

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

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

DRAFTING A REQUEST

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What is expected in an EOI request?

Content – Legal basis and references



- ✓ **Specify the legal basis (EOI instrument).**
 - **Where there are several legal basis (for instance, the MAC and DTC), it is possible to make reference to these legal basis in the EOI request.**

- ✓ **Identification of the EOI request and of the Requesting CA:**
 - **Reference number of the request, date and country name.**
 - **Name, phone number, and email of the Competent Authority.**
 - **Signature of the Competent Authority.**



Content – Taxpayer(s) identity

✓ Identity of the person(s) under investigation or examination:

- Name and Surname, or corporate name
- Address
- TIN / Company register number
- Family status, if relevant

Note : the identification of the person concerned may be made by means other than the name (for instance, by the address or by a bank account number). This will also allow group requests.



Content – Information holder



- ✓ Grounds for believing that the requested information is held in the requested jurisdiction or is within the possession or control of a person within its jurisdiction.

- ✓ Identity of any person believed to be in possession of the information requested (to the extent known). Could be provided for instance:

- Name, Surname, or corporate name
- Address
- TIN / Company register number
- Family status, if relevant
- Email, phone number, etc.



Content - Urgency and/or notification refrain

URGENT



- ✓ If the reply is urgent, indicate the reason (court case, statute of limitation, etc.) and the date, if any, after which information would no longer be useful.

- ✓ Indicate if there are reasons to refrain from notifying the taxpayer(s) involved. In that case, provide sufficient grounds to demonstrate that:
 - The request is of a very urgent nature; or
 - The notification is likely to undermine the chance of success of the investigation.

Content - Statements



✓ Statements that:

- the request is in conformity with the law and administrative practices of the applicant country and is further in conformity with the agreement on the basis of which it is made;
- the requested information would be obtainable under its laws and the normal course of its administrative practice in similar circumstances.

✓ A statement that the requesting jurisdiction has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

✓ Any attachment that could help the requested CA:

- Charts or other documents illustrating the relationships between the persons concerned.
- Copies of documents (invoice, delivery notes, etc.).

Content - Information requested

last but not least

a clear exposition of

the requested information!

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How should an EOI request be formulated?

Ensure the clarity of your EOI request

Avoid to the extent possible requests for clarification from the requested jurisdictions

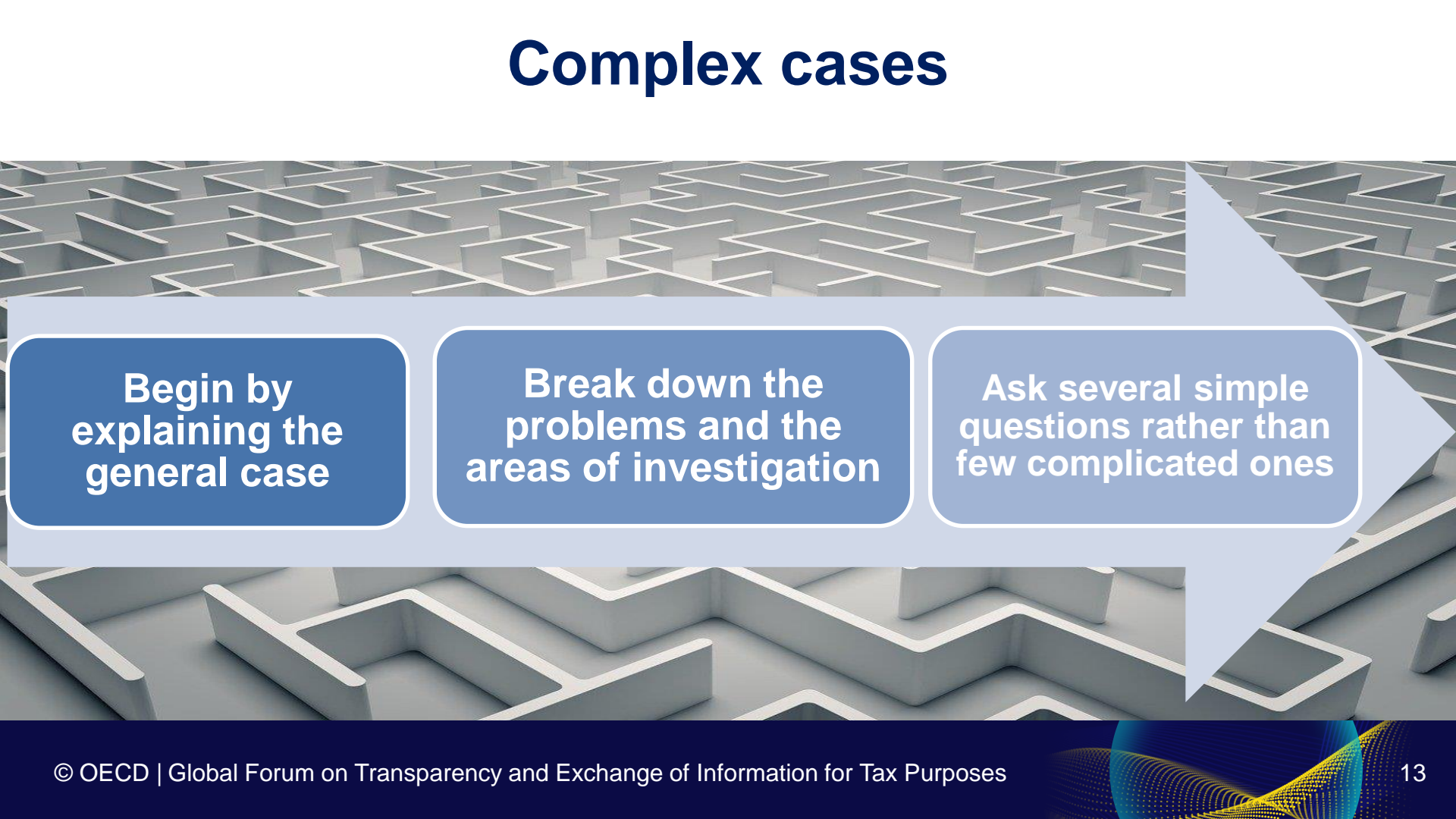
- **Use standard terms: Financial year** rather than Assessment year.
- **Explain any domestic terms used.**
- **Explain the provisions of domestic tax laws if not obvious.**
 - *Reproduce any relevant section(s)*
 - *Explain of the contextual background*
 - *Information only for periods covered by the Agreement*



Demonstration of foreseeable relevance

- Requesting country:
 - Understanding of the International Standards by auditors.
 - Understanding of the Domestic Laws of the requested country by the auditors.
- Requested country:
 - Interpretation of the International Standards by the CA.
 - Understanding of the Domestic Laws of the requesting country.

Complex cases



**Begin by
explaining the
general case**

**Break down the
problems and the
areas of investigation**

**Ask several simple
questions rather than
few complicated ones**

Documents to be enclosed

Enclose relevant documents to help the CA and auditors of the requested country understand and process the request.

- Examples:
 - Relevant documents provided by the taxpayer during investigation.
 - Account statement or invoices that need to be reconciled.
 - Documents purportedly issued by authorities of the requested country.

Use of standardised templates

It might be a domestic requirement:
Do you have an internal template?

Otherwise, you can
also refer to the
OECD Model template
for EOIR under TIEAs

Model Template 1

Template for an EOIR Request

[This model template was developed by OECD's Working Party 10 as a standard form template for requests for information under TIEAs. Alternatively, where a jurisdiction has developed its own template it may prefer to include it here]

The completed form constitutes a confidential communication between the relevant competent authorities.

1.	To: ¹		
2.	From: ²		
3.	Contact point ³	Name:	
		Email:	
		Telephone:	
		Fax:	
		Language skills:	
4.	Legal Basis:		
5.	Reference numbers and related matters	Reference number: ⁴	
		Initial request:	Please check the box: <input type="checkbox"/> Yes <input type="checkbox"/> No If no, please provide reference number(s) and date(s) of any related request(s):
		Acknowledgement needed:	Please check the box: <input type="checkbox"/> Yes <input type="checkbox"/> No
		Number of attachments to the request:	
		Total number of pages for all attachments:	

Don't Forget

- Powers and procedures vary; don't assume all tax administrations are the same.
- Taxpayer rights (notification/appeal) differ from country to country.
- If you don't want the taxpayer to be notified of the request, explain why.
- If information gathering powers have to be exercised this normally takes time – take this into account.

Don't Forget (2)

- If you need information by a certain date make sure you specify the date and explain why.
- Consider exchange as early as possible in the audit process, not the day before a court case.
- If you need information in a particular form (e.g. certified copy, etc.), specify the form and explain why.
- Declarations required by your treaty partner.
- Signature, use request template if prescribed by your treaty partner.

Ask the right questions

Questions have to be explicit and unequivocal.

You can generally expect that partner jurisdictions will answer exactly to the questions you ask – no more, no less.



Ask **ONLY** the right questions

Questions have to be specific.

Ask only questions that are (foreseeably) relevant for your investigation and consistent with what you explained in the background information.



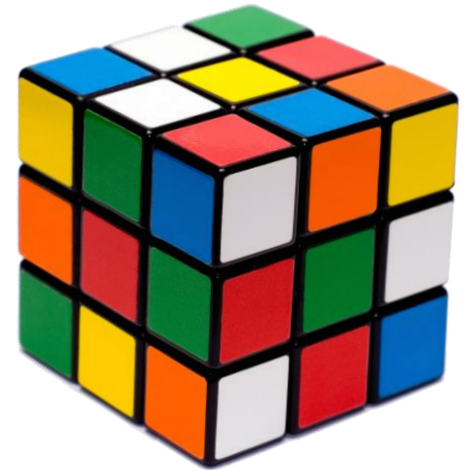
Ask **ONLY** the right questions

- Do not ask for “*all financial transactions and business transactions X and Y*”.
- Restrict your questions to the relevant transactions between specific entities and for specific periods of time.



Ask the right questions

- Many exchanges may be straightforward but in large or complex cases effort in tailoring the request is needed to ensure you get what you want.
- Work your way into the more complex questions providing sufficient context and background first: don't get lost in non-essential details.



Examples of questions (1)

- Is Company C required to file financial statements for tax purposes in your country, and if so for what periods has it done so? If not, on what grounds?
- **Better:** Please provide copies of financial statements and income tax returns that company C has filed in the relevant period.
- **Even better:** Please provide copies of the financial statements, tax returns, accounts or other forms filed or submitted by Company C and any related correspondence for the period 1 January 2017 to 31 December 2019.

Examples of questions 2

- Copies of all bank account opening forms or forms showing signatories for all accounts held in Mrs Y's name in Bank B including account numbers 123 and 345.
- **Better: (...)** + in her sole name or jointly with others.
- **Even better: (...)** + **or to which Mrs Y is a signatory.**

What other information you consider might be relevant?

Send an EOI requests to the right place

Transactions may be linked to more than one jurisdiction

Jurisdiction of
registration

Jurisdiction of **active
business**

Jurisdiction of
**residence of the
directors**

Jurisdiction **where the
funds are remitted**



Different types of information might available in different jurisdictions

Tax purpose for seeking information

Commonly encountered issues:

- Overly brief request – insufficient description to show why information is needed (e.g. Merely a phrase that says “*income tax investigation*”).
- Overly detailed case description that does not touch on why the information requested is necessary in the first place.
- Information requested does not match what seems to be required by the description of the transactions or arrangements being investigated.
- No connection or link is provided.

Communication is key

Effective communication between the auditor and CA:

- Ensure a good balance in the EOI process between quickness and control.
- E-communication channels: consider infrastructure and confidentiality.
- Quick exchange of clarifications.

Effective communication between Competent Authorities:

- Information delayed is information denied.
- Communication by e-mail: speed vs confidentiality,
- In complex cases exchanging paper may not be enough – talk before you exchange.
- Other Competent Authorities may use a specific request format.

What the peer reviews show

In some peer review reports the level of clarifications requested has been high. Reasons included:

- Whether request civil or criminal not specified.
- Period of request not specified.
- Mandatory statements (e.g. in relation to reciprocity), not provided.
- Information requested unclear or too wide (foreseeable relevance).

What the peer reviews show

There is a correlation between the quality of the request and the quality of the response

Good quality requests

greater chances of

timely and high quality responses

Bad quality requests

greater chances of

not meeting the requirements or bad responses

Do not expect



Opinions / judgements

Comparability analysis

Trade or commercial secret information

Information that you cannot get under your domestic laws

Feedback

- You are encouraged to provide feedback to your competent authority so that the usefulness/quality of the information provided can be determined and so feedback can be provided to the partner country.
- Feedback would general include details on the use and the usefulness of the information, of any tax evasion methods or non compliance behaviour identified as a result of the information, of any additional tax revenue raised as a result of the request, the usefulness of the information, and any tax evasion methods detected.
- **Be constructive.**



Summary

Provide a
clear
motivation

Ask **and**
specific
questions

Take into
account the
time to
process the
request

Communi-
cate effectively
with your CA

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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>