



UPDATE TO THE COMMENTARY ON ARTICLE 26 OF THE OECD MODEL TAX CONVENTION

Approved by the OECD Council on 19 February 2024

UPDATE TO THE COMMENTARY ON ARTICLE 26 OF THE OECD MODEL TAX CONVENTION ON INCOME AND ON CAPITAL

Approved by the OECD Council on 19 February 2024

[Changes to the existing text of the Model Tax Convention appear in ***bold italics*** for additions and ~~strikethrough~~ for deletions]

COMMENTARY ON ARTICLE 26 CONCERNING THE EXCHANGE OF INFORMATION

Replace paragraphs 11 and 12 of the Commentary on Article 26 by the following:

11. Reciprocal assistance between tax administrations is feasible only if each administration is assured that the other administration will treat with proper confidence the information which it will receive in the course of their co-operation. The confidentiality rules of paragraph 2 apply to all types of information received under paragraph 1, including both information provided in a request and information transmitted in response to a request. Hence, the confidentiality rules cover, for instance, competent authority letters, including the letter requesting information. At the same time, it is understood that the requested State can disclose the minimum information contained in a competent authority letter (but not the letter itself) necessary for the requested State to be able to obtain or provide the requested information to the requesting State, without frustrating the efforts of the requesting State. If, however, court proceedings or the like under the domestic laws of the requested State necessitate the disclosure of the competent authority letter itself, the competent authority of the requested State may disclose such a letter unless the requesting State otherwise specifies. ***The confidentiality rules also apply to reflective non-taxpayer specific information (i.e. information about or generated on the basis of the information that was received by a Contracting State through the exchange of information such as, statistical data, as well as non-taxpayer specific notes, summaries, and memoranda incorporating exchanged information). However, such reflective non-taxpayer specific information may be disclosed to third parties if the information does not, directly or indirectly, reveal the identity of one or more taxpayers and the sending and receiving States have consulted with each other and it is concluded that the disclosure and use of such information would not impair tax administration in either the sending or the receiving State. It is understood that there should be a written record of this consultation and its outcome. Consistent with established practice, this consultation and conclusion (and the written record of such consultation and conclusion) can also be achieved in the multilateral context, where the disclosure and use are foreseen in a multilateral process, such as a peer review methodology.*** The maintenance of secrecy in the receiving Contracting State is a matter of domestic laws. It is therefore provided in paragraph 2 that information communicated under the provisions of the Convention shall be treated as secret in the receiving State in the same manner as information obtained under the domestic laws of that State. Sanctions for the violation of such secrecy in that State will be governed by the administrative and penal laws of that State. In situations in which the requested State determines that the requesting State does not comply with its duties regarding the confidentiality of the information exchanged under this Article, the requested State may suspend assistance under this Article until such time as proper assurance is given by the requesting State that those duties will indeed be respected. If necessary, the competent authorities may enter into specific arrangements or memoranda of understanding regarding the confidentiality of the information exchanged under this Article.

12. Subject to paragraphs 12.3 and 12.4, the information obtained may be disclosed only to persons and authorities involved in the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes with respect to which information may be exchanged according to the first sentence of paragraph 1, or the oversight of the above. This means that the information *(whether obtained with respect to one or multiple taxpayers)* may also be communicated to the taxpayer (or his proxy) *to the extent that such information has a bearing on the outcome of a tax matter concerning such taxpayer*, or to the witnesses. *As an example, in the context of an exchange of information that contains information with respect to multiple taxpayers, the principle set out in the preceding sentence means that a taxpayer is a “person concerned” only to the extent that the information has a bearing on the outcome of a tax matter concerning that particular taxpayer.* ~~This also means that~~ Information can *also* be disclosed to governmental or judicial authorities charged with deciding whether such information should be released to the taxpayer, his proxy or to the witnesses. The information received by a Contracting State may be used by such persons or authorities only for the purposes mentioned in paragraph 2. *Such use is not limited to the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in paragraph 1 in respect of the person or persons for which the information was received, but also includes the use for such purposes in respect of any other person. The receiving Contracting State is not required to inform or to request authorisation from the sending Contracting State regarding such use. Except as provided in paragraph 11* Furthermore, information covered by paragraph 1, whether taxpayer-specific or not, should not be disclosed to persons or authorities not mentioned in paragraph 2, regardless of domestic information disclosure laws such as freedom of information or other legislation that allows greater access to governmental documents.