the scope of a specific EOI request? ✔

¹We are not aware of any cases when the principle of reciprocity in relations between the two countries to provide certain information was used in practice by Ukrainian tax authorities.

United States



United States

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Foreign Initiated EOI request received by your country of residence:

1. What is the scope of information that may be exchanged:

Interest payments	✓
Dividends paid	✓
Sales proceeds	✓
Gross/net, costs & charges	✓
Local tax rulings	✓
Transfer pricing documentation	✓
Contracts	✓
Payroll & pay slips	✓
Rental payments	✓
Corporate documents	✓
Statutory accounts	✓
Cost accounts	✓
Other	

Comments:

It should be noted that with respect to information that is not reported to the IRS under US tax information reporting rules, such as “contracts”, “payroll & pay slips” and “corporate documents,” the IRS may not have this information in its possession. Thus, to exchange such information, the IRS would need to go to the taxpayer or a third party to obtain this information. In light of the obligations imposed by FATCA reciprocal intergovernmental agreements, the amount and types of information collected by the IRS will be increasing (e.g., account balances and account numbers with respect to certain financial accounts).

2. What is the scope of taxes covered by EOI requests?

Direct	✓
Indirect	✓
Wealth tax	✓
Local taxes	✓
State	✓
Federal	✓
Social security contributions	✓
Estate or inheritance	✓
Gift tax	✓

Comments:

Note that these are subject to the scope of the applicable information exchange agreement or tax treaty. Thus, some older agreements may not cover all of these taxes. For example, information authorized to be exchanged under the US-Greece income tax treaty is limited to taxes that are subject to the treaty, and information to be provided by the British Virgin Islands under the US-BVI TIEA is limited to federal income taxes.

3. Do foreign-initiated EOI requests require the opening of an examination or audit in your country of residence? If not, is an examination launched in practice?

No.

4. Fishing expeditions: does your country apply a relevance test on foreign EOI requests? If so, what are the criteria?

Article 26(1) of the US Model Treaty (and US tax treaties and TIEAs generally) require only the exchange of information that “may be relevant,” and the United States generally follows international norms in determining whether information sought is “relevant.” Although the United States does not engage in “fishing expeditions,” it does not require specific requests to identify taxpayers by name and does seek information on specific groups of persons who are not individually named.

5. Can your domestic administration make a reservation to respond to an EOI request? If so, please provide with examples.

US tax treaties and TIEAs generally adopt the same reservations as in Article 26(3) of the OECD Model Treaty. Thus the obligations to exchange information do not require a Contracting State to carry out administrative measures that are at variance with the laws or administrative practice of either State. Nor is a Contracting State required to supply information not obtainable under the laws or administrative practice of either State, or to disclose trade secrets or other information, the disclosure of which would be contrary to public policy.

6. Is there a maximum time frame to respond? What is the standard practice in terms of delays to respond?

US domestic law does not set forth a time frame in which to respond. However, according to the United States’ Global Forum Peer-Review Report, “The United States reports that it fully responded within 90 days to more than 50 percent of specific requests (51%), within 180 days to more than 75 percent of specific requests (76%), and within 365 days to more than 90 percent of specific requests (91%). This is generally consistent with the information provided by the peers.”

7. Before responding to an EOI request:

Does your country apply a reciprocity test (also called the “dual criminality principle”), i.e. information would be given by your country outwards only if the presumed tax offense constitutes an offense in both the requesting and requested states? ✘

Is a “domestic tax interest” required by your country to respond to a foreign EOI request? (i.e. could your country refuse to send information if such information is not needed locally for its own tax purposes?) ✘

Is there a connection requirement between the entities/individual audited in the foreign country and the entity/individual from whom information is requested. The US Technical Explanation to the US Model Treaty notes that because information exchange is restricted by Article 1(1), information may be requested and provided with respect to persons who are not residents of either Contracting State. ✘

Foreign EOI requests relayed to local taxpayers in your country

8. Enforcement provisions: when your local tax administration relays foreign EOI requests to a local taxpayer, what are the penalties in the absence of a response? Fines? Criminal sanctions? Tax searches? Please elaborate.

As noted in the United States' Global Forum Peer-Review Report, conviction for failure to comply with an administrative summons is punishable by a fine of up to US\$1,000 or a prison sentence of up to one year, or both, together with the costs of prosecution. I.R.C. § 7210. Also, in the event that a summoned party does not comply with a US court's order to produce, the US court has inherent powers (under US common law) to impose so called "civil contempt" sanctions, i.e. daily imposition of fines and/or incarceration, until the summoned person complies with the court's enforcement order.

9. Rights and safeguards:

Are there any threshold amounts below which information does not have to be reported?

x

In general, many categories of payments do not require reporting if the total payments made to a person with respect to such category do not exceed a threshold amount. For example, interest and dividend payments under US\$10, royalty payments under US\$10 and cash paid of under US\$600 from a notional principal contract to an individual, partnership, or estate, generally do not have to be reported.

Are there any notification requirements to taxpayers in your country when a foreign EOI request is received?

x

Sometimes. As noted in the United States' Global Forum Peer-Review Report, "Generally, US law does not require the IRS to notify a taxpayer before providing to a [treaty] or TIEA partner information in the possession of the IRS, and taxpayers and third parties have no right to oppose or challenge the provision of information to a requesting party." Nonetheless, "[n]otice to the taxpayer is required in many cases when the IRS uses its compulsory summons authority (as opposed to an [Informal Document Request]) to acquire information from third parties. I.R.C. § 7602(c)(1). In particular, a copy of each IRS summons generally must be mailed to the taxpayer. I.R.C. § 7609."

What are the general rights and safeguards attached to EOI request?

The United States insists that its treaty and TIEA partners protect the confidentiality of information exchanged. The Technical Explanation to the US Model Treaty states that, "Paragraph 2 [of Article 26] also provides assurances that any information exchanged will be treated as secret, subject to the same disclosure constraints as information obtained under the laws of the requesting State. Information received may be disclosed only to persons, including courts and administrative bodies, involved in the assessment, collection, or administration of, the enforcement or prosecution in respect of, or the determination of the of appeals in relation to, the taxes covered by the Convention." The United States will not enter into a tax treaty or TIEA with a country that cannot comply with the standard treaty or TIEA confidentiality provisions and generally suspends exchange of information if a treaty or TIEA partner violates the agreement's confidentiality requirements.

What are the rules on confidentiality over the information collected: is client-privileged information protected?

✓

The attorney-client privilege is preserved. Bank secrecy and similar financial confidentiality are not protected privileges, however.

Is the EOI request provided to taxpayers subject to EOI requests?

x

Is the draft response of your local authority provided to the taxpayer for prior approval or for information only?

x

Is the draft response of your local authority provided to the taxpayer for information only?

x

Have any in-wards EOI provisions been included in your domestic tax legislation?

✓

Is the EOI request provided to taxpayers subject to EOI requests?	x
Is the draft response of your local authority provided to the taxpayer for prior approval or for information only?	x
Is the draft response of your local authority provided to the taxpayer for information only?	x
Have any in-wards EOI provisions been included in your domestic tax legislation?	✓

Domestically initiated EOI requests relayed abroad:

10. Rights and safeguards:

When your local tax administration launches an EOI request abroad, is the statute of limitations extended? Interrupted?	x	Comments: <p>Interrupted? Statutes of limitations are governed by I.R.C. § 6501 and there are no provisions that relate to EOI requests. I.R.C. § 6501 provides a general rule that any tax imposed by the Internal Revenue Code shall be assessed within three years after the return was filed. In general, the United States will inform the foreign authority of the deadline.</p> <p>In some cases, yes. Some requests are specific to a taxpayer, and thus generally are made pursuant to an audit, examination, criminal investigation or collection matter. Other requests, such as those seeking information from an intermediary or other third party, may be addressed through a summons or information document request rather than in the context of an audit.</p>
Does an EOI request made by your country need to be issued during a local tax audit or examination?	x	
Are domestic taxpayers in your jurisdiction required to receive notice that an EOI request has been sent abroad which may concern them?	x	
Does your domestic administration need to disclose the information that has been requested?	x	
Have any outwards EOI provisions been included in your domestic tax legislation?	✓	

Spontaneous transfers of Information:

11. Rights and safeguards:

Can your country provide to a tax treaty partner, without a previous EOI request, information it may have discovered during a tax examination or other procedure which suggests or establishes noncompliance with the tax laws of a Tax Treaty partner?	✓
The IRS does engage in spontaneous exchange and participates in fora (such as the Joint International Tax Shelter Information Centre) which are conducive to such exchanges.	
Can your country use information received by a tax treaty partner that was provided outside the scope of a specific EOI request?	✓
US domestic law generally allows such information to be used. I.R.C. § 7602(a)(1) authorizes the examination of “any books, papers, records or other data which may be relevant or material.” However, this does not per se mean that such material is admissible in a proceeding. In addition, if the information was provided to the IRS pursuant to a tax treaty or TIEA, the US government’s use of that information must be consistent with the applicable rules of the treaty or TIEA.	

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CS26911-Vox Tax Report small — 02/06/2014