

# **OECD Model Agreement on Exchange of Information on Tax Matters (2002)**

## **MULTILATERAL VERSION**

**The Parties to this Agreement, desiring to facilitate the exchange of information with respect to taxes have agreed as follows:**

## **BILATERAL VERSION**

**The government of \_\_\_\_\_ and the government of \_\_\_\_\_, desiring to facilitate the exchange of information with respect to taxes have agreed as follows:**

### **Article 1**

#### **OBJECT AND SCOPE OF THE AGREEMENT**

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

### **Article 2**

#### **JURISDICTION**

A Requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

**Article 3**  
**TAXES COVERED**  
**MULTILATERAL VERSION**

1. This Agreement shall apply:
  - a) to the following taxes imposed by or on behalf of a Contracting Party:
    - i) taxes on income or profits;
    - ii) taxes on capital;
    - iii) taxes on net wealth;
    - iv) estate, inheritance or gift taxes;
  - b) to the taxes in categories referred to in subparagraph a) above, which are imposed by or on behalf of political sub-divisions or local authorities of the Contracting Parties if listed in the instrument of ratification, acceptance or approval.
2. The Contracting Parties, in their instruments of ratification, acceptance or approval, may agree that the Agreement shall also apply to indirect taxes.
3. This Agreement shall also apply to any identical taxes imposed after the date of entry into force of the Agreement in addition to or in place of the existing taxes. This Agreement shall also apply to any substantially similar taxes imposed after the date of entry into force of the Agreement in addition to or in place of the existing taxes if the competent authorities of the Contracting Parties so agree. Furthermore, the taxes covered may be expanded or modified by mutual agreement of the Contracting Parties in the form of an exchange of letters. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

**BILATERAL VERSION**

1. The taxes which are the subject of this Agreement are:
  - a) in country A, \_\_\_\_\_;
  - b) in country B, \_\_\_\_\_.
2. This Agreement shall also apply to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. This Agreement shall also apply to any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the competent authorities of the Contracting Parties so agree. Furthermore, the taxes covered may be expanded or modified by mutual agreement of the Contracting Parties in the form of an exchange of letters. The competent authorities of the Contracting Parties shall notify each

other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

## Article 4

### DEFINITIONS

#### MULTILATERAL VERSION

1. For the purposes of this Agreement, unless otherwise defined:
  - a) the term “Contracting Party” means any party that has deposited an instrument of ratification, acceptance or approval with the depositary;
  - b) the term “competent authority” means the authorities designated by a Contracting Party in its instrument of acceptance, ratification or approval;
  - c) the term “person” includes an individual, a company and any other body of persons;
  - d) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - e) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
  - f) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
  - g) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
  - h) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
  - i) the term “tax” means any tax to which the Agreement applies;
  - j) the term “applicant Party” means the Contracting Party requesting information;

- k) the term “requested Party” means the Contracting Party requested to provide information;
  - l) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
  - m) the term “information” means any fact, statement or record in any form whatever;
  - n) the term “depository” means the Secretary-General of the Organisation for Economic Co-operation and Development;
  - o) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party;
  - p) the term “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes.
2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

### **BILATERAL VERSION**

1. For the purposes of this Agreement, unless otherwise defined:
- a) the term “Contracting Party” means country A or country B as the context requires;
  - b) the term “competent authority” means
    - i) in the case of Country A, \_\_\_\_\_;
    - ii) in the case of Country B, \_\_\_\_\_;
  - c) the term “person” includes an individual, a company and any other body of persons;
  - d) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - e) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;

- f) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
  - g) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
  - h) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
  - i) the term “tax” means any tax to which the Agreement applies;
  - j) the term “applicant Party” means the Contracting Party requesting information;
  - k) the term “requested Party” means the Contracting Party requested to provide information;
  - l) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
  - m) the term “information” means any fact, statement or record in any form whatever;
  - n) This paragraph would not be necessary
  - o) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party;
  - p) the term “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes.
2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

## Article 5

### EXCHANGE OF INFORMATION UPON REQUEST

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party.
2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the applicant Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.
3. If specifically requested by the competent authority of an applicant Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.
4. Each Contracting Party shall ensure that its competent authorities for the purposes specified in Article 1 of the Agreement, have the authority to obtain and provide upon request:
  - a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
  - b) information regarding the ownership of companies, partnerships, trusts, foundations, “Anstalten” and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, this Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.
5. The competent authority of the applicant Party shall provide the following information to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:
  - (a) the identity of the person under examination or investigation;
  - (b) a statement of the information sought including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;

- (c) the tax purpose for which the information is sought;
  - (d) 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;
  - (e) to the extent known, the name and address of any person believed to be in possession of the requested information;
  - (f) a statement that the request is in conformity with the law and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the information under the laws of the applicant Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
  - (g) a statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.
6. The competent authority of the requested Party shall forward the requested information as promptly as possible to the applicant Party. To ensure a prompt response, the competent authority of the requested Party shall:
- a) Confirm receipt of a request in writing to the competent authority of the applicant Party and shall notify the competent authority of the applicant Party of deficiencies in the request, if any, within 60 days of the receipt of the request.
  - b) If the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

## Article 6

### TAX EXAMINATIONS ABROAD

#### MULTILATERAL VERSION

1. A Contracting Party may allow representatives of the competent authority of another Contracting Party to enter the territory of the first-mentioned Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the first-mentioned Party of the time and place of the meeting with the individuals concerned.

2. At the request of the competent authority of a Contracting Party, the competent authority of another Contracting Party may allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the
3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

### **BILATERAL VERSION**

1. A Contracting Party may allow representatives of the competent authority of the other Contracting Party to enter the territory of the first-mentioned Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the first-mentioned Party of the time and place of the meeting with the individuals concerned.
2. At the request of the competent authority of one Contracting Party, the competent authority of the other Contracting Party may allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax<sup>9</sup> second-mentioned Party. examination in the second-mentioned Party.
3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

## **Article 7**

### **POSSIBILITY OF DECLINING A REQUEST**

1. The requested Party shall not be required to obtain or provide information that the applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.



2. The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.
3. The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:
  - (a) produced for the purposes of seeking or providing legal advice or
  - (b) produced for the purposes of use in existing or contemplated legal proceedings.
4. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (*ordre public*).
5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.
6. The requested Party may decline a request for information if the information is requested by the applicant Party to administer or enforce a provision of the tax law of the applicant Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the applicant Party in the same circumstances.

## Article 8

### CONFIDENTIALITY

Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party.

**Article 9****COSTS**

Incidence of costs incurred in providing assistance shall be agreed by the Contracting Parties.

**Article 10****IMPLEMENTATION LEGISLATION**

The Contracting Parties shall enact any legislation necessary to comply with, and give effect to, the terms of the Agreement.

**Article 11****LANGUAGE****MULTILATERAL VERSION**

Requests for assistance and answers thereto shall be drawn up in English, French or any other language agreed bilaterally between the competent authorities of the Contracting Parties under Article 13.

**BILATERAL VERSION**

This article may not be required.

**Article 12****OTHER INTERNATIONAL AGREEMENTS OR ARRANGEMENTS****MULTILATERAL VERSION**

The possibilities of assistance provided by this Agreement do not limit, nor are they limited by, those contained in existing international agreements or other arrangements between the Contracting Parties which relate to co-operation in tax matters.

**BILATERAL VERSION**

This article may not be required.

**Article 13****MUTUAL AGREEMENT PROCEDURE****MULTILATERAL VERSION**

1. Where difficulties or doubts arise between two or more Contracting Parties regarding the implementation or interpretation of the Agreement, the

competent authorities of those Contracting Parties shall endeavour to resolve the matter by mutual agreement.

2. In addition to the agreements referred to in paragraph 1, the competent authorities of two or more Contracting Parties may mutually agree:
  - a) on the procedures to be used under Articles 5 and 6;
  - b) on the language to be used in making and responding to requests in accordance with Article 11.
3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.
4. Any agreement between the competent authorities of two or more Contracting Parties shall be effective only between those Contracting Parties.
5. The Contracting Parties may also agree on other forms of dispute resolution.

#### **BILATERAL VERSION**

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of the Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.
2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5 and 6.
3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.
4. The paragraph would not be necessary.
5. The Contracting Parties may also agree on other forms of dispute resolution.

#### **Article 14**

#### **DEPOSITARY'S FUNCTIONS**

#### **MULTILATERAL VERSION**

1. The depositary shall notify all Contracting Parties of:
  - a. the deposit of any instrument of ratification, acceptance or approval of this Agreement;
  - b. any date of entry into force of this Agreement in accordance with the provisions of Article 15;
  - c. any notification of termination of this Agreement;

- d. any other act or notification relating to this Agreement.
2. At the request of one or more of the competent authorities of the Contracting Parties, the depositary may convene a meeting of the competent authorities or their representatives, to discuss significant matters related to interpretation or implementation of the Agreement.

### **BILATERAL VERSION**

The article would be unnecessary

### **Article 15**

### **ENTRY INTO FORCE**

### **MULTILATERAL VERSION**

1. This Agreement is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be submitted to the depositary of this Agreement.
2. Each Contracting Party shall specify in its instrument of ratification, acceptance or approval vis-à-vis which other party it wishes to be bound by this Agreement. The Agreement shall enter into force only between Contracting Parties that specify each other in their respective instruments of ratification, acceptance or approval.
3. This Agreement shall enter into force on 1 January 2004 with respect to exchange of information for criminal tax matters. The Agreement shall enter into force on 1 January 2006 with respect to all other matters covered in Article 1.

For each party depositing an instrument after such entry into force, the Agreement shall enter into force on the 30th day following the deposit of both instruments.

4. Unless an earlier date is agreed by the Contracting Parties, the provisions of this Agreement shall have effect
  - with respect to criminal tax matters for tax able periods beginning on or after 1 January 2004 or, where there is no taxable period, for all charges to tax arising on or after 1 January 2004;
  - with respect to all other matters described in Article 1 for all taxable periods beginning on or after January 1 2006 or, where there is no taxable period, for all charges to tax arising on or after 1 January 2006.

In cases addressed in the third sentence of paragraph 3, the Agreement shall take effect for all taxable periods beginning on or after the sixtieth day following entry into force, or where there is no taxable period for all charges to tax arising on or after the sixtieth day following entry into force.

**BILATERAL VERSION**

1. This Agreement is subject to ratification, acceptance or approval by the Contracting Parties, in accordance with their respective laws. Instruments of ratification, acceptance or approval shall be exchanged as soon as possible.
2. This Agreement shall enter into force on 1 January 2004 with respect to exchange of information for criminal tax matters. The Agreement shall enter into force on 1 January 2006 with respect to all other matters covered in Article 1.
3. The provisions of this Agreement shall have effect:
  - with respect to criminal tax matters for taxable periods beginning on or after 1 January 2004 or, where there is no taxable period, for all charges to tax arising on or after 1 January 2004;
  - with respect to all other matters described in Article 1 for all taxable periods beginning on or after January 1 2006 or, where there is no taxable period, for all charges to tax arising on or after 1 January 2006.

**Article 16****TERMINATION****MULTILATERAL VERSION**

1. Any Contracting Party may terminate this Agreement vis-à-vis any other Contracting Party by serving a notice of termination either through diplomatic channels or by letter to the competent authority of the other Contracting Party. A copy shall be provided to the depositary of the Agreement.
2. Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the depositary.
3. Any Contracting Party that terminates the Agreement shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

**BILATERAL VERSION**

1. Either Contracting Party may terminate the Agreement by serving a notice of termination either through diplomatic channels or by letter to the competent authority of the other Contracting Party.
2. Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of notice of termination by the other Contracting Party.

3. A Contracting Party that terminates the Agreement shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement. In witness whereof, the undersigned, being duly authorised thereto, have signed the Agreement.