

GLOBAL FORUM ON
**TRANSPARENCY AND EXCHANGE OF
INFORMATION FOR TAX PURPOSES**

**Tax transparency
and Exchange Of Information
Virtual training**

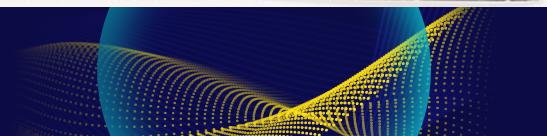
WHEN YOU CAN USE EOI

Learning Objectives:

To provide you with an understanding and exposure to:

- The vital steps to follow before drafting an EOI request
- Practical aspects likely to be encountered to determine whether you should make the request
- A heightened ability and need to work with others as part of the EOI process.

Where to start

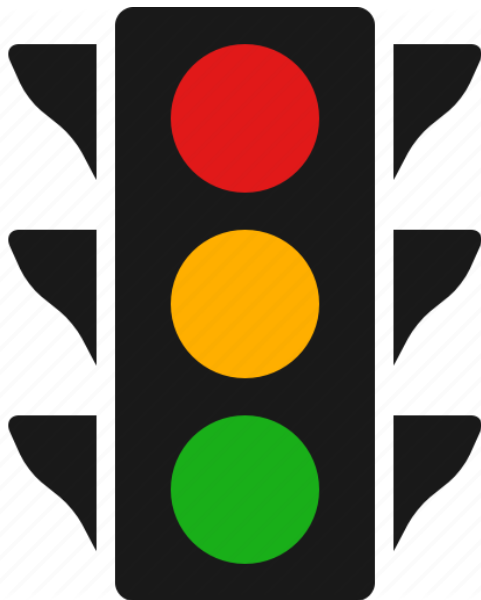


Overview

Preconditions to be met before drafting an EOI request:

- pursued all means available in one's own jurisdiction
- reciprocity
- appropriate legal instrument

Prerequisite: Exhaustion of the domestic means to obtain information



EOI is not a means for requesting your EOI partner to audit your taxpayer



Obtaining relevant information that is not domestically available

Use domestic tools first



Preconditions to an EOI request is that the information shall not be domestically available with:

Taxpayer

Related company in the requesting jurisdiction

Other authorities within the requesting jurisdiction

Other sources of information (internet, registers, etc.)

Start where you are, use what you have, do what you can...

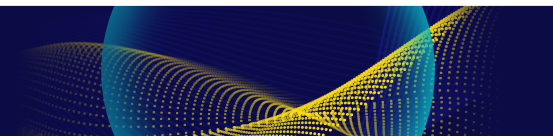
Have you pursued all domestic sources?

Example:

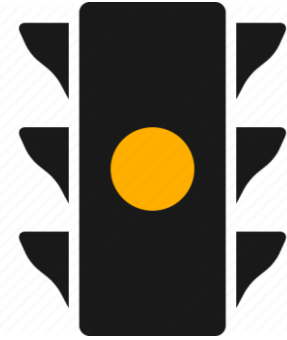
- Request received in relation to investigation of payments to individual by cheque which showed these were credited to a Country X bank account. The deposits were not included in taxpayer's records.
- Requesting country asks for copies of customer KYC records and statements for the account.
- Country X queried validity of request – taxpayer had not yet been asked about the account and been given opportunity to produce records.

Example of Internet Public Sources

- List of Business Registers of European Union Member States
 - https://beta.e-justice.europa.eu/106/EN/business_registers_in_eu_countries
- “Find a company” service for companies in the European Union and the European Economic Area
 - https://beta.e-justice.europa.eu/489/EN/business_registers_search_for_a_company_in_the_eu
- UK Companies House (register of UK companies)
 - <https://beta.companieshouse.gov.uk>
- A partial list of company registers
 - https://en.wikipedia.org/wiki/List_of_company_registers
- International yellow pages
 - <http://www.yellow.com>



A matter of proportionality

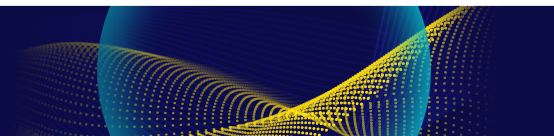


- **Disproportionate difficulties**
- **To be explained in the EOI request**

Reciprocity – before you make a request

You cannot request information from an EOI partner if your laws do not permit you to obtain or provide information if you get a request.

- Example: if you cannot access banking information for domestic tax purposes, you cannot ask for banking information from an EOI partner



Is there an EOI instrument in force?



The EOI instrument must be in force and in effect

An EOI partner may be covered by several EOI instruments

Read the EOI instrument: they may differ in terms of scope (persons, taxes, year covered)

Is the request permitted by the agreement?

Subject → Persons covered

Object → Taxes covered

Period → Years covered

Retrospective provisions?

Persons covered

EOI mechanisms should “provide for exchange of information **in respect of all persons**”.

Not restricted by the residence or nationality of the taxpayer.

However, some instruments may not comply with the standard.

Taxes covered

TIEAs

- **at a minimum, direct taxes.**

DTCs

- **Recent formulation covers “taxes of every kind and description”.**
- **Many older agreements limit EOI to taxes covered by the provisions on DTC.**

MAC

- **at least all forms of compulsory payments to central government, except customs duties.**

Tax years covered

DTCs

- To see in particular the provisions on entry into force.
- Not always specified the effects for EOI, but it may allow requests for all previous taxation years

TIEAs

- generally allow requests to go back further for criminal tax matters than civil tax matters
- But broad definition of criminal tax matters.

MAC

- allows requests to go back for all years for criminal matters (absent a reservation in which case the limit is 4 years)

Retrospective provision – example of DTC

(Convention between Italy and Panama)

Article 27

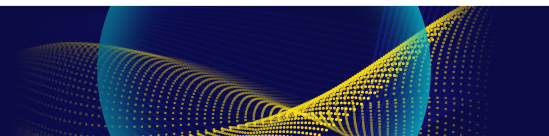
Entry into Force

- The Governments of the Contracting States shall notify to each other, the completion of the internal procedures required by each Contracting State for the entry into force of this Convention.
- The Convention shall enter into force on the first day of the fourth month following the date of receipt of the later of the notifications referred to in paragraph 1 and its provisions shall have effect:
 - [...]
 - [...]
 - with respect to the exchange of information, the requests may be performed with regards to information relating to any date within 3 years prior to the entry into force of this convention

Retrospective provision – example of TIEA

The Agreement shall enter into force on the date of receipt of the later of the notifications of ratification and its provisions shall have effect:

- (a) for criminal tax matters **on that date**; and
- (b) for all other matters covered in the Agreement in respect of **any tax year beginning on or after the first day of January of the calendar year following** that in which this Agreement enters into force



Foreseeable Relevance

- If the information is relevant, necessary, or may be relevant to the administration or enforcement of your tax laws – you can ask for it.
- The intention is to allow for exchange of information to the widest possible extent but it does not allow “fishing expeditions” or information unlikely to be relevant to the tax affairs of a given taxpayer.

Information to Establish Foreseeable Relevance

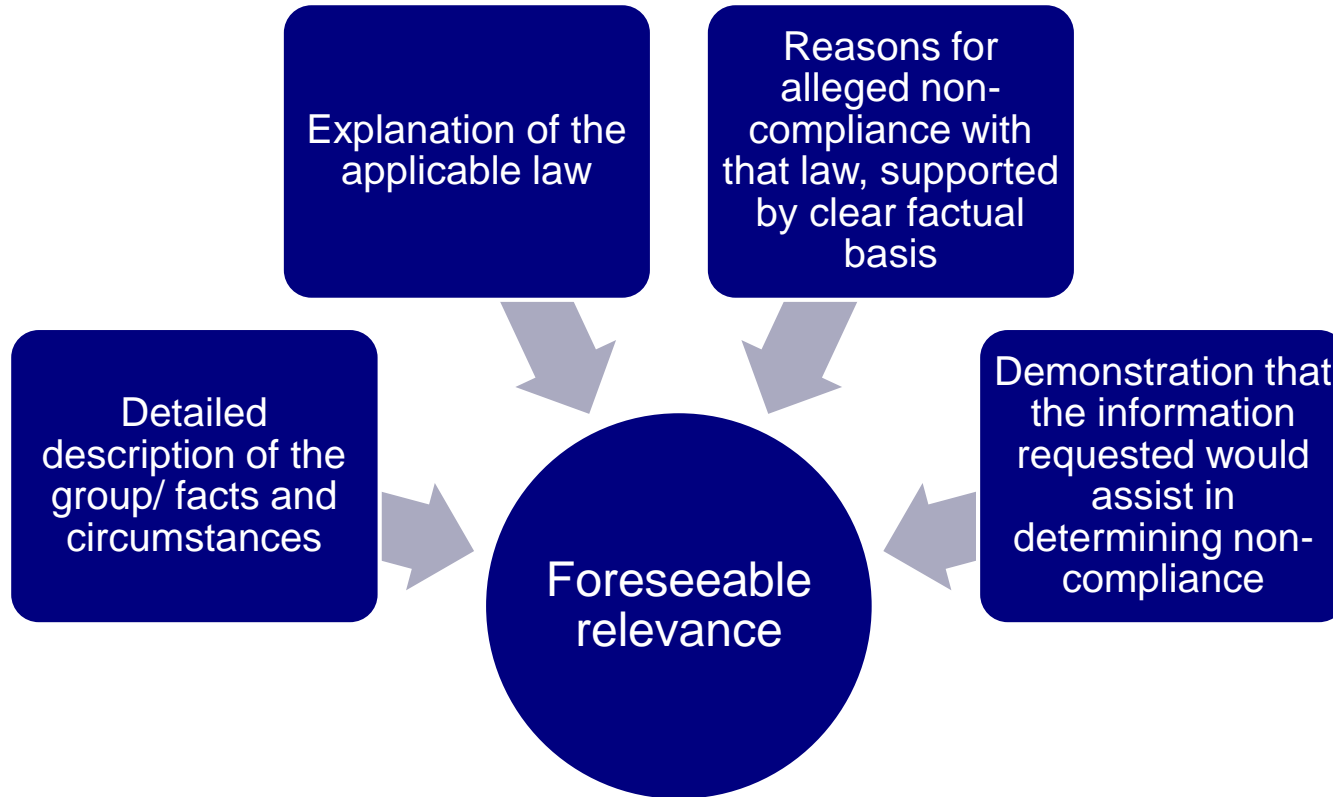
- Requests should include information on:
 - the **identity** of the person under examination
 - a description of the information sought (including its nature and the form in which the requesting party wishes to receive it)
 - the tax purpose for which the information is sought
 - the grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party
 - to the extent known, the name and address of any person believed to be in possession of the requested information

Plus general statements

Fishing expeditions

- Speculative requests for information that have no apparent link to an open inquiry or investigation.
- Example of fishing expedition:
 - Company B is a company established in jurisdiction B. Jurisdiction A requests the names of all shareholders in Company B resident of jurisdiction A and information on all dividend payments made to such shareholders. The requesting jurisdiction A points out that Company B has significant business activity in jurisdiction A and is therefore likely to have shareholders resident of jurisdiction A. The request further states that it is well known that taxpayers often fail to disclose foreign source income or assets.

Group requests



Third party usually contributed to non-compliance

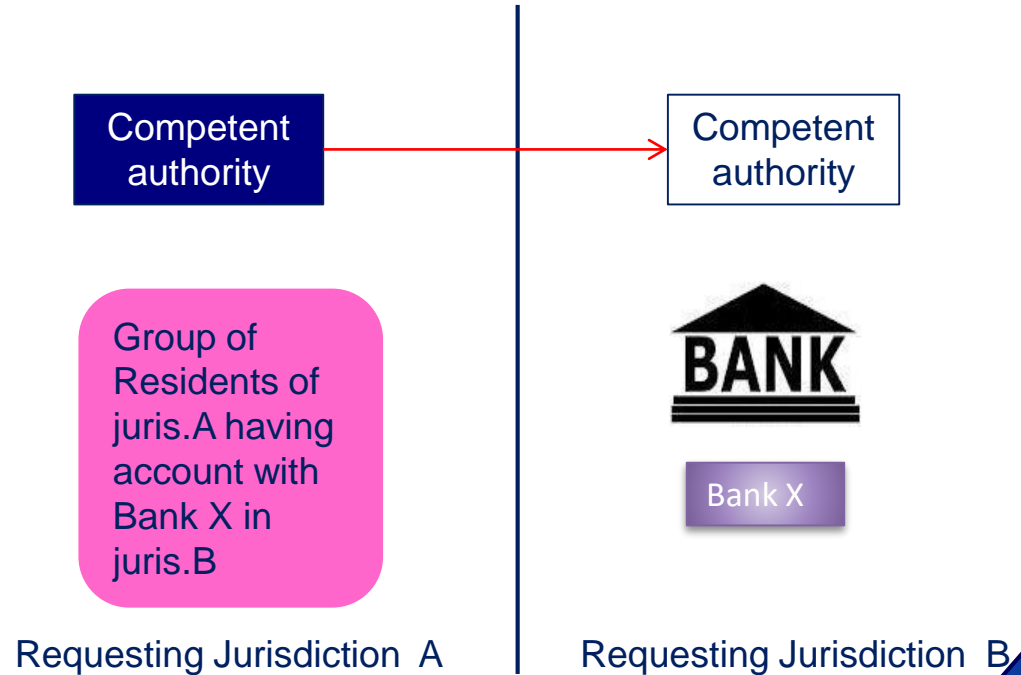
Example from the OECD Commentary (para. 8(h))

EOI Request contains:

- A financial product marketed by Bank X of juris.B in juris.A
- Misleading information on tax liability
- Tax authorities of juris. A alerted taxpayers
- Evidences show several resident taxpayers invested but none declared

EOI Request asks for:

- All residents of juris.A having an account with Bank X in juris.B; and
- invested in the financial product



To summarise

- Is the information foreseeably relevant to an ongoing tax examination or tax case?
- Have I used all reasonable efforts (powers/public sources) to obtain this information in my jurisdiction?
- Is there an exchange of information agreement in place?
- Does it cover the taxes and tax years under audit?
- If this information were available in my jurisdiction would I be able to obtain it?

If you can answer yes to all of the above questions you proceed to drafting your request.

Reflection Questions

- Do you know how many EOI relationships your jurisdiction has?
- Have you met your Competent Authority before?
- How do you contact your Competent Authority?
- Have you ever made a request?

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Thank you

For more information

 <https://oe.cd/tax-transparency>

 <https://twitter.com/OECDtax>

 gftaxcooperation@oecd.org

 <https://oe.cd/tax-news>