

Central Board of Direct Taxes
Foreign Tax and Tax Research Division

Manual on Exchange of Information



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CHAPTER – I: INTRODUCTION

1.1 With increased globalisation and liberalisation of national economies and removal/relaxation of control of foreign investments/foreign exchange, there has been manifold increase in cross-border transactions. This has had a positive impact on the Indian economy which has witnessed unprecedented growth in the recent years. However, this has also provided new opportunities for tax avoidance and evasion by some taxpayers having worldwide operations. While the taxpayers in such cases operate globally, the tax administrators remain confined to their respective jurisdictions and accordingly they may not get information available in other jurisdictions since taxation is a sovereign function of the State and manner to collect information is restricted to the State. Thus, to effectively tackle the tax evasion/avoidance adopted by the taxpayers and for proper administration and enforcement of domestic laws, it is imperative that the tax administrators co-operate with each other through sharing of information available with them. Such international co-operation in tax matters is done through exchange of information mechanism available in the Double Taxation Avoidance Agreements (DTAAs), Tax Information Exchange Agreements (TIEAs) and Multilateral Agreements for Exchanging Information.

1.2 The need for effective co-operation amongst jurisdictions with consequent defensive measures against non-cooperative offshore jurisdictions was felt even more after the 2008 global financial crisis in order to tax revenues through co-ordinated global efforts. India has been a strong proponent of transparency and exchange of information for tax purposes and is playing a major role in international forums to exert pressures on countries that do not confirm to the international standards of transparency. These global efforts have resulted in many countries/jurisdictions coming on board and they are now willing to cooperate with other jurisdictions for exchanging information as per internationally agreed standards.

1.3 Simultaneously and along with the global efforts, effective steps have been taken in the last three years for creating an appropriate legislative framework for receiving and effectively utilizing of the information received from foreign jurisdictions. These steps include renegotiating the existing DTAAs to update the provisions on exchange of information to the internationally agreed standards including enabling India to receive banking information (e.g. with Switzerland), entering into new DTAAs with provisions on exchange of information as per internationally agreed standards and entering into TIEAs with no tax or low tax jurisdictions (e.g. with Cayman Islands, British Virgin Islands etc.). A number of legislative changes has also been

carried out in the last two years including extension of time limit for completing assessments by one year if enquiry is made from a foreign jurisdiction, extension of time limit for reopening cases to sixteen years where income is in relation to any asset located outside that has escaped assessment, reporting mechanism for submission of details of foreign bank accounts, financial interests, immovable properties or other assets outside India, enabling provisions (section 94A) for notifying non-cooperative jurisdictions if the said jurisdiction does not effectively exchange information with India etc. Administrative measures such as strengthening of the Foreign Tax and Tax Research Division in the CBDT and creation of a dedicated Exchange of Information Cell have also been taken.

1.4 Although exchange of information provisions existed with some of India's important treaty partners for long, these provisions have not always been utilized effectively. Even after the recent efforts as outlined above, the Investigating Officers are not making many requests, primarily because they are not fully aware of the provisions. This is evident from the fact that the total numbers of requests received from field authorities were 39, 46, 92 and 386 during the F.Y. 2008-09, 2009-2010, 2010-11 and 2011-12 respectively. This issue was also discussed during the Conference of Chief Commissioners and Director Generals of Income Tax in June, 2012, and it was decided to bring Manual to explain the provisions of the Exchange of Information and provide guidance to the Investigating Officers for making requests to a foreign country. This Manual on Exchange of Information has been prepared in accordance with the above decision and also covers, in brief, other forms of administrative assistance under India's tax treaties. The officers in the field formation are requested to provide feedback, which will be used for bringing out a revised and improved version of the Manual in due course.

1.5 The content of this Manual on Exchange of Information has been organized in the following manner. After Introduction in the present Chapter, the legislative framework of Exchange of Information and other forms of Administrative Assistance under India's DTAA's and TIEAs have been explained in Chapter-II. Chapter-III provides the guidelines and the Proforma which the field formations should follow while making any specific request from foreign tax administrators. Chapter-IV provides the guidelines to be followed in case a request is received from abroad, which is equally important as all the tax treaties are bilateral and if India want to continue receiving assistance India must provide assistance to them timely and efficiently. Chapter-V provides the guidelines in case of requests made/received under the provisions of Assistance in Collection of Taxes while Chapter-VI discusses

other forms of administrative assistance under the treaties such as Automatic and Spontaneous Exchange of Information, Tax Examination Abroad, Simultaneous Examination and Joint Audits. Chapter-VII provides guidelines for utilization of information received from a foreign jurisdiction including providing of regular feedback while in Chapter-VIII, necessity to maintain strict confidentiality in all forms of Exchange of Information is explained.

CHAPTER–II: INSTRUMENTS FOR EXCHANGE OF INFORMATION

2.1 Introduction

2.1.1 India has a wide network of tax treaties for exchange of information and other administrative assistance for tax purposes from a foreign jurisdiction. There are presently eighty-four DTAA's in force. In addition to this, Government has signed the DTAA's with three more countries which will come into force on completion of internal procedures by the other countries. New DTAA's with twelve other countries are at various stages of negotiations.

2.1.2 In addition to DTAA, India has a network of TIEA with nine low/no tax jurisdictions. Three more TIEAs have been signed and will come into force on completion of internal procedures by other jurisdictions. Additionally, negotiations for entering into new TIEAs with thirty-four other jurisdictions are initiated and are at various stages of negotiations.

2.1.3 India has also signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters on 26th January, 2012, which came into force for India on 1st June, 2012. This Convention has been signed by forty-two countries upto 31.10.2012 and has entered into force for 16 countries. The parties to the Convention are obliged to provide administrative assistance to each other with scope wider than DTAA's or TIEAs. Further, the members of the South Asian Association for Regional Cooperation (SAARC) have entered into a limited multilateral agreement with wide scope of providing administrative assistance and training. This SAARC Limited Multilateral Agreement has come into force from 1st April, 2011.

2.1.4 The list of Indian DTAA's/TIEAs as on date are at **Annexure-A**. The texts of these treaties are available on the website www.incometaxindia.gov.in. The list of participating countries to Multilateral Convention on Mutual Administrative Assistance in tax matters are at **Annexure-B**.

2.2 Exchange of Information under DTAA's

2.2.1 The basic legal framework for Exchange of Information under DTAA's is provided in "Article 26:¹Exchange of Information" which obliges the Competent Authorities of the Contracting States to exchange information which is foreseeably relevant for carrying out the provisions of the DTAA's or to the administration and enforcement of the domestic laws concerning taxes of every

¹In some of the DTAA's, the Article number may be different

kind. The text of Article 26 of the OECD Model Tax Convention on Income and on Capital and its Commentary (as updated by OECD on 17th July, 2012)² and Article 26 of the UN Model Double Taxation Convention between Developed and Developing Countries and its Commentary (2011 version)³ are publically available. Article 26 in India's DTAA's is modelled on the basis of the above with some minor differences in individual DTAA's.

2.2.2 In 2005, in the OECD Model Tax Convention, two new paragraphs have been added. The new paragraph 4 provides the obligation to exchange information in situations where the requested information is not needed by the requested State for its domestic tax purposes while the new paragraph 5 stipulates that a Contracting State shall not decline to supply information to a treaty partner solely because the information is held by a bank or other financial institutions. The UN Model Tax Convention also inserted these two paragraphs. India's older DTAA's did not include these two new paragraphs and accordingly, efforts have been made in the last three years to renegotiate old DTAA's to insert these two paragraphs. For example these two paragraphs have been included in recently amended DTAA's with Switzerland and Singapore. However, a majority of countries (including India) are of the view that even without the existence of these two paragraphs, Contracting States are obliged to exchange banking information as well as information without domestic interest. However, some of the countries had reservation in exchanging such information without specific paragraphs 4 and 5 in the Article. India has already renegotiated the article concerning exchange of information with most of such countries to specifically include these two paragraphs. Thus, even if in the existing DTAA, paragraphs 4 and 5 are not present, it should not deter the tax authorities to make a request for banking information from India's treaty partners.

2.2.3 Paragraph 4 deals with the obligation to exchange information in situations where the requested information is not needed by the requested State for its domestic tax purposes but is subject to the limitations of paragraph 3 (which are for instance supplying information which is not obtainable under the laws or in the normal course of administration of the requested State). However, it also provides that such limitations cannot be construed to form the basis for declining to supply information where a country's laws or practices include a domestic tax interest requirement.

²[http://www.oecd.org/ctp/exchangeofinformation/latestdocuments/120718_Article%2026-ENG_no%20cover%20\(2\).pdf](http://www.oecd.org/ctp/exchangeofinformation/latestdocuments/120718_Article%2026-ENG_no%20cover%20(2).pdf)

³http://www.un.org/esa/ffd/documents/UN_Model_2011_Update.pdf

2.2.4 Paragraph 5 is introduced to ensure that the limitations of paragraph 3 cannot be used to prevent the exchange of information held by banks, other financial institutions, nominees, agents and fiduciaries as well as ownership information. Paragraph 5 stipulates that a Contracting State shall not decline to supply information to a treaty partner solely because the information is held by a bank or other financial institution. Paragraph 5 also provides that a Contracting State shall not decline to supply information solely because the information is held by persons acting in an agency or fiduciary capacity.

2.2.5 Both the OECD and UN Model provide that information exchanged under a treaty should be kept confidential and should be used only for tax purposes. The July 2012 update to Article 26 of the OECD Model Tax Convention has amended model paragraph 2 expanding its scope which provides that the information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorizes such use. Since as a matter of policy, India prefers that exchanged information may be shared with other Government agencies, in all new DTAAAs as also renegotiated DTAAAs, this sentence or similar sentence are being included, which essentially means that most of the new DTAAAs as well as renegotiated DTAAAs have provisions which allow sharing of information with other law enforcement agencies with the authorization of the supplying State. This also stipulates that information received under the provisions of DTAAAs/TIEAs cannot be shared with other agencies unless India's treaty partner specifically authorizes such sharing.

2.2.6 The July 2012 update of the OECD Model Convention has clarified that a group request for information can also be made under Article 26. Thus, it would be possible to request information on a group of taxpayers, without naming them individually, as long as the request is not a "fishing expedition." A group request may fall outside the "fishing expedition" exclusion if the request contains a detailed description of the group and the specific facts and circumstances that have led to the request, an explanation of the applicable law and while there is a reason to believe that the taxpayers in the group have been non-compliant with that law, supported by a clear factual basis.

2.2.7 Para 9 of the Commentary to Article 26 of OECD Model Tax Convention states that information may be exchanged in three ways, that is, on request, on automatic basis and spontaneously. Most of India's treaty partners accept the above view and exchange or willing to exchange information on automatic basis and spontaneously. Some of India's other treaty partners, however, have

reservations on exchanging information automatically and Government is making efforts both at bilateral levels and on global forums to make the exchange of information on automatic basis as part of the global standards.

2.2.8 Para 9.1 of the Commentary to Article 26 of OECD Model Tax Convention provides that the Contracting States may use other techniques to exchange information such as simultaneous examination, tax examination abroad and industry-wise exchange of information. In some of India's DTAA provisions relating to tax examination abroad have been included. However, even in DTAA where this specific provision is not included, it is expected that most of India's treaty partners will agree to "tax examination abroad" which allows for possibilities to obtain information in the presence of representatives of the competent authorities of the requesting State in light of OECD Commentary. This provision is subject to domestic law of the country to whom such a request is made.

2.2.7 "Article 27⁴: Assistance in the Collection of Taxes" obliges the Contracting States to lend assistance to each other in the collection of outstanding tax claim/demand. Although this Article has been added for the first time in OECD Model Tax Convention in 2003, in many of India's old DTAA, this provision was already there. The underlying philosophy of this provision is that while the taxpayers have assets abroad, tax authorities generally cannot go beyond their borders to take action to collect taxes and thus these provisions provide a legal basis for collecting taxes by them beyond the boundaries of their country with the assistance of other countries. As of now, the Article on Assistance in Tax Collection is present in 32 of India's 84 DTAA, which are Estonia, Lithuania, Norway, Botswana, Romania, Denmark, Poland, Turkmenistan, Kazakhstan, Sweden, South Africa, Belarus, Trinidad and Tobago, Jordan, Czech Republic, Morocco, Portuguese Republic, Belgium, Kyrgyz Republic, Bangladesh, Ukraine, Uganda, Sudan, Armenia, Iceland, Tajikistan, Luxembourg, Qatar, Mexico, Uruguay, Mozambique and Georgia.

2.2.8 It may, however, be noted that while the matter of administrative assistance for the purposes of tax collection is dealt with in Article 27, exchange of information for the purposes of tax collection are governed by Article 26.

2.3 Tax Information Exchange Agreements

2.3.1 The basic legal framework for Exchange of Information under TIEAs is provided in "Article 5: Exchange of Information Upon Request", which obliges

⁴In some of the DTAA, the Article number may be different

the competent authority of the requested Party to provide information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by the Agreement. India's TIEAs are based on the 2002 Model Agreement on Exchange of Information on Tax Matters developed by the OECD Global Forum Working Group on Effective Exchange of Information with certain variations. This Model Agreement and its Commentary is publically available⁵.

2.3.2 The TIEAs only cover exchange of information on request, i.e., when the information requested relates to a particular examination, inquiry or investigation, and does not cover automatic or spontaneous exchange of information. The requested Party, however, is obliged to provide banking information and information without domestic interest. The information received under the TIEAs may be disclosed to other authorities with the written consent of the competent authority of the requested Party. The TIEAs also have provisions for Tax Examination Abroad.

2.4 SAARC Multilateral Agreement

The SAARC (South Asian Association for Regional Cooperation) Member States have signed a Limited Multilateral Agreement on Avoidance of Double Taxation and Mutual Administrative Assistance in tax matters on 13th November, 2005 during the 13th SAARC Summit at Dhaka on 12th – 13th November, 2005. The SAARC Member States i.e. India, Pakistan, Bangladesh, Nepal, Bhutan, Sri Lanka and Maldives are signatories to this Agreement. Subsequently in 2007, Afghanistan also joined the Association. This Agreement mainly envisages cooperation between the Member States in the following matters:

- Exchange of Information;
- Assistance in collection of taxes;
- Service of documents;
- Training of tax administrators;
- Sharing of tax policy.

After completion of internal procedure, the agreement came into effect from 1st April, 2011. A copy of the agreement is available on the Internet⁶

⁵<http://www.oecd.org/ctp/exchangeofinformation/2082215.pdf>

⁶<http://www.saarc-sec.org/userfiles/Various%20Publications,%20Agreements,MOUs,%20%20Conventions.%20Charters/PUBLICATIONS/Taxation%20Agreement/pdf/Final%20Agreement%20on%20Avoidance%20of%20Double%20Taxation%20%20.pdf>

2.5 Multilateral Convention on Mutual Administrative Assistance in Tax Matters

2.5.1 India has signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters on 26th January, 2012, which has become effective for India from 1st June, 2012. This Multilateral Convention was developed jointly by the European Council and the OECD in 1998. It was revised on 1st June, 2011. In response to the call of G20 countries for a global instrument to fight international tax evasion and avoidance, the Convention was opened for signature of other countries also. India is the first country outside the block of OECD and European Council to ratify this Multilateral Convention. As on 31.10.2012, 42 countries have signed the Convention and for 16 countries, it has entered into force. Some of the countries, such as Ghana and Tunisia, which have signed the Multilateral Convention, do not have DTAA/TIEA with India and thus the Multilateral Convention extends India's treaty network for the purposes of Exchange of Information.

2.5.2 The Parties to the Convention are obliged to provide wide range of administrative assistance to each other subject to the reservations made by them, if any. These include exchange of information on request, automatic exchange of information, spontaneous exchange of information, simultaneous tax examinations, tax examination abroad, assistance in recovery, service of documents etc. Thus, the Multilateral Convention provides an additional instrument for receiving administrative assistance from foreign jurisdictions having scope wider than DTAAs and TIEAs. The text of the Multilateral Convention may be seen on the Internet⁷. The list of countries that have signed and ratified this Convention as on 30.11.2012 is enclosed as **Annexure-B**. The list of declarations, reservations and other communications made by Parties to the Convention is also publically available.⁸

2.6 Selection of the Legal Instrument for Requesting the Assistance

While making a reference, the legal instruments available for the exchange of information or other forms of administrative assistance must be selected carefully. It is quite possible that we have more than one legal instrument with a particular country providing for the mechanism for administrative assistance.

⁷ <http://www.oecd.org/ctp/exchangeofinformation/48980598.pdf>

⁸ <http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=127&CV=1&NA=&PO=999&CN=999&VL=1&CM=9&CL=ENG>

However, a particular administrative assistance may be available only in one of those instruments. In such cases, assistance should be sought under the appropriate instrument. For instance, in India's DTAA with some countries, there is no provision for Assistance in Collection of Taxes. However, if India and that country are Parties to the Multilateral Convention, the concerned country will be obliged to provide assistance to us in collection of taxes. In case, if more than one instrument can be used for administrative assistance, the one which is wider in scope should be selected.

2.7 Global Forum Standards on Exchange of Information

2.7.1 The Global Forum on Transparency and Exchange of Information (Global Forum) carries on an in-depth monitoring and peer review of the standards of transparency and exchange of information through tax purposes through a Peer Review Group (PRG) which is chaired by France, and India is one of the vice-chairs of the PRG. Through the process of Peer Review, the extent to which the jurisdictions have implemented the international standards on transparency and exchange of information for tax purposes is examined, and ways and means are suggested by which the deficient jurisdictions can improve and come upto the recognized international standards.

2.7.2 The international standards of Global Forum on transparency, which have basically been developed on the basis of OECD Model Tax Convention and Model TIEA and their commentaries, requires that information must be available in a jurisdiction, competent authorities must have access to the information, and there must be a legal basis for exchanging the information with other countries. These standards have been developed with the underlying concept that exchange of information for tax purposes is effective when reliable information, foreseeably relevant to the tax requirements of a requesting jurisdiction is available, or can be made available, in a timely manner and there are legal mechanisms that enable the information to be obtained and exchanged. Thus, the transparency and exchange of information embraces three basic components

- availability of information e.g. with tax authorities, public registries, money laundering authorities, banks etc.
- appropriate access to the information by way of legislative and administrative powers in the hands of the authorities
- the existence of exchange of information mechanisms by way of DTAA/TIEAs etc.

2.7.3 If any of these three elements are missing, information exchange will not be effective and jurisdictions will not be able to enforce their own laws

effectively. For the purposes of assessing jurisdictions' implementation of these standards a two stage peer review process has been established. Phase 1 of the peer review process examines jurisdictions' legal and regulatory framework for exchange of information, while in the Phase 2 of the peer review process the implementation of the standards in practice is assessed. These reviews are carried out on the basis of the "Terms of Reference" which describes the international standards on transparency and exchange of information for tax purposes as developed by Global Forum and breaks them down into ten essential elements to be assessed through monitoring and review process. Copy of these Terms of Reference is enclosed as **Annexure-C**.

INTERNATIONALLY AGREED STANDARD ON EXCHANGE OF INFORMATION

The standard on transparency and exchange of information for tax purposes provides for exchange on request of foreseeable relevant information for the administration or enforcement of the domestic tax laws of a requesting party. Fishing expeditions are not authorized but all foreseeably relevant information must be provided, including bank information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality principle. The three components of internationally agreed standards of transparency and exchange of information for tax purposes are

- **Availability** of information, particularly accounting, bank and ownership information;
- **Access** to information and powers to obtain it; and
- **Exchange** of information on request for the administration or enforcement of domestic tax laws, with safeguards to protect taxpayers' rights and confidentiality.

2.7.4 The reports resulting from this Peer Review Process provide an important overview of the legal and regulatory framework of the jurisdiction and the stage of the implementation of the international standards on transparency and exchange of information. The reports may be accessed at the website of Global Forum⁹ and its EOI portal¹⁰. The EOI portal also contains useful information such as DTAA's and TIEAs entered into by various countries.

⁹<http://www.oecd.org/tax/transparency/>

¹⁰<http://eoi-tax.org/>

CHAPTER-III: GUIDELINES FOR MAKING REQUEST FOR EXCHANGE OF INFORMATION

3.1 Introduction – Revised Proforma for Making Requests

A Proforma in which request can be made to a country with which India has entered into a DTAA was prescribed by the CBDT in 2007. In view of the extension of treaty network, changing international standards of information exchange and feedback/clarifications from India's treaty partners, it has been decided to modify the Proforma in which information will be sought by the officers of the field formations. This Proforma is based on the template developed by OECD/Global Forum and is enclosed as **Annexure-D**¹¹ which also contain instructions/guidance in the form of Notes. The Officers in the field formations such as Assessing Officer or the officers of the Investigation Wing or CIT (A) carrying out investigation/enquiry must use this Proforma when they make a request for information from a foreign jurisdiction under the provisions of DTAAs/TIEAs/Multilateral Agreements. This Proforma should be forwarded to the Competent Authority with the signature of the CIT/DIT concerned and should be filled up in duplicate.

3.2 Reference to be Made Through Competent Authority

3.2.1 The DTAAs/TIEAs/Multilateral Agreements provide that the information may be exchanged by the Competent Authorities. Thus, any request to a foreign jurisdiction has to be routed through the Indian Competent Authority who will make a reference to his counterpart in the other country/jurisdiction which eventually, will be passed on to their tax administrators for providing necessary assistance.

3.2.2 The term "Competent Authority" is defined in the DTAAs/TIEAs generally as the Central Government in the Ministry of Finance (Department of Revenue) or their authorized representative or the Finance Minister or his authorized representative. For the purposes of Exchange of Information, Assistance in Tax Collection, Tax Examination Abroad and Service of Documents, the functions of Competent Authority, with the approval of the Finance Minister, is being exercised by the Joint Secretaries to the Government of India in the Department of Revenue as under:

¹¹As per the domestic laws of some of the countries, such as United Kingdom, banking information can be provided only after application to Courts/Tribunals and in these cases, additional information, may need to be provided while making a request, the details of which may be obtained from officers posted in the FT&TR Division.

Countries	Competent Authority
North America (including countries of Central America and Caribbean), Europe and Japan	Joint Secretary (FT&TR-I) Room No. 803, 'C' Wing, Bhikaji Cama Place Hudco Vishala Building, New Delhi – 110066 Phone: +91-11-26108402, FAX: +91-11-26177990
Rest of the World	Joint Secretary (FT&TR-II) Room No. 804, 'C' Wing, Bhikaji Cama Place Hudco Vishala Building, New Delhi – 110066 Phone: +91-11-26104504, FAX: +91-11-26104504

In the Multilateral Convention, the term 'Competent Authority' has been defined to mean the Minister of Finance or his authorised representatives i.e., the Joint Secretary, Foreign Tax and Tax Research Division-I and the Joint Secretary, Foreign Tax and Tax Research Division-II, Department of Revenue, Ministry of Finance. In the SAARC Limited Multilateral Agreement, the term "Competent Authority" has been defined in the schedule III as the Finance Minister or his authorized representative, which is, Joint Secretary, Foreign Tax and Tax Research Division-II, Department of Revenue, Ministry of Finance.

3.2.3 The request to the foreign tax authorities should be made in Proforma mentioned in Para 3.1 which needs to be filled up by the officer making the inquiry or investigation such as the Assessing Officer or CIT (A) or the officers of the Investigation Wing, should be signed by the CIT/DIT concerned, and should be sent to the Competent Authority, with a copy to the Chief Commissioner of Income Tax/Director General of Income Tax concerned.

3.2.4 Section 142(2) of the Income-tax Act, 1961, provides that for the purpose of obtaining full information in respect of the income or loss of any person, the Assessing Officer may make such inquiry as he considers necessary. The Income-tax Act empowers the Assessing Officer to obtain information from the foreign tax authorities under this provision in accordance with the DTAA/TIEAs/Multilateral Agreements entered into by India. Section 142(3) provides that the assessee shall, except where the assessment is made under section 144, be given an opportunity of being heard in respect of any material gathered on the basis of any inquiry under section 142(2) and proposed to be utilised for the purposes of the assessment and thus before making any addition, an opportunity of being heard must be provided to the assessee.

3.2.5 The list of officers with their contact details posted in the office of the Competent Authority is enclosed as per **Annexure-E**. If field officers need any clarification before making the request or during follow up procedures, they

may contact these officers through telephone/email. However, all official communications should be addressed to the Joint Secretary concerned in the FT&TR Division of the CBDT (the Competent Authority under the DTAA/TIEAs/Multilateral Agreements).

3.3 Issues to be Considered while Making a Request for Information from a Foreign Jurisdiction

3.3.1 Introduction: The content of the request made for obtaining the information from foreign tax authorities would depend on the fact of the case and it would not be possible to cover all the issues arising thereon in this Manual. However, some of the issues relevant to content of request are being covered below which should be kept in mind so that the foreign authorities would be able to provide us with the necessary information and without seeking further clarifications from their side, which may lead to avoidable delays. Before making a request, efforts should be made to use all means available in India for obtaining information except where those would give rise to disproportionate difficulties. Further, efforts should also be made to access the information available publically e.g. on Government and non-governmental websites of foreign jurisdictions, commercial databases, etc., before making the request under a bilateral or multilateral agreement.

3.3.2 Proforma for Requested Information: It must be noted that request is made in a prescribed Proforma to the foreign authorities and accordingly all the relevant information mentioned in covering letters, assessment orders etc. must be captured in the Proforma. Thus, the background note, summary of the case, factual analysis etc. should be included in the Proforma and if necessary, Annexures may be added to the Proforma. Since the information sent is treated as confidential by the tax authorities in other jurisdictions, copies of the relevant incriminating documents seized may be enclosed if the same is considered useful for foreign tax administration to facilitate them to obtain the information and also for carrying out their enquiry or investigation.

3.3.3 Separate Proforma for Separate Taxpayers and for Separate Countries: If in a group of cases, inquiry/investigation needs to be done, separate Proforma should be filled up for different taxpayers. Further, separate Proforma needs to be filled up for inquiry/investigation from different countries. Thus, for instance, if three members of a family have received gifts from persons located in three different jurisdictions, the total number of Proformas to be filled in would be nine.

3.3.4 Language of the Request for Information: The information which is sought has to be specific and should be described in greatest detail possible. The language should be simple and easily understandable to foreign tax authorities who may not be aware of India's tax laws and procedures. The questions should be framed in such a manner that it can be answered by the foreign tax authorities directly and the details requested should be specific. Thus, if inquiry relates to gifts from a foreign jurisdiction, the request should not be general (for example asking the foreign authorities to verify the creditworthiness of the donor). Such a request would not be understood by the foreign tax authorities. If the tax officer wishes to establish the credit worthiness of the donor, the request for information should be specific and details such as Income Tax Return of the donor or its bank accounts for the relevant period or details of assets owned by him etc. should be asked. Further, the language of the request should not offend other countries and terms like "tax havens" should be avoided.

3.3.5 Request should Cover all Possible Information: The request letter for information from a foreign jurisdiction should be carefully prepared after going through all documents available with the Investigating Officer and should cover request for all possible information which may be available in the foreign jurisdiction so as to conduct the enquiry in an effective manner and to improve the quality of assessment. This is also to avoid repetitive requests in the same case. The supervising officers of the Investigating Officer should be involved in preparation of these requests.

DATA ON SERVERS LOCATED IN FOREIGN JURISIDCTION

During the investigation/enquiry by the Tax Officer (the Assessing Officer or the Officers of the Investigation Wing), may come across situations where the data is available in servers/computers located in another country and the taxpayer accesses such server from India and maintains the data in such remote server. In these cases, reference can be made to the tax authorities of India's treaty partner to requisition such information from the person(s) who are in control of such servers. While making this request, all the relevant information/evidence available with the Investigating Officer must be included to enable the tax administrators of India's treaty partner to access the data in their country.

3.3.6 Persons Covered: The persons covered by the exchange of information include individuals, corporate, legal entities and any other body of persons (trusts, foundations etc.). Under DTAA's, exchange of information is not limited to information relating to residents of the Contracting States, but information about a third country resident, may also be requested, if the information is

relevant for the taxation of a person resident in the requesting State. In all the TIEAs negotiated by India, it has been provided that information may be exchanged even when the person, to whom the information relates to, or held by, is not a resident of the requested State. However, the information must be available in the country to whom request is being made. Under the Multilateral Convention, the persons covered are the residents as well as non-residents of the Parties to the Convention. In SAARC Limited Multilateral Agreement, the persons covered are residents of one or more of the SAARC countries.

3.3.7 Taxes Covered: The Exchange of Information Article in most of India's DTAAAs state that the information exchange applies to taxes of every kind and description and goes on to state that the exchange is not limited by Article 2 (Taxes covered). Thus, under the DTAAAs, requests regarding other taxes, such as details of sales tax liability or VAT may be requested. In some of DTAAAs, the Exchange of Information is restricted to the taxes covered under the Agreement only (e.g. income tax and wealth tax). In the TIEAs the taxes which are covered are listed and information may be requested for those taxes. In the Multilateral Convention countries have specified the list of taxes where they will be providing the assistance (see para 2.4.2 above) and thus the requests may be made for those taxes.

3.3.8 Time Period or Taxable Event and the Period of Limitation:

3.3.8.1 While making a request, the time period or taxable event (e.g. the date on which withholding tax is imposed) needs to be specified.

3.3.8.2 It may be noted that under a DTAA, the request for information can be made concerning information that existed prior to the entry into force of the DTAA, as long as the assistance with respect to this information is requested after the DTAA has become effective. However, in some of the DTAAAs or in Protocol to the DTAAAs, it has been specifically provided that information can be exchanged only if it relates to a period after a specified date.

3.3.8.3 In the case of TIEAs negotiated by India, one of the following three options has been adopted

(a) Category 1: In some TIEAs (e.g. Bermuda, Isle of Man etc.), it has been provided that the TIEA will have effect with respect to "criminal tax matters" as "on that day" and for "civil tax matters" for taxable periods beginning on or after the date on which the TIEA comes into effect. This means that in criminal tax matters, the information relating to period prior to coming into force of TIEA can be requested but not in civil tax matters. A criminal tax matter is

interpreted broadly and the requesting Party only needs to state that the information received may lead to prosecution.

(b) Category 2: In many other TIEAs of India (e.g. Jersey), there is no distinction between civil and criminal tax matters and similar to DTAAAs, information available with the jurisdiction, which relates to period prior to coming into force of the TIEAs, needs to be shared after the TIEA come into effect.

(c) Category 3: In case of Bahamas, the information available with the jurisdiction, which relates to the period prior to coming into force of the TIEA, cannot be shared. However, Bahamas has domestic law which allow sharing of information in criminal tax matters, even without DTAA/TIEA, through the office of Attorney General. Hence, in case of Bahamas, past information in criminal tax matters could still be obtained through the office of AG.

3.3.8.4 However, in all such cases, as per internationally agreed standards, information created prior to the date of entry into force of the agreement can be exchanged where that information is relevant for a period after the agreement comes into force. Thus, if a DTAA has been amended to specifically allow for exchange of banking information from a prospective date, the information of period prior to that date can still be obtained provided it can be proved that this information is relevant for determining the tax liability for the subsequent period.

3.3.8.5 The Multilateral Convention on Mutual Administrative Assistance in Tax Matters provides for administrative assistance related to taxable periods beginning on or after 1 January of the year following the one in which the Convention entered into force in respect of a Party, or where there is no taxable period (e.g. for withholding taxes), for administrative assistance related to charges to tax arising on or after 1 January of the year following the one in which the Convention entered into force in respect of a Party. However, for tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party, that is, the criminal tax matters, the provisions of the Multilateral Convention shall have effect from the date of their entry into force in respect of a Party in relation to earlier taxable periods or charges to tax.

3.3.8.6 The SAARC Limited Multilateral Agreement on Avoidance of Double Taxation and Mutual Administrative Assistance in Tax Matters came into force on 19th May, 2010 and the provisions of the said Agreement were

given effect to India with effect from 1st April, 2011. The signatories of the Agreement are Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka, an Exchange of Information request can be made under this Agreement for F.Y. 2011-12 and subsequent financial years. It may be mentioned that India also has a DTAA with Bangladesh, Nepal and Sri Lanka.

3.3.8.7 While making a request, an issue relating to the law of limitation regarding time may arise. However, it may be noted that the question of whether use of information is time barred is determined by reference to the law of limitations of the country where the information is to be used. It is, therefore, necessary to state the period of limitation while making request. However, the possibility of usefulness of information in the current year's proceedings even if it relates to an earlier year, may need to be stated. Further, it needs to be mentioned that even if the information is not received before the end of period of limitation, the same may be useful during the appellate proceedings, penalty proceedings and prosecution proceedings.

3.3.9 Foreseeable Relevance: As per the Exchange of Information provisions of the DTAAs/TIEAs/Multilateral Convention, the Competent Authorities shall exchange information as is foreseeably relevant for administration and enforcement of the domestic laws concerning taxes. Thus, to enable the foreign tax authorities to assist us and to prevent legal challenges to proceedings in accessing information, if any, in the requested State, it is necessary that in the request made, the foreseeable relevance of the information for the administration and enforcement of Indian tax laws is demonstrated.

3.3.9.1 The standard of “foreseeable relevance” in the treaties is intended to provide for exchange of information in tax matters to the widest possible extent and, at the same time, to clarify that Contracting States are not at liberty to engage in “fishing expeditions” or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. The standard, however, requires that at the time the request is made, there is a reasonable possibility that the information will be relevant and the requesting State determines the foreseeable relevance of the request through statement/explanation.

3.3.9.2 The provisions for Exchange of Information do not obligate the requested State to provide information in response to requests that are “fishing expeditions”, i.e. speculative requests that have no apparent nexus to an ongoing specific inquiry or investigation. The examples of such “fishing expedition” would include, for instance, request for details of all the bank accounts of all residents of the requesting State maintained in the banks of the requested State

or details of all shareholders resident of requesting State of a company located in requested State. Hence, the requests made should be specific.

3.3.9.3 It has been clarified in the July, 2012 update to Article 26 by the OECD that the standard of “foreseeable relevance” requires that at the time a request is made there is a reasonable possibility that the requested information will be relevant; whether the information, once provided, actually proves to be relevant is immaterial. Thus, the requested State may therefore not decline requests in cases where a definite assessment of the pertinence of the information to an ongoing investigation can only be made following the receipt of the information. The commentary further states that the competent authorities should consult in situations in which the content of the request, the circumstances that led to the request, or the foreseeable relevance of requested information are not clear to the requested State. However, once the requesting State has provided an explanation as to the foreseeable relevance of the requested information, the requested State may not decline a request or withhold requested information because it believes that the information lacks relevance to the underlying investigation or examination.

3.3.9.4 Thus, the standard of “foreseeable relevance” is very wide and except for few instances, the requested State may not decline the request for information. However, it has to be ensured while making the initial request itself that all the relevant facts of the case are clearly brought out and the relevance of information for the purposes of administration and enforcement of Indian tax laws are spelt out. This will help the foreign tax authorities to provide the information requested, will obviate the need for further clarifications on their part and will avoid delays.

STANDARD OF FORESEEABLE RELEVANCE

The standard of Foreseeable relevance was clarified in the July 2012 Update of Article 26 of the OECD Model Tax Convention as under:

- The Standard requires at the time the request is made there is a reasonable possibility that the information will be relevant
- The requesting State determines foreseeable relevance of the request (but an explanation must be provided)
- The identification of the taxpayer does not always require a name and address(i.e. some other kind of identification is allowed, like bank account no)
- Group requests can meet the standard of foreseeable relevance.

The standard of foreseeable relevance can be met in respect of a group of

taxpayers that are not individually identified provided the requesting State gives:

- a detailed description of the group and the facts and circumstances that led to the request;
- an explanation of the applicable law and why there is reason to believe that the taxpayers in the group have been non-compliant with that law supported by a clear factual basis

And shows that the requested information would assist in determining compliance by the taxpayers in the group. Usually, although not necessarily, a third party will have actively contributed to the non-compliance of the taxpayers in the group

3.3.10 Relevant Background Information and Enclosure of Necessary Evidence:

In the Proforma, the necessary background information, which would typically include a brief summary of the ongoing examination or investigation and how the requested information relates to this examination or investigation, should be included, if necessary as Annexures. It should be explained in great detail as to why the information which has been requested from a foreign tax authority is required for the purpose of administration and enforcement of domestic tax laws. If required, additional supporting information may be attached separately as appropriate. Copies of documents available with the tax authorities may be attached for the assistance of foreign tax authorities. For instance, if during a search operation, a paper is seized which records the bank account number, a copy of the seized document may be attached in addition to listing the bank account number separately. This will enable the foreign tax authorities to look for further clues available in the seized material and they will be able to provide better assistance to us. It may, however, be ensured that only the most relevant documents should be attached so as not to make it unnecessarily voluminous. For example, there may not be a need to attach copies of assessment orders etc. and only their extracts/main points etc. should be included as part of the background note.

3.3.11 Tax Purpose – Criminal Investigation: The information may be exchanged under DTAA/TIEAs/Multilateral Convention for one of the following tax purposes: (a) determination, assessment and collection of taxes (b) recovery and enforcement of tax claims (c) investigation or prosecution of tax matters and (d) other tax administration matters. While making the request for information, the tax purpose, which may be more than one, needs to be mentioned. As stated in para 3.3.7 above, the information related to period prior to coming into force of the TIEAs can be provided only in criminal tax matters, that is, investigation or prosecution of tax matters.

3.3.12 Grounds for Believing that the Information is available in Requested Jurisdiction: The grounds for believing that the information is available in the requested State may be specified clearly.

3.3.13 Persons/Entities in the Requested Jurisdiction: The names and addresses of all relevant persons/entities believed to be in the possession of the information needs to be mentioned with details of the identity of any foreign taxpayers or entities relevant to the examination or investigation and to the extent known, their relationship to the persons/entities under examination or investigation.

3.3.14 Exemption from Prior Notification: Some countries have rules that require requested authority to notify the taxpayer concerned about the request for information in certain cases. Those rules also provide for exceptions from the notification requirements in certain cases, for instance, in cases where the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation in the requesting country. While making the request, if such exemption from prior notification becomes necessary, the same should be indicated in the Proforma in which request is made. Brief reasons for seeking such exemption should also be provided.

3.3.15 Form in which Information is Required: The request for information from a foreign jurisdiction, must specify whether information should be supplied in hard copy or in electronic format (where available), nature of authentication of the information, if any, and any other requirements in respect of the form in which the information needs to be provided.

3.3.16 Exchange of Information Available in the Jurisdiction – Multi-level Enquiry Necessary in Some Cases: As per the currently agreed international standards, the Contracting States/Parties are obliged to exchange information which is held by the jurisdiction or is within the possession or control of persons within the jurisdiction's territorial jurisdiction. This creates a limitation of exchanged information in multi-level investigation involving entities located in more than one jurisdiction. For instance, if a request is made to jurisdiction A to provide ownership information of a company resident in A, and if it gives the information that the owners of company are residents in country B, then further enquiry will have to be made from country B to identify the next level of ownership. Similar enquiry may be necessitated in case of flow of funds. Thus, in many cases, complete information may not be obtained through requests made to one jurisdiction and it may require follow up requests to other

jurisdictions to take the investigation to its logical end. It is necessary that this must be done in all cases requiring multi-level enquiry.

3.3.17 Declarations: While making the request for any information from a foreign jurisdiction, the following should be ensured, including confidentiality which is a major concern for many developed countries and a declaration to that effect should be given as under:

- All information received in relation to this request will be kept confidential and used only for the purposes permitted in the agreement which forms basis for this request
- The request is in conformity with its laws and administrative practice and is further in conformity with the agreement on the basis of which it is made
- The information would be obtainable under its laws and the normal course of its administrative practice in similar circumstances
- It has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

CHECKLIST FOR SENDING INFORMATION

- Any request for information from a foreign jurisdiction should be made through the office of the Competent Authority, that is, JS(FT&TR-I) in case of North America (including countries of Central America and Caribbean), Europe and Japan and JS(FT&TR-II) in case of rest of the world
- The Proforma (Annexure-D) in which request is made to a foreign jurisdiction should be signed by the CIT/DIT concerned and should be forwarded to JS(FT&TR-I) and JS (FT&TR-II), as the case maybe, with a copy to the CCIT/DGIT concerned
- The Proforma should be filled up in duplicate and should be neatly typed
- Any subsequent communications, including requests for clarifications, interim or final reports, etc. should be made to JS (FT&TR-I) and JS(FT&TR-II), by the CsIT/DsIT concerned
- Request in Proforma is sent to foreign authorities and thus all the relevant information in the self-contained form must be captured in the Proforma
- Separate Proforma should be filled up for each taxpayer and for each country
- The language used in the request should be simple and direct and it should be easily understandable to foreign tax authorities who may not be aware of Indian tax laws and procedures
- The foreseeable relevance of the request made, for carrying out the

provisions of the DTAAs or for the administration and enforcement of the domestic law of the country, should be demonstrated clearly although it must be understood that the standards of foreseeable relevance is very wide and except for few specific instances, the requested State may not decline the request for information

- All the relevant background information, including a brief summary of the ongoing examination or investigation and how the requested information relates to this examination or investigation, should be included, if necessary as Annexures.
- In some cases, multi-level enquiry from a number of jurisdictions, may become necessary and follow up requests need to be made for taking the investigation to its logical end
- Following declaration should be made (a) the information received will be kept confidential (b) the request is in conformity with domestic laws and administrative practices and the agreement, (c) information would be available under domestic laws and normal administrative practices and (d) all means available in India to obtain the information, except which may give rise to disproportionate difficulties have been pursued.

3.4 Information which may be Exchanged on Request

3.4.1 Introduction

Under the Exchange of Information Article in the DTAAs/TIEAs/Multilateral Convention, a country/jurisdiction is obliged to provide a variety of information when a request for the same is made by its treaty partner. This include information relating to ownership of entities, copies of tax returns, banking information, accounting information, transfer pricing information, copies of contracts/agreements, copies of invoices, etc. The information might be directly available with the tax department or held by a third party (other Government organizations, trade registries, banks and financial institutions, employers etc.) which can be accessed by the tax department using its powers.

3.4.2 Illustrative Categories of Information Exchange on Request

Some of the illustrative categories of information which may be exchanged on request are enumerated below:

- Ownership information of companies and other body corporate. The information on ownership include legal owners, and, in any case where a legal owner acts on behalf of any other person as a nominee or under a similar agreement, that other person, as well as persons in an ownership chain, to the extent that information is held by the jurisdiction's authorities or is within the possession or control of persons within the jurisdiction's territorial jurisdiction

- Documents demonstrating formation of an entity and documents about subsequent changes of shareholders/partners and name and address of the entity at the time of formation and all subsequent changes in name and address
- In the case of partnership, information which identifies the partners in any partnership that (i) has income, deductions or credits for tax purposes in the jurisdiction (ii) carries on business in the jurisdiction or (iii) is a limited partnership formed under the laws of that jurisdiction
- In the case of trusts, information which identifies the settlor, trustee and beneficiaries of express trusts (i) created under the laws of that jurisdiction (ii) administered in that jurisdiction, or (iii) in respect of which a trustee is resident in that jurisdiction
- Accounting records in case of an entity or arrangement (i) correctly explaining all transactions (ii) enabling the financial position of the Entity or Arrangement to be determined with reasonable accuracy at any time and (iii) which allows financial statements to be prepared
- Underlying documents of the accounting records such as invoices, contracts etc. reflecting details of (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place (ii) all sales and purchases and other transactions and (iii) the assets and liabilities of the relevant entity or arrangement
- Price paid for acquiring an asset in a foreign jurisdiction to determine whether the taxpayer has claimed the expenditure correctly, both on revenue account for claim of expenditure for the purposes of business or on capital account for claim of depreciation
- Banking information (held by banks or other financial institutions) including all records pertaining to the accounts as well as to related financial and transactional statements
- Tax returns filed by the taxpayer under examination or the related foreign party. For instance, if loan/gift is received from a foreign entity, the tax returns of the concerned entity may be examined for the credit worthiness
- Information regarding taxes paid by an Indian taxpayer in a foreign country for giving proper credits of taxes paid abroad
- In cases of payments made to a foreign entity, e.g., by way of royalty, fees for technical services, interest, dividend etc., it may need to be examined the tax treatment of such payments in the foreign country including information regarding beneficial ownership
- Information from a foreign country for adjustments of the profits shown in the accounts of a permanent establishment in one State and in the accounts of head office in the other State

- In case of supply of goods to an independent company in a foreign jurisdiction, information regarding what price was paid by the said independent company
- Information from a foreign country for proper allocation of taxable profits between associated companies in different States
- Information relevant to application of transfer pricing provisions

EXAMPLES OF REQUEST FOR INFORMATION

Identification of the Foreign Taxpayers:

If the Investigating Officer wishes to verify identity of a foreign person, he may request the following information

- Information as to whether the foreign person is known to the Tax Administration of the foreign country and if so then the details available in the database of the Tax Administration such as the Taxpayer Identification Number, address, nature of business carried out, the date of setting up of business etc.
- Information about the identification may also be sought from other government agencies such as the Registrar of Companies of the foreign country, in case if the information is not available with the Tax Administration of the foreign country.

Credentials of the Foreign Taxpayers:

If the Investigating Officer has reasons to believe that the foreign person may actually exist at the address provided but he may be having shell existence and there is no actual activity and in such cases he may request the following information:

- Copy of the financial statements of the foreign person as available with the Tax Administration or with the other government agencies such as the registrar of companies or the trust regulator etc. as the case may be.
- The information about the action taken against the foreign person by the law enforcement agencies in the past.
- Copy of the registration or incorporation documents of the foreign concern so as to get an idea of the period of its existence.
- Copy of the returns of income filed by the foreign taxpayer with the Tax Department.

Information about the Transaction:

The Investigation Officer may like to request for the documents related to the transaction entered in to by the foreign person with the Indian taxpayer and thus he may seek the following information:

- Copy of the ledger account of the Indian taxpayer in the books of accounts of the foreign taxpayer or the other ledger accounts to cover the whole chain of transactions with the Indian taxpayer. For example if the

Indian taxpayer has claimed some expenses in the name of foreign person but the payment has been made through some intermediary, in that case the ledger account of the Indian taxpayer may not be available in the books of accounts of the foreign person and rather the ledger account of the intermediary may serve the purpose.

- Copy of the documents related to the remittance of the money. These documents may be obtained either from the taxpayer or from the banking undertakings.

Source of Funds:

The Investigating Officer may enquire in to the source of the funds of the foreign person by requesting the following information:

- The source of funds of the foreign concern for the investment in the securities of the Indian concern including a copy of the bank account of the foreign concern for specific period.
- The copy of the agreement entered in to by the foreign concern with the Indian concern, if any.
- Copy of the documents submitted by the foreign concerns with the regulatory agencies of the foreign entity regarding the investment in Indian company.

3.4.3 Exchange of Information for Carrying out Provisions of the DTAA's

Under the DTAA's, double taxation is avoided through allocation of taxing rights between the Contracting States. To ensure that this allocation is made correctly, including prevention of double non-taxation, the Contracting Parties may exchange information, which may include (as per 2012 Update on Article 26 of the OECD Model Tax Convention and its Commentary):

- (a) When applying Article 12, State A where the beneficiary is resident may ask State B where the payer is resident, for information concerning the amount of royalty transmitted.
- (b) Conversely, in order to grant the exemption or lower rate of withholding provided for in Article 12, State B asks State A whether the recipient of the amounts paid is in fact a resident of the last-mentioned State and the beneficial owner of the royalties.
- (c) Similarly, information may be needed with a view to the proper allocation of taxable profits between associated companies in different States or the adjustment of the profits shown in the accounts of a permanent establishment in one State and in the accounts of the head office in the other State (Articles 7, 9, 23 A and 23 B).
- (d) Information may be needed for the purposes of applying Article 25 on Mutual Agreement Procedure.

- (e) When applying Articles 15 and 23 A, State A, where the employee is resident, informs State B, where the employment is exercised for more than 183 days, of the amount exempted from taxation in State A.

EXCHANGE OF INFORMATION AND TRANSFER PRICING AUDITS

Transfer pricing audits are often very fact intensive and having the right information is vital to the successful implementation of transfer pricing rules, both in risk assessment/case selection, and in the course of an audit. There are various sources of information that are useful in transfer pricing: documentation, financial data and other information from taxpayers, public and private databases, company websites etc. Transfer Pricing Officers may need information that is not available domestically and exchange of information may provide assistance concerning transactions within a multinational enterprise.

3.4.4 Exchange of Information for Administration and Enforcement of Domestic Laws

Under the DTAAs, the information can also be exchanged for the purposes of administration or enforcement of domestic laws of the country making the request. The TIEAs and Multilateral Convention obliges the Contracting Parties to exchange information that is foreseeably relevant for administration and enforcement of the domestic law of the requesting Party. July, 2012, update to Article 26 of the OECD Model Tax Convention provides a number of examples clarifying which information can be exchanged as under:

- (a) A company in State A supplies goods to an independent company in State B. State A wishes to know from State B what price the company in State B paid for the goods with a view to a correct application of the provisions of its domestic laws.
- (b) A company in State A sells goods through a company in State C (possibly a low-tax country) to a company in State B. The companies may or may not be associated. There is no convention between State A and State C, nor between State B and State C. Under the convention between A and B, State A, with a view to ensuring the correct application of the provisions of its domestic laws to the profits made by the company situated in its territory, asks State B what price the company in State B paid for the goods.
- (c) State A, for the purpose of taxing a company situated in its territory, asks State B, under the convention between A and B, for information about the prices charged by a company in State B, or a group of companies in State B with which the company in State A has no business contacts in order to enable it to check the prices charged by the company in State A by direct

comparison (e.g. prices charged by a company or a group of companies in a dominant position). It should be borne in mind that the exchange of information in this case might be a difficult and delicate matter owing in particular to the provisions of subparagraph c) of paragraph 3 relating to business and other secrets.

- (d) State A, for the purpose of verifying VAT input tax credits claimed by a company situated in its territory for services performed by a company resident in State B, requests confirmation that the cost of services was properly entered into the books and records of the company in State B.
- (e) The tax authorities of State A conduct a tax investigation into the affairs of Mr. X. Based on this investigation the tax authorities have indications that Mr. X holds one or several undeclared bank accounts with Bank B in State B. However, State A has experienced that, in order to avoid detection, it is not unlikely that the bank accounts may be held in the name of relatives of the beneficial owner. State A therefore requests information on all accounts with Bank B of which Mr. X is the beneficial owner and all accounts held in the names of his spouse E and his children K and L.
- (f) State A has obtained information on all transactions involving foreign credit cards carried out in its territory in a certain year. State A has processed the data and launched an investigation that identified all credit card numbers where the frequency and pattern of transactions and the type of use over the course of that year suggest that the cardholders were tax residents of State A. State A cannot obtain the names by using regular sources of information available under its internal taxation procedure, as the pertinent information is not in the possession or control of persons within its jurisdiction. The credit card numbers identify an issuer of such cards to be Bank B in State B. Based on an open inquiry or investigation, State A sends a request for information to State B, asking for the name, address and date of birth of the holders of the particular cards identified during its investigation and any other person that has signatory authority over those cards. State A supplies the relevant individual credit card numbers and further provides the above information to demonstrate the foreseeable relevance of the requested information to its investigation and more generally to the administration and enforcement of its tax law.
- (g) Company A, resident of State A, is owned by foreign unlisted Company B, resident of State B. The tax authorities of State A suspect that managers X, Y and Z of Company A directly or indirectly own Company B. If that were the case, the dividends received by Company B from Company A would be taxable in their hands as resident shareholders under country A's controlled foreign company rules. The suspicion is

based on information provided to State A's tax authorities by a former employee of Company A. When confronted with the allegations, the three managers of Company A deny having any ownership interest in Company B. The State A tax authorities have exhausted all domestic means of obtaining ownership information on Company B. State A now requests from State B information on whether X, Y and Z are shareholders of Company B. Furthermore, considering that ownership in such cases is often held through, for example, shell companies and nominee shareholders it requests information from State B on whether X, Y and Z indirectly hold an ownership interest in Company B. If State B is unable to determine whether X, Y or Z holds such an indirect interest, information is requested on the shareholder(s) so that it can continue its investigations.

- (h) Financial service provider B is established in State B. The tax authorities of State A have discovered that B is marketing a financial product to State A residents using misleading information suggesting that the product eliminates the State A income tax liability on the income accumulated within the product. The product requires that an account be opened with B through which the investment is made. State A's tax authorities have issued a taxpayer alert, warning all taxpayers about the product and clarifying that it does not achieve the suggested tax effect and that income generated by the product must be reported. Nevertheless, B continues to market the product on its website, and State A has evidence that it also markets the product through a network of advisors. State A has already discovered several resident taxpayers that have invested in the product, all of whom had failed to report the income generated by their investments. State A has exhausted its domestic means of obtaining information on the identity of its residents that have invested in the product. State A requests information from the competent authority of State B on all State A residents that (i) have an account with B and (ii) have invested in the financial product. In the request, State A provides the above information, including details of the financial product and the status of its investigation.

Few case studies developed on the basis of actual exchange of information is provided in **Annexure-F**.

USE OF REQUEST AS A SOURCE OF INTELLIGENCE

A request for information itself often contains information that may be relevant to identify a tax risk in the country to which the request is made. A request may be helpful for instance to detect taxpayers who have not filed a tax return or defaulted in respect of their tax payment obligations, taxpayers who have been

involved in cross border aggressive tax planning arrangements, identity theft and identity fraud cases, false invoicing cases, potential debt risk cases, independent personal services carried on abroad and not reported for tax purposes etc. The tax authority of the requested country may wish to determine whether the taxpayer(s) mentioned in the information request possesses substantial assets in the country (e.g. real estate, cash, and shares) that may indicate a tax liability in the requested country.

3.4.5 Limitations on Exchange of Information

The Contracting States/Parties are not obliged to exchange information which are not foreseeable relevant for administration and enforcement of the domestic laws of the requesting State/Party. However, as stated earlier, if the requesting State provides an explanation as to the foreseeable relevance of the requested information, the requested State may not decline or withhold requested information because of belief that the information lacks relevance to the underlying investigation or examination. The July, 2012, update to Article 26 of the OECD Model Tax Convention provides illustrations of the situations where the Contracting States are not obliged to provide information in response to a request for information, assuming no further information is provided as under:

- (a) Bank B is a bank established in State B. State A taxes its residents on the basis of their worldwide income. The competent authority of State A requests that the competent authority of State B provide the names, date and place of birth, and account balances (including information on any financial assets held in such accounts) of residents of State A that have an account with, hold signatory authority over, or a beneficial interest in an account with Bank B in State B. The request states that Bank B is known to have a large group of foreign account holders but does not contain any additional information.
- (b) Company B is a company established in State B. State A requests the names of all shareholders in Company B resident of State A and information on all dividend payments made to such shareholders. The requesting State A points out that Company B has significant business activity in State A and is therefore likely to have shareholders resident of State A. The request further states that it is well known that taxpayers often fail to disclose foreign source income or assets.

Further, the provisions of Exchange of Information in the DTAAs/TIEAs/Multilateral Convention normally does not impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

3.5 Request for Further Clarification – Immediate Reply Required

In cases where the field authorities have sent requests for information from foreign countries through the Competent Authority, sometimes, particularly when the requests are not complete or clear, foreign authorities seek clarification/ additional information on the request. In such cases, it is important that such clarifications/additional information should be sent at the earliest and within the time period stipulated. If there is either inordinate delay in providing clarification/additional information or no response is sent, the foreign authorities may close the request and no information can be obtained in such cases. This would also reflect adversely on the administration of the Indian Income Tax Department in the eyes of the foreign tax authorities. This aspect of timely submission of further clarifications/additional information should be personally monitored by the Commissioner of Income Tax/Director of Income Tax concerned to ensure unavoidable delays.

3.6 Extension of Time Limit for Completing Assessments

Through Finance Act, 2012, sections 153 and 153B have been amended to provide that in computing the period of limitation, the period commencing from the date on which a reference for exchange of information is made by an authority competent under the agreements referred to in sections 90 or 90A (i.e. DTAAs, TIEAs, Multilateral Convention) and ending with the date on which the information so requested is received by the Commissioner or a period of one year, whichever is less, shall be excluded, when a reference is made by the Assessing Officer. Further, the proviso to section 153 and 153B provides that where immediately after the exclusion of the aforesaid period, the period of limitation available to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case maybe, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly. It is important to note that reference to the Competent Authority for obtaining information from other countries should be made in time and should not be left to be made at the last moment. If references are made at the last moment just before the time barring

date, the period of 60 days may not be enough to confront the taxpayer with information obtained and complete the assessment.

3.7 Time Limit for Reopening

It may be noted that the time limit for reopening of assessments, where income in relation to any asset located outside India that has escaped assessment, has been extended from six years to sixteen years.

3.8 Use of Information for Other Purposes

3.8.1 Under DTAA/TIEA, information can only be provided for either carrying out the provisions of the relevant agreement or for enforcement or administration of the domestic laws concerning taxes covered by the agreement. In general, such information received under the DTAA/TIEA is to be disclosed and used by the persons concerned with the taxes as specified in the Agreement. They may disclose it in public court proceedings or in judicial decisions. However, if such information is to be used for purposes other than taxation, then the same can be done only in accordance with the specific provisions of the said agreement.

3.8.2 There were no provisions in any of the DTAA's for sharing the information for purposes other than taxation, till the year 2009. The provisions of the Exchange of Information were revised by OECD in 2008 and, inter alia, included the following paragraph in the commentary to the Model Tax Convention on Income and Capital:

“Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.”

This language has now been recommended to be added in Article 26 itself as per the 2012 update to Article 26 of the OECD Model Tax Convention. The above paragraph means that if Contracting States wish to broaden the purposes for which they may use information exchanged under Article of Exchange of Information, they may do so by including the above text in their Article on Exchange of Information in their Agreements.

3.8.3 India started revising its Article on Exchange of information in 2009 for bringing it in line with international standards and has been negotiating with its treaty partners to include the paragraph referred above in all its existing article on exchange of information. As on date, the said paragraph enabling the Competent Authority to share the information with other agencies, with the

approval of the Supplying state, is available in the Agreements with the following countries:

1. Swiss Confederation
2. Norway
3. Nepal
4. Mozambique
5. Georgia
6. Estonia
7. Lithuania
8. Taiwan
9. Uzbekistan

The revision of the aforesaid paragraph with many other treaty partners are in different stages viz, under-negotiation, negotiations completed – awaiting signing of the agreement, signed but yet to be ratified by the other country etc.

3.8.4 In addition to the above, India has Tax Information Exchange Agreements (TIEA) with the following countries are in force as on date:

1. Liberia
2. Cayman Islands
3. Bermuda
4. Bahamas
5. British Virgin Islands
6. Isle of Man
7. Jersey
8. Guernsey
9. Macau

In all these TIEAs, there are provisions for sharing information for other purposes with the express consent of the Competent Authority of the Supplying State. In case of Liberia, there is no requirement of obtaining consent of the supplying competent authority for sharing information for other purposes. Thus, if any information has been received from any of these countries (except Liberia) in the cases under investigation, the request can be sent to the supplying country for sharing the information for their express consent and then, upon approval, the information can be shared for other purposes.

CHAPTER-IV: GUIDELINES FOR HANDLING THE REQUESTS IN SPECIFIC CASES FROM FOREIGN TAX AUTHORITIES

4.1 Introduction

Gathering information and providing the same to a foreign tax authority should be given a very high priority by all the officers in the field formations and all efforts should be made to immediately collect and send the information. It should be understood that exchange of information as per the DTAA/TIEAs/Multilateral Conventions are bilateral as well as reciprocal in nature and if India provide the information, India will also be receiving the information from India's treaty partners. Prompt response would also demonstrate India's commitment to the international standards on exchange of information and transparency for tax purposes at a global level.

4.2 Process of Handling the Requests Received from Foreign Tax Authorities

4.2.1 Receipt of Information: The instruments for exchange of information (DTAAs/TIEAs/Multilateral Convention) stipulate that the competent authorities shall exchange information. Accordingly, any request for information from the Indian tax authorities is received by the Indian Competent Authority, that is, JS (FT&TR-I) and JS (FT&TR-II). The Competent Authority sends the requests to the officers in the Exchange of Information (EOI) cell of the FT&TR Division reporting to them. The EOI cell enters the request in the database and also scans copies of the request and the enclosing documents and store in the secured computerized system.

4.2.2 Verification of the validity of the request: The Competent Authority/EOI cell verifies the validity of the request, that is, whether the request has been made under the provisions of the DTAA/TIEAs/Multilateral Convention and whether it is complete in all respects. This verification process include

- a) Whether there is a legal instrument for exchange of information in place (DTAA/TIEA/Multilateral Convention/SAARC Limited Multilateral Agreement)with the foreign country
- b) Does the information relate to taxes covered by the EOI instrument
- c) Does the information relate to tax years covered by the EOI instrument
- d) Is the information requested foreseeably relevant to an ongoing tax examination, investigation or inquiry

- e) Is the request detailed enough, that is, if there is sufficient background information provided to understand the request and if the information is sufficient to identify a taxpayer or group of taxpayers by name or otherwise etc.
- f) Is the request signed by the competent authority or its authorized representative

4.2.3 Forwarding to the Field Authorities: After the process of verification as stated above, the information available with the EOI Cell, for instance the requests for Permanent Account Number, is provided to the foreign tax authorities. However, in a large number of cases, assistance is required from field authorities and for this purpose, normally the requests are forwarded to the field authorities, through confidential letters as under:

- (a) If the information can be provided by accessing the central database of the Income Tax Department, for instance, the current address of taxpayer, the request is forwarded to Director General of Income Tax (Systems)
- (b) If the information is readily available with the Assessing Officer, such as copies of returns filed with the Income Tax Department, the request is forwarded to the jurisdictional Chief Commissioners/ Commissioners with a request to direct the Assessing Officer to send the information to the EOI Cell.
- (c) If the information can be provided only after carrying out field enquiries or by making requests from other organizations such as banks, financial institutions, registrar of companies, stock exchanges, etc., the request is forwarded to the jurisdictional Director General of Income Tax (Investigation) at Ahmadabad, Bengaluru, Bhopal, Chandigarh, Chennai, Hyderabad, Jaipur, Kochi, Kolkata, Lucknow, Mumbai, New Delhi, Patna and Pune. In cases where jurisdiction cannot be identified readily, or require co-ordinated investigation, the request is forwarded to the Director General of Income Tax (Intelligence and Criminal Investigation), which has an all India jurisdiction. A copy of these requests is forwarded to Member (Investigation), Central Board of Direct Taxes, for ensuring timely response and coordinated action, wherever required.

4.2.4 Timelines: Any request from foreign tax authorities, which has been forwarded to the officers of the field formations, as above, should be immediately attended to and information should be provided at the earliest. The international best practices on maintaining timelines are as under:

- Acknowledgment of receipt of information request within one month of their receipt, or within seven days, if received electronically
- If the information is already with the tax authority, within two months of the receipt of the request
- Where the information requested is not already held by the tax authority, within six months of the receipt of the request
- Pointing out deficiencies, if any, within sixty days of the receipt of the request
- Informing obstacles in obtaining information, if any, within ninety days of the receipt of the request

Maintaining of above timelines is monitored through the Peer Review Group of the Global Forum on Transparency and Exchange of Information for Tax Purposes. In view of the unavoidable delays in the process of communications, both from one Competent Authority to another Competent Authority and also from EOI Cell to field formations, the field formations are accordingly directed to forward the information to the EOI Cell as per the following timeline

- Within fifteen days if the information is already available with the tax authorities, such as, tax returns
- Within thirty days, if the information can only be obtained after carrying out outside enquiries
- Informing within thirty days, if there are obstacles in obtaining information or if there are deficiencies in the request

4.2.5 Making Enquiries: Depending on the facts of the case, the officers of the field formations may make necessary enquiries using the statutory provisions of the Direct Taxes Laws. If the foreign tax authority requests for exemption from prior notification to the taxpayer or other persons concerned on the grounds that such notification may jeopardise/ undermine the outcome of the ongoing investigation or inquiry, information must be collected without informing the taxpayer.

4.2.6 Forwarding to the Foreign Tax Authorities: The information obtained by the field units, either by accessing its own records, or after conducting necessary enquiries, should be forwarded to the Competent Authority by the Commissioner of Income Tax/Director of Income Tax concerned, with a copy to their CCIT/DGIT. The Proforma for sending the results of the enquiry is enclosed as **Annexure-G**. It may be noted that only the Proforma is sent to Foreign Tax Authorities and thus all the relevant information, even if included in the covering letter, must be included in the Proforma. Although, the response

will be different in different cases and will be dependent on the results of enquiry, the following points, which may be covered, are provided as Checklist. The Competent Authority of India, on receipt of the above response, will forward the same to his counterpart in the other country completing the process of Exchange of Information.

**CHECKLIST FOR SENDING INFORMATION REQUESTED BY A
FOREIGN TAX AUTHORITY**

- The information requested by a foreign tax authority must be sent through the office of the Indian Competent Authority, that is, JS(FT&TR-I) and JS(FT&TR-II), who is authorized to exchange information with his counterpart in the other country/jurisdiction
- The information should be provided in the Proforma prescribed in Annexure G
- The timeline for providing requests should be followed strictly. If full information could be gathered within time limit, part information with an interim reply must be provided
- It should be clearly mentioned as to whether this is an interim/partial or full response. If partial, timeline by which the remaining information will be sent should be mentioned
- If applicable, explanation why certain information could not be provided or could not be provided in the form requested should be provided
- A background paper/writeup explaining the results of enquiry in simple language which can be understood by the foreign tax authorities should be provided
- The information requested, including copies of documents (e.g. records, contracts, invoices) as well as any information not specifically requested but likely to be useful based on the information provided in connection with the request should be provided
- If the foreign tax authorities have requested the information in a particular format for evidentiary value, the specific forms for deposition of witnesses or the manner in which copies of original documents are to be authenticated, the same should be done
- Other relevant information such as the type of action taken to gather the information, the tax periods for which the information is provided, whether the taxpayer or a third person has been notified about the exchange should also be provided.

CHAPTER-V: ASSISTANCE IN COLLECTION OF TAXES

5.1 Request to a Foreign Country/Jurisdiction

5.1.1 International cooperation in tax administration matters may take many forms including assistance in tax collection. Taxpayers may have assets outside their country of residence, but tax authorities generally cannot go beyond their borders to take action to collect taxes. The provisions of Assistance in tax collection help the tax administrations to collect their tax due from the tax administrations of the other countries. Assistance in tax collection has an important deterrent effect, which in some countries may outweigh the benefit of tax debts actually recovered with the assistance of another country. Revenue claim in this context means:

1. Amount of tax
2. Interest thereon
3. Related administrative fines
4. Related costs incidental to recovery

5.1.2 Provisions relating to Assistance in Tax Collection are optional in the DTAAs/TIEAs. However, as stated earlier, in para 2.2.7, India has provisions relating to Assistance in Tax Collection in India's DTAAs with as many as 32 of India's treaty partners. In addition, assistance in collection of taxes may also be requested under the Multilateral Convention on Mutual Administrative Assistance in Tax Matters/SAARC Limited Multilateral Agreement.

5.1.3 In some of the treaties, an additional paragraph has been added referring to cases where interim or provisional measures have been taken by the Contracting State to freeze the assets even before the actual raise of tax claim against a person, for instance provisional attachment under section 281B of the Income-tax Act, 1961. Through inclusion of this paragraph, if one Contracting State has taken such interim or provisional measures under its domestic laws, it can request the other Contracting State to take similar measures in accordance with domestic laws of that other State.

5.1.4 Section 2228(A)(2) of Income-tax Act, 1961 empowers the Tax Recovery Officer to forward a request to Indian Competent Authority for Assistance in Collection of Taxes from foreign countries with which India has such provisions in the DTAAs/TIEAs etc. and the assessee has property in that country. While framing a request, the TRO should enclose a certificate drawn

up by him under section 222 of the Income-tax Act, 1961 so as to take follow up action appropriately.

5.1.5 The request for the assistance in tax collection should be made in the prescribed Proforma enclosed as **Annexure-H**. The notice of demand and a certificate under section 222 should also be enclosed as attachment with the Proforma. The revenue claim needs to be shown separately as the tax/interest/penalty etc. so that the Requested country may understand that the interest portion of the tax claim is variable over time. It is also important to ensure that all efforts have been exhausted to recover taxes from assets located in India, before making reference to other country.

5.2 Request from a Foreign Country/Jurisdiction

The request for Assistance in Collection of Taxes is also received from a foreign jurisdiction through the office of the Competent Authority. These requests are forwarded through the jurisdictional Chief Commissioner/Commissioner to the Tax Recovery Officer (TRO) within which such property is situated for necessary action/compliance. Section 228A of the Income tax Act, 1961 empowers TRO to recover the amount specified in the certificate in the manner in which he would proceed to recover the amount specified in a certificate drawn up by him under section 222 and remit any sum so recovered to the Indian Competent Authority after deducting his expenses in connection with recovery proceedings.

CHAPTER-VI: OTHER FORMS OF ADMINISTRATIVE ASSISTANCE

6.1 Introduction

As seen earlier, the DTAAAs/TIEAs/Multilateral Instruments entered into by India provides for a multitude of administrative assistance, in addition to the exchange of information in specific cases, discussed in Chapters-III and IV and assistance in collection of taxes, discussed in Chapter-V. These other forms of administrative assistance include

- (a) Automatic Exchange of Information
- (b) Spontaneous Exchange of Information
- (c) Tax Examination Abroad
- (d) Simultaneous Examination
- (e) Joint Audits

India is both receiving and sending information under automatic exchange of information. It is also receiving information under spontaneous exchange of information. India's experience in tax examination abroad, simultaneous examination and joint audits is almost negligible but it is expected that in future, Indian tax officers will utilize these forms of administrative assistance more and more and thus these are briefly discussed in this Chapter.

6.2 What is Automatic Exchange of Information

Automatic exchange of information comprises periodic transmission of bulk taxpayers' information by one country to another country concerning various categories of income e.g. fees for technical services, dividends, interest, royalties, salaries, pensions etc. For example in India, the taxpayers are required to submit the information to Income Tax Department related to remittances made to the foreign taxpayers as per the provisions of the Income-tax Act, 1961 and this information is submitted by the remitters online to the Income Tax Department. This data may be exchanged on automatic basis with the other countries so that the recipient country may ensure that the taxpayers in their country have discharged their liability towards payment of taxes. Automatic exchange can also be used to transmit other useful types of information such as change of residence, the purchase or disposition of immovable property, etc. In addition, information concerning the acquisition of significant assets may be used to evaluate the net worth of an individual, to see if the reported income reasonably supports the transaction. Different countries exchange different types of information under the automatic exchange of information programme. Automatic exchange of information is most common with respect to Interest

and dividend income, Income from dependent personal services, other income, royalty, income derived from the activities of artist, pensions, directors fees, income from independent personal services, income from immovable properties, business profits, income from government services, capital gains and payments to students etc. The OECD has recently issued a booklet on Automatic Exchange of Information: What It Is, How It Works, Benefits, What Remains to be Done, which is available on the Internet ¹²

6.3 Automatic Exchange of Information as Standard of Exchange of Information

Automatic Exchange of Information is one of the most effective ways to improve voluntary tax compliance and decrease the incidence of tax evasion. Although many countries have started exchanging information automatically, at present it is not mandatory as per the provisions of the DTAAs/TIEAs and is not considered as part of the international standards on transparency and exchange of information for tax purposes. India has taken a lead in making the automatic exchange of information as standards so that all countries start exchanging the information available with them regarding taxpayers of other countries voluntarily and on automatic basis. India's commitment to the exchanging information periodically was demonstrated by the speech of the Hon'ble Prime Minister during the Cannes Summit in November, 2011, where he stated the following

“G-20 countries should take the lead in agreeing to automatic exchange of tax related information with each other, irrespective of artificial distinctions such as present or past, tax evasion or tax fraud in the spirit of our London Summit that the era of bank secrecy is over.”

The above statement was quoted by the Hon'ble Finance Minister while replying the debate on adjournment motion on Black Money on 14th December, 2011. Further, during the recent G20 meeting in Los Cabos, Mexico, on 18-19 June, 2012, mainly due to India's insistence, the following line was included in the official communique:

“We welcome the OECD report on the practice of automatic information exchange, where we will continue to lead by example in implementing this practice. We call on countries to join this growing practice as appropriate and strongly encourage all jurisdictions to sign the Multilateral Convention on Mutual Administrative Assistance.”

¹²http://www.oecd.org/ctp/exchangeofinformation/AEOI_FINAL_with%20cover_WEB.pdf

6.4 Exchanging Information Automatically

6.4.1 India have been receiving information from some countries on automatic basis in the past although the numbers were small as seen below

Information received during	Pieces of Information
2008-10 (disseminated in January, 2011)	7,704
January to June, 2011	480
July to December, 2011	1,006
January to June, 2012	4,614
July to December, 2012	31,119

This information is sent by the Competent Authority of India's treaty partners to the Indian Competent Authority, that is, Joint Secretary (FT&TR-I) and Joint Secretary (FT&TR-II) normally in Compact Disk. As per the decision taken by the Central Board of Direct Taxes in its meeting on 4th November, 2009, the FT&TR Division forwards the information received to DGIT (Intelligence), now known as DGIT (I&CI).

6.4.2 The information received so far has been in different formats and some of them are not usable. The office of DGIT (I&CI), however, have used some of the information gainfully and identified cases of tax evasion, which are at different levels of processing, investigation and assessment. Guidelines for effective utilization of this information have been provided in Chapter-VII.

6.4.3 Consequent to the G20 leaders' declaration of Las Cabos, India has transmitted about 2 million pieces of information relating to F.Y. 2009-10, 2010-11 and 2011-12 to more than fifty of its treaty partners. We have also requested them to send the information available with them. In view of this and also because of efforts at global levels to popularize the Automatic EOI, we expect more information to be received under the automatic route in future.

6.4.4 As the automatic exchange of information will become more popular, we will need to address a number of challenges, including

- Standardization of the format in which information is exchanged between countries. The OECD has been working on this standardization and has prescribed an advanced standard using XML language (STF Format).
- Sending information available with Indian tax administration to foreign jurisdictions in the standard format of STF.
- Secured and standard platform for transmission of data between different countries and also from the Competent Authority to the field units

- Matching of the data received from the foreign jurisdictions with India's own database and populating the PAN database with the information received
- Carrying out risk assessment and identifying the cases for scrutiny
- Feedback on utilization of information including additional revenues generated

6.5 What is Spontaneous Exchange of Information

The Exchange of Information Articles in India's treaties also provide for Spontaneous Exchange of Information, for example in the case of a State having acquired through certain investigations, information which could be of interest to the other Contracting State. This may be contrasted with automatic exchange of information, which is systematic and periodic transmission of "bulk" taxpayer information by the source country to the resident country concerning various categories of income, such as dividends, interest, royalties, salaries, pensions etc.

6.6 Spontaneous Exchange of Information from Foreign Jurisdiction

The Spontaneous Information, which may be available with a foreign tax administrator, is sent to its own Competent Authority, which passes it on its counterpart in India, that is JS(FT&TR-I) and JS(FT&TR-II), as the case maybe. Sometimes, this information is also received through overseas units attached to Embassies/High Commissions in some of the select countries. Since the information is likely to be relevant for investigation of Indian taxpayers, this information will be sent by the Competent Authority to Member (Inv.), CBDT, who will forward it to the concerned jurisdictional DGIT (Inv.) for necessary action. If the jurisdiction cannot be determined or if the request relates to coordinated action across various jurisdictions, the same would be sent to DGIT (I&CI) by Member (Inv.). Guidelines for effective utilization of this information have been provided in Chapter-VII.

6.7 Spontaneous Information to a Foreign Country/Jurisdiction

The tax officers in the field formations, both in the assessment and investigation wings, may also receive, from time to time, information which may be useful for the tax administrators of a foreign jurisdiction. This information may be forwarded to JS(FT&TR-I) and JS(FT&TR-II), through the Chief Commissioner of Income Tax/Director General of Income Tax concerned, who may share the same with his counterpart in the other country. The information which may be shared under this route includes the following:

- there are grounds for suspecting that there may be a significant tax loss to the treaty partner, on the basis of evidence gathered during scrutiny assessments or during search or survey operations
- a person liable to tax obtains a reduction in or an exemption from tax in one State, for instance by getting relief at the appellate stage, which would give rise to an increase in tax or to liability to tax in the other State
- foreign taxpayer has limited liability in India, e.g. royalty income of 10% and the remaining taxes need to be paid in the foreign country
- payment to a foreign taxpayer without imposition of withholding tax at full rate
- business dealings between a person liable to tax in one State and a person liable to tax in the other State are conducted through one or more countries in such a way that a saving in tax may result in one of the States or in both
- there are grounds for supposing that the same tax avoidance scheme which has been identified during a tax audit may be used in other countries.

In few cases, the need for sharing the information with a foreign jurisdiction may arise after evidence found during search and seizure operations or other sensitive enquires being conducted by the Investigation Wing of the Department. In such cases, the information should be sent to the Competent Authority through Member (Investigation).

6.8 Tax Examination Abroad

6.8.1 Tax examination abroad enables tax administrations to permit authorised tax officials of another country to participate in the conduct of tax examinations carried out by the Requested State. Thus in case if India has tax examination abroad provisions in place with a country, the officers of the filed unit may visit that country and participate in the conduct of the tax examination of the affairs of taxpayer. The participation of authorised foreign tax officials in a tax examination being carried out by the requested country may be passive or active. Some countries may only permit passive participation of foreign tax officials in a tax examination. In such instances, participation by foreign tax officials would be limited to observing relevant parts of the tax examination and only liaising directly with the tax officials of the requested country. Foreign tax officials would not be permitted to directly interview taxpayers or other individuals under this form of tax examination abroad. Other countries may permit active participation of authorised foreign tax officials. Under such circumstances, some countries may, for example, allow foreign tax officials to conduct interviews and examine records pertaining to the taxpayers under examination.

6.8.2 Tax examinations of this nature are useful in situations where the laws enable the taxpayer to keep records in another country and the taxpayer has agreed to have the tax official come to the foreign country rather than provide the books and records in the taxpayer's country. This form of assistance is especially relevant in cases involving complex issues that are not likely to be resolved by way of specific exchange of information.

6.8.3 In cases, where a request is required to be made for Tax Examination Abroad, the CIT/DIT concerned should make a reference to the Competent Authority, that is, JS(FT&TR-I) or JS(FT&TR-II) as the case maybe, with a copy to the CCIT/DGIT concerned, giving full details of the case. The Competent Authority will contact his counterpart in the other country and request for his assistance depending on the domestic laws of the requested State.

6.9 Simultaneous Examination

A simultaneous examination is an arrangement between two or more parties to examine simultaneously each in its own territory, the tax affairs of a taxpayer(s) in which they have a common interest or related interest, with a view to exchanging any relevant information which they so obtain. This may be useful in cases of scrutiny assessment of multi-national corporations having operations in different countries or in transfer pricing audits. Request for the same may also be made through the office of Competent Authority.

6.10 Joint Audits

A joint audit means two or more countries join together to form a single audit team to examine an issue of one or more related taxable persons with cross-border business activities, organized in the participating countries and in which the countries have a common or complementary interest. It also includes the taxpayer jointly makes presentations and shares information with the countries. The joint audit team may include Competent Authority representatives, joint audit team leaders and examiners from each country.

CHAPTER-VII: UTILIZATION OF INFORMATION RECEIVED FROM A FOREIGN JURISDICTION

7.1 Introduction

In the previous Chapters, it has been seen that substantial information is being received from India's treaty partners and it is essential that the same must be effectively utilized during investigations and making assessments, levying of penalty and during prosecution proceedings. It is also essential that regular feedback on how this information is utilized must be provided. Regular, timely and comprehensive feedback between competent authorities is also important as it

- enables quality improvements to be made for future information exchanges
- can improve the motivation of tax officials to provide information
- may be useful for competent authorities to obtain the resources they need as it will serve as an indicator of the usefulness of exchange

To achieve these objectives, guidelines in the following paragraphs have been provided which needs to be followed by officers posted in the field formations.

7.2 Information Received on Specific Requests

7.2.1 As stated earlier, the requests for information from a foreign jurisdiction can be made by officers of the Investigation Wing and by the Assessing Officer or by the CIT (A). This information is made to the foreign tax authorities through the Competent Authority. The Competent Authority forwards the request to his counterpart who in turn will instruct their tax authorities to gather information. The information is received by the Indian Competent Authority through the foreign jurisdiction's Competent Authority, who will forward the information to the officer from whom the request for information has been received.

7.2.2 If the request was made by the Investigation Wing and if the investigations are completed by the Investigation Wing and the case has been referred to the Assessment Wing, all the information received from foreign tax authorities, must be sent to the Assessment Wing, with intimation to the Competent Authority. Similarly, if the jurisdiction of the case changes, all the information must be transferred to the new jurisdictional officer, with copy to the Competent Authority. The information received from the foreign tax authorities should also be brought to the notice of appellate authorities, if the Assessing Officer is of the opinion that it would be relevant for appellate

proceedings and should also be used during penalty and prosecution proceedings.

7.2.3 The officer who has made the request from the foreign jurisdiction as also the Assessing Officer/CIT(A) who has utilized the information is required to provide feedback which should be as detailed as possible including the following details:

1. Overall usefulness of the information
2. If the information is not useful, reasons thereof, e.g., information received was too late or it was incomplete or not relevant
3. The additional tax revenues realized
4. Tax evasion method detected, if any, and other related details
5. Acknowledgment and appreciation of the fact that the request for information was given high priority
6. Any other useful comments/suggestions

7.2.4 The officer who has made the request must provide interim feedback in all the cases regarding the usefulness of the information received from foreign jurisdiction within two months of the receipt of information. Supplementary feedback may be sent after the information is utilised and results are obtained. The Commissioner of Income Tax/Director of Income Tax concerned should ensure that the ADIT/DDIT and the Assessing Officer sends the feedback in a regular and timely manner.

7.2.5 The feedback should be forwarded by the CIT/DIT concerned to JS(FT&TR-I) and JS(FT&TR-II) as the case may be, who in turn will provide the feedback to their counterpart in other country.

7.3 Standard Operating Procedure with Regard to Ways to Handle Information Received through Automatic Exchange of Information

7.3.1 The data/information under the Automatic Exchange of Information will be received by the Competent Authority, that is, JS(FT&TR-I) and JS(FT&TR-II), as the case maybe, from his counterpart in the other country/jurisdiction. This data/information will be forwarded by the office of the Competent Authority to DGIT (Intelligence and Criminal Investigation), through Member (Inv.), CBDT.

7.3.2 The DGIT (I&CI) will

1. Access the data, examine its integrity, and convert the data into usable format
2. Segregate the data in terms of a monetary limit of Rs. 5 million and above, and below Rs. 5 million
3. The data will be populated with PAN wherever possible
4. The information in respect of cases involving the amount of Rs. 5 million and above would be sent to the respective DIT(I&CI) or DIT (Intelligence) for verification and report. The information in respect of cases involving the amount below Rs. 5 million would be forwarded to the respective CCIT(CCA) for necessary action and report. However, the cases involving amount of less than Rs. 5 million where jurisdiction/PAN is not readily ascertainable will be verified by the Directorate of Intelligence and Criminal Investigation for further necessary action and report.
5. The DGIT (I&CI) will obtain feedback from the DIT(I&CI) concerned or DIT (Intelligence) or CCIT-CCA, as the case maybe, within a time frame of two months in the prescribed format at **Annexure-I** and will forward the same to Competent Authority for transmission to the treaty partner
6. The DGIT (I&CI) shall, both at the time of dissemination to the field formations and providing feedback to the Competent Authority, put up the gist of important information/findings to the Investigation Division of the CBDT

7.3.3 The DGIT (Systems) shall facilitate online dissemination and feedback in respect of the information/data by providing necessary platform.

7.3.4 If on examination of information received under Automatic Exchange of Information, if the officer concerned is of the opinion that some other relevant information may be obtained by making specific reference, such reference may be made as per procedure prescribed in Chapter-III of the Manual.

7.3.5 All the officers concerned in the above process should strictly follow the confidentiality provisions of the treaties including the computer data protection.

7.4 Feedback on use of Automatic Exchange of Information

7.4.1 The feedback of automatic exchange is very important. To illustrate this point let us assume a case where a foreign resident in India has interest income. He files a declaration that he is resident of a country with which India has DTAA and, therefore, entitled to reduced rate of withholding tax. The tax is withheld accordingly at reduced rate. This information is passed on to the tax

authority of the other country by India under automatic route. It is the duty of the other country to provide feedback. There is always a possibility that the other country may find that the person is not resident of that country. In that case that country should immediately inform India so that Indian tax authority can take necessary action. Same applies to automatic information received by India from other countries. Thus, automatic exchange of information is a two way process which helps both the countries.

7.4.2 The format in which the officers in the field formation needs to provide the feedback is enclosed as **Annexure-I**. The first feedback should be provided within two months of receipt of the information. If on verification of the information, it is found that the information is useful for tax purposes, supplementary report in **Annexure-I** should be sent by the officer concerned whenever new developments take place, such as completion of assessments, collection of taxes, levy of penalty, initiation of prosecution proceedings, etc. As stated earlier, the feedback may be sent to DGIT (I&CI) who will forward this to the Competent Authority for transmission to the Competent Authority of the other country. Any updated feedback, for instance, imposition of penalty or launching of prosecution at a future date may also be reported.

7.5 Spontaneous Exchange of Information

As stated earlier, the information received under Spontaneous Exchange of Information including through India's Embassies/Income Tax Overseas Units will be forwarded to Member (Inv.), who will send it to the jurisdictional DGIT (Inv.) and to DGIT (I&CI), if the jurisdiction cannot be determined or matter require coordinated action across various jurisdictions. The DGIT concerned should provide feedback on the usefulness of the information including details of action taken, additional revenue realized, penalties imposed, prosecution launched etc. as per Proforma prescribed in **Annexure-I**. This feedback may be provided to Member (Inv.) who will forward the same to the Competent Authority for sharing with its counterpart in the foreign country.

7.6 Small Tax Effect

Where information is received, either under Automatic Exchange of Information route or Spontaneous Exchange of Information route, and if the information is likely to result in an undisclosed income of below Rs. 50,000, the officer concerned may not conduct enquiries/verifications, after taking approval of the CIT/DIT concerned. However, in these cases also, the feedback report in the prescribed format must be submitted.

CHAPTER-VIII: CONFIDENTIALITY

8.1 Confidentiality under the Provisions of Income-tax Act, 1961

Confidentiality of information related to a taxpayer is fundamental cornerstone of all modern tax administrators, including that of India. Section 138 of the Income-tax Act, 1961, read with notifications issued, provides that, subject to certain exceptions, no public servant shall furnish any information contained in any statement made, return furnished or accounts or documents produced under the provisions of the Act, or in any evidence given, affidavit or depositions made in the course of any assessment proceedings under the Act. Section 280 of the Income-tax Act, 1961, provides that if a public servant furnishes any information or produces any document in contravention of the above, he shall be punishable with imprisonment which may extend to six months and shall also be liable for fine. These provisions have been put in so that the taxpayers have confidence in the system and are ensured that their sensitive financial information is not disclosed inappropriately, whether incidentally or by accident. The Supreme Court in a recent decision¹³ has held that the details disclosed by a person in his income tax returns are “personal information” which stand exempted under clause (j) of section 8(1) of the Right to Information Act, 2005, unless it involves a large public interest.

8.2 Confidentiality under the Provisions of DTAAs/TIEAs

7.2.1 Under the provisions relating to Exchange of Information, any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that Contracting State. Thus, the information received under the provisions of DTAAs/TIEAs/Multilateral Convention is also subject to the restrictions imposed through section 138 read with section 280 of the Income-tax Act, 1961.

7.2.2 The provisions relating to Exchange of Information further states that if the information is originally regarded as secret in the transmitting State, it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Convention. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions. Since the provisions of DTAAs override the domestic legislation, this means that if the information is

¹³Girish Ramchandra Deshpande vs. Central Information Commissioner & Others Special Leave Petition (Civil) No. 27734 of 2012

treated as confidential in the transmitting State, it should be treated as confidential in India also and the exceptions provided in section 138 would not be applicable in these cases.

8.3 Guide on Protection of Confidentiality

The Global Forum has recently published a guide on the protection of confidentiality of information exchanged for tax purposes¹⁴ - Keeping It Safe which also includes best practices adopted in the tax administration of different countries. Some of the relevant issues in this regard are summarized below which needs to be taken care of by the tax officers in the field units:

- Confidentiality covers both information provided in a request and information received in response to a request
- Information provided can be used only for tax purposes and it cannot be shared with authorities not dealing with tax matters except in certain limited cases with the prior consent of the competent authority of the State supplying the information
- The letters of the Competent Authorities, either of Indian Competent Authority or the Competent Authority of India's treaty partner, must not be disclosed even to the taxpayers, although minimum information contained in the letter necessary for obtaining the information requested may be disclosed to the taxpayer or its proxy.
- The information may be disclosed in public court proceedings, for instance during prosecution proceedings or in judicial decisions
- The information received from foreign Government is exempt from disclosure under section 8(1)(a) and 8(1)(f) of the Right to Information Act, 2005
- The information received from a foreign jurisdiction needs to be kept under lock and eye and the officer concerned is directly responsible for any unauthorized access of the information
- All the information received or sent must be stored in a secure manner and the access should be strictly controlled on a need to know basis. Where an IT system is used, access should be with individual login and password.

8.4 Computer Data Protection

Sometimes, the information is received from India's treaty partners in electronically. It is of utmost importance that this information must be transmitted in a secured manner after proper encryption and password

¹⁴

http://www.oecd.org/ctp/exchangeofinformation/Keeping%20it%20Safe_EN%20FINAL%20w_cover_WEB.pdf

protection. This should be done both for transmission through emails and also through Compact Discs. No copies should be made unless absolutely necessary and record of such copies and the persons handling the data should be maintained.

ANNEXURE-A: India'S DTAAs AND TIEAs

Double Taxation Avoidance Agreements (DTAAs)			
S. No.	Country	Date of Entry into Force	Competent Authority
1.	Armenia	9 th September, 2004	JS(FT&TR-I)
2.	Australia	30 th December, 1991	JS(FT&TR-II)
3.	Austria	5 th September, 2001	JS(FT&TR-I)
4.	Bangladesh	27 th May, 1992	JS(FT&TR-II)
5.	Belarus	17 th July, 1998	JS(FT&TR-I)
6.	Belgium	1 st October, 1997	JS(FT&TR-I)
7.	Botswana	30 th January, 2008	JS(FT&TR-II)
8.	Brazil	11 th March, 1992	JS(FT&TR-II)
9.	Bulgaria	23 rd June, 1995	JS(FT&TR-I)
10.	Canada	6 th May, 1997	JS(FT&TR-I)
11.	China	21 st November, 1994	JS(FT&TR-II)
12.	Cyprus	21 st December, 1994	JS(FT&TR-I)
13.	Czech Republic	27 th September, 1999	JS(FT&TR-I)
14.	Denmark	13 th June, 1989	JS(FT&TR-I)
15.	Egypt	30 th September 1969	JS(FT&TR-II)
16.	Estonia	20 th June, 2012	JS(FT&TR-I)
17.	Finland	19 th April, 2010	JS(FT&TR-I)
18.	France	1 st August, 1994	JS(FT&TR-I)
19.	Georgia	1 st April, 2012	JS(FT&TR-I)
20.	Germany	26 th October, 1996	JS(FT&TR-I)
21.	Greece	17 th March, 1967	JS(FT&TR-I)
22.	Hungary	4 th March, 2005	JS(FT&TR-I)
23.	Iceland	21 st December, 2007	JS(FT&TR-I)
24.	Indonesia	19 th December, 1987	JS(FT&TR-II)
25.	Ireland	26 th December, 2001	JS(FT&TR-I)
26.	Israel	15 th May, 1996	JS(FT&TR-II)
27.	Italy	23 rd November, 1995	JS(FT&TR-I)
28.	Japan	29 th December, 1989	JS(FT&TR-I)
29.	Jordan	16 th October, 1999	JS(FT&TR-II)
30.	Kazakhstan	2 nd October, 1997	JS(FT&TR-II)
31.	Kenya	20 th August, 1985	JS(FT&TR-II)
32.	Korea	1 st August, 1986	JS(FT&TR-II)
33.	Kuwait	17 th October, 2007	JS(FT&TR-II)
34.	Kyrgyz Republic	10 th January, 2001	JS(FT&TR-II)
35.	Libya	1 st July, 1982	JS(FT&TR-II)
36.	Lithuania	10 th July, 2012	JS(FT&TR-I)
37.	Luxembourg	9 th July, 2009	JS(FT&TR-I)
38.	Malaysia	14 th August, 2003	JS(FT&TR-II)
39.	Malta	8 th February, 1995	JS(FT&TR-I)
40.	Mauritius	6 th December, 1983	JS(FT&TR-II)
41.	Mexico	1 st February, 2010	JS(FT&TR-I)
42.	Mongolia	29 th March, 1996	JS(FT&TR-II)

43.	Montenegro	23 rd September, 2008	JS(FT&TR-I)
44.	Morocco	20 th February, 2000	JS(FT&TR-II)
45.	Mozambique	28 th February, 2011	JS(FT&TR-II)
46.	Myanmar	30 th January, 2009	JS(FT&TR-II)
47.	Namibia	22 nd January, 1999	JS(FT&TR-II)
48.	Nepal	1 st November, 1988	JS(FT&TR-II)
49.	Netherlands	21 st January, 1989	JS(FT&TR-I)
50.	New Zealand	3 rd December, 1986	JS(FT&TR-II)
51.	Norway	20 th Dec, 2011	JS(FT&TR-I)
52.	Oman	3 rd June, 1997	JS(FT&TR-II)
53.	Philippines	21 st March, 1994	JS(FT&TR-II)
54.	Poland	26 th October, 1989	JS(FT&TR-I)
55.	Portuguese Republic	30 th April, 2000	JS(FT&TR-I)
56.	Qatar	15 th January, 2000	JS(FT&TR-II)
57.	Romania	14 th November, 1987	JS(FT&TR-I)
58.	Russia	11 th April, 1998	JS(FT&TR-I)
59.	Saudi Arabia	1 st November, 2006	JS(FT&TR-II)
60.	Serbia	23 rd September, 2008	JS(FT&TR-I)
61.	Singapore	1 st Sept, 2011	JS(FT&TR-II)
62.	Slovenia	17 th February, 2005	JS(FT&TR-I)
63.	South Africa	28 th November, 1997	JS(FT&TR-II)
64.	Spain	12 th January, 1995	JS(FT&TR-I)
65.	Sri Lanka	19 th April, 1983	JS(FT&TR-II)
66.	Sudan	15 th April, 2004	JS(FT&TR-II)
67.	Sweden	25 th December, 1997	JS(FT&TR-I)
68.	Swiss Confederation	7 th Oct, 2011	JS(FT&TR-I)
69.	Syria	10 th November, 2008	JS(FT&TR-II)
70.	Taiwan	2 nd September, 2011	JS(FT&TR-II)
71.	Tajikistan	10 th April, 2009	
72.	Tanzania	20 th Dec, 2011	JS(FT&TR-II)
73.	Thailand	13 th March, 1986	JS(FT&TR-II)
74.	Trinidad and Tobago	13 th October, 1999	JS(FT&TR-II)
75.	Turkey	1 st February, 1997	JS(FT&TR-II)
76.	Turkmenistan	7 th July, 1997	JS(FT&TR-II)
77.	UAE	22 nd September, 1993	JS(FT&TR-II)
78.	Uganda	27 th August, 2004	JS(FT&TR-II)
79.	UK	26 th October, 1993	JS(FT&TR-I)
80.	Ukraine	31 st October, 2001	JS(FT&TR-I)
81.	USA	18 th December, 1990	JS(FT&TR-I)
82.	Uzbekistan	25 th January, 1994	JS(FT&TR-II)
83.	Vietnam	2 nd February, 1995	JS(FT&TR-II)
84.	Zambia	18 th January, 1984	JS(FT&TR-II)
Tax Information Exchange Agreements (TIEAs)			
1.	Bahamas	1 st March, 2011	JS(FT&TR-I)

2.	Bermuda	3 rd November, 2010	JS(FT&TR-I)
3.	British Virgin Islands	5 th July, 2011	JS(FT&TR-I)
4.	Cayman Islands	8 th November, 2011	JS(FT&TR-I)
5.	Guernsey	11 th June, 2012	JS(FT&TR-I)
6.	Isle of Man	17 th March, 2011	JS(FT&TR-I)
7.	Jersey	8 th May, 2012	JS(FT&TR-I)
8.	Liberia	30 th Mar, 2012	JS(FT&TR-II)
9.	Macua	14 th April, 2012	JS(FT&TR-II)

ANNEXURE-B: Status of Multilateral Convention as on 31.12.12

Country	ORIGINAL CONVENTION			PROTOCOL (P)/ AMENDED CONVENTION (AC)		
	SIGNATURE (Opened on 25-01-1988)	DEPOSIT OF INSTRUMENT OF RATIFICATION ACCEPTANCE OR APPROVAL	ENTRY INTO FORCE	SIGNATURE (Opened on 27- 05-2010)	DEPOSITE OF INSTRUMENT OF RATIFICATION, ACCEPTANCE OR APPROVAL	ENTRY INTO FORCE
ARGENTINA				03-11-2011 (AC)	13-09-2012	01-01-2013
AUSTRALIA				03-11-2011 (AC)	30-08-2012	01-12-2012
AZERBAIJAN	26-03-2003	03-06-2004	01-10-2004			
BELGIUM	07-02-1992	01-08-2000	01-12-2000	04-04-2011 (P)		
BRAZIL				03-11-2011 (AC)		
CANADA	28-04-2004			03-11-2011 (P)		
CZECH REPUBLIC				26-10-2012 (AC)		
COLOMBIA				23-05-2012 (AC)		
COSTA RICA				01-03-2012 (AC)		
DENMARK	16-07-1992	16-07-1992	01-04-1995	27-05-2010 (P)	28-01-2011	01-06-2011
FINLAND	11-12-1989	15-12-1994	01-04-1995	27-05-2010 (P)	21-12-2010	01-06-2011
FRANCE	17-09-2003	25-05-2005	01-09-2005	27-05-2010 (P)	13-12-2011	01-04-2012
GHANA				10-07-2012 (AC)		
GEORGIA	12-10-2010	28-02-2011	01-06-2011	03-11-2010 (P)	28-02-2011	01-06-2011
GERMANY	17-04-2008			03-11-2011 (P)		
GREECE	21-02-2012			21-02-2012 (P)		
ICE LAND	22-07-1996	22-07-1996	01-11-1996	27-05-2010 (P)	28-10-2011	01-02-2012
INDIA				26-01-2012 (AC)	21-02-2012	01-06-2012
INDONESIA				03-11-2011 (AC)		
IRELAND				30-06-2011 (AC)		
ITALY	31-01-2006	31-01-2006	01-05-2006	27-05-2010 (P)	17-01-2012	01-05-2012
JAPAN	03-11-2011			03-11-2011 (P)		
KOREA	27-05-2010	26-03-2012	01-07-2012	27-05-2010 (P)	26-03-2012	01-07-2012
MALTA				26-10-2012 (AC)		
MAXICO	27-05-2010			27-05-2010 (P)	23-05-2012	01-09-2012
MOLDOVA	27-01-2011	24-11-2011	01-03-2012	27-01-2011 (P)	24-11-2011	01-03-2012
NETHERLANDS	25-09-1990	15-10-1996	01-02-1997	27-05-2010 (P)		
NEW ZEALAND				26-10-2012 (AC)		
NORWAY	05-05-1989	13-06-1989	01-04-1995	27-05-2010 (P)	18-02-2011	01-06-2011
POLAND	19-03-1996	25-06-1997	01-10-1997	09-07-2010 (P)	22-06-2011	01-10-2011
PORTUGAL	27-05-2010			27-05-2010 (P)		
ROMANIA	15-10-2012			15-10-2012 (P)		
RUSSIA				03-11-2011 (AC)		
SLOVENIA	27-05-2010	31-01-2011	01-05-2011	27-05-2010 (P)	31-01-2011	01-06-2011
SOUTH AFRICA				03-11-2011 (AC)		
SPAIN	12-11-2009	10-08-2010	01-12-2010	11-03-2011 (P)	28-09-2012	01-01-2013
SWEDEN	20-04-1989	04-07-1990	01-04-1995	27-05-2010 (P)	27-05-2011	01-09-2011
TUNISIA				16-07-2012 (AC)		
TURKEY				03-11-2011 (AC)		
UKRAIN	20-12-2004	26-03-2009	01-07-2009	27-05-2010 (P)		
UNITED KINGDOM	24-05-2007	24-01-2008	01-05-2008	27-05-2010 (P)	30-06-2011	01-10-2011
UNITED STATES	28-06-1989	30-01-1991	01-04-1995	27-05-2010 (P)		

ANNEXURE-C: Terms of Reference to Monitor and Review Progress towards Transparency and Exchange of Information for Tax Purposes

A. Availability of Information – Essential Elements

A.1 Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

A.1.1. Jurisdictions should ensure that information is available to their competent authorities that identifies the owners of companies and any bodies corporate. Owners include legal owners, and, in any case where a legal owner acts on behalf of any other person as a nominee or under a similar arrangement, that other person, as well as persons in an ownership chain.

A.1.2. Where jurisdictions permit the issuance of bearer shares they should have appropriate mechanisms in place that allow the owners of such shares to be identified. One possibility among others is a custodial arrangement with a recognized custodian or other similar arrangement to immobilize such shares.

A.1.3. Jurisdictions should ensure that information is available to their competent authorities that identifies the partners in any partnership that (i) has income, deductions or credits for tax purposes in the jurisdiction, (ii) carries on business in the jurisdiction or (iii) is a limited partnership formed under the laws of that jurisdiction.

A.1.4. Jurisdictions should take all reasonable measures to ensure that information is available to their competent authorities that identifies the settlor, trustee and beneficiaries of express trusts (i) created under the laws of that jurisdiction, (ii) administered in that jurisdiction, or (iii) in respect of which a trustee is resident in that jurisdiction.

A.1.5. Jurisdictions that allow for the establishment of foundations should ensure that information is available to their competent authorities for foundations formed under those laws to identify the founders, members of the foundation council, and beneficiaries (where applicable), as well any other persons with the authority to represent the foundation.

A.1.6. Jurisdictions should have in place effective enforcement provisions to ensure the availability of information, one possibility among others being sufficiently strong compulsory powers.

A.2 Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

A.2.1. Accounting records should (i) correctly explain all transactions, (ii) enable the financial position of the Entity or Arrangement to be determined with reasonable accuracy at any time and (iii) allow financial statements to be prepared.

A.2.2. Accounting records should further include underlying documentation, such as invoices, contracts, etc. and should reflect details of (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place; (ii) all sales and purchases and other transactions; and (iii) the assets and liabilities of the relevant entity or arrangement.

A.2.3. Accounting records should be kept for 5 years or more.

A.3 Banking information should be available for all account-holders.

A.3.1. Banking information should include all records pertaining to the accounts as well as to related financial and transactional information.

B. Access to Information – Essential Elements

B.1. Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

B.1.1. Competent authorities should have the power to obtain and provide information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees, as well as information regarding the ownership of companies, partnerships, trusts, foundations, and other relevant entities including, to the extent that it is held by the jurisdiction's authorities or is within the possession or control of persons within the jurisdiction's territorial jurisdiction, ownership information on all such persons in an ownership chain.

B.1.2. Competent authorities should have the power to obtain and provide accounting records for all relevant entities and arrangements.

B.1.3. Competent authorities should use all relevant information-gathering measures to obtain the information requested, notwithstanding that the requested jurisdiction may not need the information for its own tax purposes (*e.g.*, information should be obtained whether or not it relates to a taxpayer that is currently under examination by the requested jurisdiction).

B.1.4. Jurisdictions should have in place effective enforcement provisions to compel the production of information.

B.1.5. Jurisdictions should not decline on the basis of its secrecy provisions (*e.g.*, bank secrecy, corporate secrecy) to respond to a request for information made pursuant to an exchange of information mechanism.

B.2 The rights and safeguards (*e.g.* notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

B.2.1. Rights and safeguards should not unduly prevent or delay effective exchange of information. For instance, notification rules should permit exceptions from prior notification (*e.g.*, in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction).

C. Exchanging Information – Essential Elements

C.1. Exchange of information mechanisms should provide for effective exchange of information and should:

C.1.1. allow for exchange of information on request where it is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction.

C.1.2. provide for exchange of information in respect of all persons (*e.g.* not be restricted to persons who are resident in one of the contracting states for purposes of a treaty or a national of one of the contracting states).

C.1.3. not permit the requested jurisdiction to decline to supply information solely because the information is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

C.1.4. provide that information must be exchanged without regard to whether the requested jurisdiction needs the information for its own tax purposes.

C.1.5. not apply dual criminality principles to restrict exchange of information.

C.1.6. provide exchange of information in both civil and criminal tax matters.

C.1.7. allow for the provision of information in specific form requested (including depositions of witnesses and production of authenticated copies of original documents) to the extent possible under the jurisdiction's domestic laws and practices.

C.1.8. be in force; where agreements have been signed, jurisdictions must take all steps necessary to bring them into force expeditiously.

C.1.9. be given effect by the enactment of legislation necessary for the jurisdiction to comply with the terms of the mechanism.

C.2 The jurisdictions' network of information exchange mechanisms should cover all relevant partners.

C.3 The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received.

C.3.1. Information exchange mechanisms should provide that any information received should be treated as confidential and, unless otherwise agreed by the jurisdictions concerned, may be disclosed only to persons or authorities (including courts and administrative bodies) 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 the exchange of information clause. Such persons or authorities shall use the information only for such purposes. Jurisdictions should ensure that safeguards are in place to protect the confidentiality of information exchanged.

C.3.2. In addition to information directly provided by the requested to the requesting jurisdiction, jurisdictions should treat as confidential in the same manner as information referred to in C.3.1 all requests for such information, background documents to such requests, and any other document reflecting such information, including communications between the requesting and requested jurisdictions and communications within the tax authorities of either jurisdiction.

C.4 The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties.

C.4.1. Requested jurisdictions should not be obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or information which is the subject of attorney client privilege or information the disclosure of which would be contrary to public policy.

C.5 The jurisdiction should provide information under its network of agreements in a timely manner.

C.5.1. Jurisdictions should be able to respond to requests within 90 days of receipt by providing the information requested or providing an update on the status of the request.

C.5.2. Jurisdictions should have appropriate organisational processes and resources in place to ensure timely responses.

C.5.3. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions.

ANNEXURE-D: Proforma for seeking Information under Exchange of Information Article in the DTAAs/TIEAs/Multilateral Agreements

(to be filled up in duplicate as per Instructions given in the Manual and as per Notes indicated
against each column)

1	To:		Note 1
2	From:		Note 2
3	Contact Point	Name:	Note 3
		Email:	
		Telephone:	
		Fax:	
4	Legal Basis:		Note 4
5	Reference numbers and related matters	Reference number:	Note 5
		Initial request:	
		Acknowledgment needed:	
		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): Please check the box: <input type="checkbox"/> Yes <input type="checkbox"/> No	
		Number of attachments to the request:	Note 6
		Total number of pages for all attachments:	Note 7
6	Urgency of reply	Date if any, after which information would no longer be useful:	Note 8
		Urgent reply required due to:	Note 9
7	Identity of person(s) under		Note 10

	examination or investigation:		
8	Request to refrain from notifying the taxpayer(s) involved:	<p>Please check the box:</p> <p>No <input type="checkbox"/></p> <p>Yes <input type="checkbox"/></p> <p>Reasons: If yes, the competent authority confirms that the requesting country would be able to refrain from notifications in similar circumstances.</p>	Note 11
9	Time period or taxable event for which or in relation to which the information is sought:		Note 12
10	Tax(es) to which the request relates:		Note 13
11	Tax purpose for which the information is requested:	<p>Please check the box:</p> <p><input type="checkbox"/> determination, assessment and collection of taxes,</p> <p><input type="checkbox"/> recovery and enforcement of tax claims,</p> <p><input type="checkbox"/> investigation or prosecution of tax matters ,</p> <p><input type="checkbox"/> other (please specify):</p>	Note 14

12	Relevant background:		Note 15
13	Information requested:		Note 16
14	Grounds for believing that the requested information is held in the requested jurisdiction or is within the possession or control or is within the possession or control of a person within its jurisdiction:		Note 17
15	Name and address of any person believed to be in possession of the information requested (to the extent known):		Note 18
16	Form, if any, in which information is requested:	For copies of documents what type of authentication, if any, is requested: other form requirements, if any:	Note 19
17	Translation of reply requested:	Please check the box: <input type="checkbox"/> Yes <input type="checkbox"/> No Language requested:	Note 20
18	In making the request, the requesting competent authority states that: (a) all information received in relation to this request will be kept confident and used only for the purposes permitted in the agreement which forms the basis for this request; (b) the request is in conformity with its law and administrative practice and is further in conformity with the agreement on the basis of which it is made; (c) the information would be obtainable under its laws and the normal course of its administrative practice in similar circumstances; (d) it has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.		Note 21

Signature of the CIT/DIT Concerned
Name and Designation (Note 22)

Notes:

Note 1	The name of the country/jurisdiction from where the information is being requested should be mentioned						
Note 2	<p>The designation of the Indian Competent Authority, who will be making the request to his counterpart, may be mentioned in this column as under:</p> <table border="1"> <thead> <tr> <th>Countries</th> <th>Competent Authority</th> </tr> </thead> <tbody> <tr> <td>North America (including countries of Central America and Caribbean), Europe and Japan</td> <td> Joint Secretary (FT&TR-I) Room No. 803, 'C' Block, Bhikaji Cama Place Hudco Vishala Building, New Delhi – 110066 Phone: +91-11-26108402 FAX: +91-11-26177990 </td> </tr> <tr> <td>Rest of the World</td> <td> Joint Secretary (FT&TR-II) Room No. 804, 'C' Block, Bhikaji Cama Place Hudco Vishala Building, New Delhi – 110066 Phone: +91-11-26104504 FAX: +91-11-26104504 </td> </tr> </tbody> </table>	Countries	Competent Authority	North America (including countries of Central America and Caribbean), Europe and Japan	Joint Secretary (FT&TR-I) Room No. 803, 'C' Block, Bhikaji Cama Place Hudco Vishala Building, New Delhi – 110066 Phone: +91-11-26108402 FAX: +91-11-26177990	Rest of the World	Joint Secretary (FT&TR-II) Room No. 804, 'C' Block, Bhikaji Cama Place Hudco Vishala Building, New Delhi – 110066 Phone: +91-11-26104504 FAX: +91-11-26104504
Countries	Competent Authority						
North America (including countries of Central America and Caribbean), Europe and Japan	Joint Secretary (FT&TR-I) Room No. 803, 'C' Block, Bhikaji Cama Place Hudco Vishala Building, New Delhi – 110066 Phone: +91-11-26108402 FAX: +91-11-26177990						
Rest of the World	Joint Secretary (FT&TR-II) Room No. 804, 'C' Block, Bhikaji Cama Place Hudco Vishala Building, New Delhi – 110066 Phone: +91-11-26104504 FAX: +91-11-26104504						
Note 3	The contact details of the officers at FT&TR Division needs to be mentioned here and thus the column should be kept blank						
Note 4	The legal basis of making the request, for instance Article 26 of the DTAA between India and ----- or Article 5 of the TIEA between India and ----- or Article 4 of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters or Article 5 of the SAARC Multilateral Limited Agreement may be mentioned						
Note 5	This column will be filled up by FT&TR Division						
Note 6	The number of attachments with the Proforma should be mentioned						
Note 7	The total number of pages for all the attachments need to be mentioned						
Note 8	The date after which information will no longer be useful may be mentioned here. However, if the information may be useful during appellate proceedings, even after the said date, this fact needs to be mentioned						
Note 9	The box stating the reasons for urgent reply needs to be ticked here. If reasons mentioned in more than one box are applicable, all the relevant boxes may be ticked.						
Note 10	The identity of the person or entity under examination or investigation should be mentioned with information such as full name, date of birth, Permanent Account Number (PAN), Full address and other details available on record.						
Note 11	Some countries have rules that require them in certain cases to notify the taxpayer concerned about the request for information. Those rules provide for exceptions from the notification requirement in certain cases, for instance, in cases where the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation in the requesting country. If it is considered that the request falls in one of the above category, a request for exemption from prior notification may be						

	explaining the reasons why the request may fall within the scope of such an exception.
Note 12	The time period or the taxable event (e.g. the date on which withholding tax is imposed) for which the information or in relation to which the information is sought should be mentioned. If the information is relevant for the current period, this fact should also be mentioned
Note 13	The taxes for which the request are made should be mentioned
Note 14	The relevant box needs to be ticked and if necessary more than one box may be ticked
Note 15	Detailed background of the case should be mentioned clearly including the fact that how the information requested is foreseeably relevant for administration and enforcement of the domestic tax laws of India. This background information should also include a brief summary of the ongoing examination or investigation and how the requested information relates to this examination or investigation. Copies of relevant documents, if considered relevant for the investigation by the foreign tax authorities, may be included as Annexure. Where any other persons (e.g. individuals, companies, partnership, trusts, etc.), including foreign persons, are relevant to the examination or the investigation and the request, the information sufficient to identify those persons, to the extent known, and their relationship with the taxpayers may be specified.
Note 16	The information which is requested should be mentioned specifically and in a simple and easily understandable language.
Note 17	The grounds for believing that the information is available in the requested jurisdiction should be mentioned
Note 18	The name and address (to the extent known) of the person believed to be in possession of the information should be mentioned.
Note 19	The form in which the information is required for evidentiary value, for example, the specific forms for deposition of witnesses or the manner in which copies of original documents are authenticated may be mentioned.
Note 20	If the information is requested in English, the same may be indicated here
Note 21	Before making the request, it should be ensured that the four conditions mentioned here have been satisfied so that the competent authority gives an undertaking for the same before making a request
Note 22	The name and designation of the concerned Commissioner of Income Tax/Director of Income Tax making the request should be mentioned and he should sign and verify the content of the information contained in the request.

ANNEXURE-E: Details of Competent Authority Office of India

FT&TR-I Division		
Name	Mr Sanjay Kumar Mishra, IRS	
Government Agency	Ministry of Finance, Government of India	
Department/ Division	Central Board of Direct Taxes, Department of Revenue	
Function/ Role	Joint Secretary, FT&TR-I	
Full Address:	Room No 803, 8 th Floor, “C” Wing, HudcoVishala Building, Bhikaji Cama Place, New Delhi-110066	
E-mail:	Skumar.mishra@nic.in	
Telephone	+91-11-26108402	
Fax:	+91-11-27177990	
Types of assistance for which the Contact point is responsible and Countries for which the Contact Point is responsible	Type of Assistance	Countries
	1. Policy issues related to International Taxation and Transfer Pricing	All the countries
	2. Mutual Agreement procedure and Advance Pricing Agreements with all the countries.	All the countries
	3. Matters related to Double Taxation Avoidance Agreements and Agreements for Exchange of Information and Assistance in Collection of Taxes.	North America, Europe and Japan.
	4. Exchange of Information, assistance in tax collection, tax examination abroad and service of documents.	North America, Europe and Japan.
Note	North America includes the countries of Central America and Caribbean.	

FT& TR – II Division	
Name	Mr K. Ramalingam, IRS
Government	Ministry of Finance, Government of India

Agency		
Department/ Division	Central Board of Direct Taxes, Department of Revenue	
Function/ Role	Joint Secretary, FT&TR-I	
Full Address:	Room No 804, 8 th Floor, “C” Wing, HudcoVishala Building, BhikajiCama Place, New Delhi-110066	
E-mail:	k.ramalingam@nic.in	
Telephone	+91-11-26104504	
Fax:	+91-11-26104504	
Types of assistance for which the Contact point is responsible and Countries for which the Contact Point is responsible	Type of Assistance	Countries
	1. Matters related to Double Taxation Avoidance Agreements and Agreements for Exchange of Information and Assistance in Collection of Taxes.	Countries/ Jurisdictions other than North America, Europe and Japan.
	2. Exchange of Information, assistance in tax collection, tax examination abroad and service of documents.	Countries/ jurisdictions other than North America, Europe and Japan.

Office of Joint Secretary FT&TR-I:

Director (FT&TR-III)

Mr Rahul Navin, IRS
Room No. 903, 9th Floor,
“C” Wing, HudcoVishala Building,
BhikajiCama Place, New Delhi-110066
E-mail: rahul.navin@nic.in
Ph: +91-11-26109827
Fax: +91-11-26109827

Under Secretary (FT&TR-III) (1)

Mr VipulAgarwal, IRS
Room No. 905, 9th Floor,
“C” Wing, HudcoVishala Building,
BhikajiCama Place, New Delhi-110066
E-mail: vipul.agarwal@nic.in
Ph: +91-11-26179265
Fax: +91-11-26179265

Under Secretary (FT&TR-III) (2)

Mr P S Sivasankaran, IRS
Room No. 905, 9th Floor,
“C” Wing, HudcoVishala Building,
BhikajiCama Place, New Delhi-110066
E-mail: siva.sankaran@nic.in
Ph: +91-11-26179269
Fax: +91-11-26179269

**Office of Joint Secretary FT&TR-II:
Director (FT&TR-IV)**

Mr Sukesh Jain, IRS
Room No. 901, 9th Floor,
“C” Wing, HudcoVishala Building,
BhikajiCama Place, New Delhi-110066
E-mail: sukesh.jain@nic.in
Ph: +91-11-26177567
Fax: +91-11-26177567

Under Secretary (FT&TR-IV) (1)

Vacant
Room No. 802, 8th Floor,
“C” Wing, HudcoVishala Building,
BhikajiCama Place, New Delhi-110066
E-mail: prashant.jha@nic.in
Ph: +91-11-26179275
Fax: +91-11-26179275

Under Secretary (FT&TR-IV) (2)

Mr AlokMalviya, IRS
Room No. 807, 8th Floor,
“C” Wing, HudcoVishala Building,
BhikajiCama Place, New Delhi-110066
E-mail: alok.malviya@nic.in
Ph: +91-11-26179436
Fax: +91-11-26179436

ANNEXURE-F: Case Studies

Case Study 1: Bogus Foreign Expenses

A Search and Seizure operation was conducted in the case of an Indian Company G Ltd., engaged in the Pharmaceutical business, in which prima-facie evidence of bogus/inflated marketing/business expenses in foreign countries, such as letter head of foreign concerns were found. It was seen that payments were made to companies in Countries A and B as reimbursement of advertisement expenses incurred by four companies X, Y, Z and W located in Country C. Reference was accordingly made for information to all the three Countries.

Information received from Country C indicated the following

- (a) As per the local tax database, Companies X and Y were not registered at the address mentioned by G Ltd. but were found at some other address. As per the statement of legal representative of the company, no relationship exists with the companies located in Country A which has claimed to have reimbursed the expenses.
- (b) Company Z was not found at the registered address. The local police department initiated detection measures of the actual location of the company and same did not yield any result.
- (c) Company W's registration was terminated. As per the report of the local tax office, in the course of the tax audit of this company for the period before cancellation of registration, no relation with companies in Countries A and B were found.

Information from Country A indicated the following:

- (a) Mr. X who was the Managing Director and the chief promoter of G Ltd., and his wife were also directors of Companies located in Country A.
- (b) The balance sheet of Companies in Country B did not have any property and the registered office address is the residential address of accountant.
- (c) Bank account of Mr. X in Country A showed substantial credit from companies based in Country B, which could not be explained by Mr. X.

The above information received from foreign countries under India's DTAA's have resulted in assessment of undisclosed income of more than Rs. 15 billion.

Case Study 2: Bogus Gifts from Foreign Countries

During the course of search and seizure action, it was found that the Mr. X has claimed credits in capital account by way of foreign inward remittances. These remittances were shown to have received as gift/ transfer from individuals in Canada including himself. To verify the genuineness of the gifts, following enquiries were made in Country A

- Whether the donors are resourceful persons to make gifts as mentioned
- Whether the transactions are bonafide
- Whether the donors are assessed to income-tax or any other tax applicable in the foreign country.
- Whether such details have been disclosed in their returns filed before the tax authorities of that country.
- Whether the bank accounts from which the monies were drawn to effect gifts are maintained continuously, if so, copy of such accounts.

The information provided by Country A proved that the said individuals have no capacity to remit the said sum because the total income returned by them were only in few thousand dollars which is disproportionately lower compared to the remittances shown to have been made.

In this case, it has also come to light that the said individual had filed fictitious/forged foreign return of income details in India as per the records of the Tax Authorities in Country A. Having done so, he had claimed huge foreign tax credits in his Indian return against his Indian tax liabilities whereas his actual return filed in Canada was only meagre. The fictitious tax credit claims were therefore disallowed.

Case Study 3: Investment from Non-existent Entity from a Foreign Jurisdiction:

In this case investments were received by the taxpayer in the form of share application money from a foreign entity. The Investigative Office doubted the genuineness of the money received during the course of scrutiny assessment. The taxpayer was asked to submit the address of the foreign concern making the share application located in Country A and the documents of the remittance of money. Information was requested from Country A under DTAA regarding the verification of the address of the investor and documents related to its identity. The information received from Country A revealed that the company stated by the Indian taxpayer to have made investment does not exist in the records of Country A. It was also informed by Country A that the property address stated by the taxpayer has been let out to three different tenancies during the specified tax period, which were from three different countries.

Case Study 4: Unaccounted Credit Card Expenses

During the course of survey operations, it was found that the taxpayer has conducted frequent foreign travels and spent a lot of money. It was found that the taxpayer is using a number of credit cards, existing in the name of his relatives living abroad, for his lavish lifestyle. His annual income was only in few millions which was not even sufficient to satisfactorily explain his expenses in India. He allegedly owns a private jet and spends part of the year abroad.

Information were requested from Country A where the credit cards have been issued, including the following

- Name and complete address of the person holding the Credit Card
- Nature of business/ occupation of the above said persons and their year-wise annual incomes for the period.
- Transaction statements of all the credit cards mentioned above for the period.
- Details of bank (including account number) from which payment made in respect of these credit cards for settlement of dues.
- Statements of Bank accounts for the period April 1, 2007 to March 31, 2010, held by the above person/entity in the bank of the foreign country.

The information received from Country A proved that he had spent millions of rupees abroad using these credit cards and the payments to credit cards were done regularly from undeclared bank accounts.

Case Study 5: Fictitious Loans and Gifts

A Search and Seizure operation was conducted on the Indian taxpayer Mr. X, in which it was found that he was in receipt of loans and gifts from Mr.Y, Mr.Z and Mr.W, the residents of Country A of about Rs. 40 million and credited the same into his bank account in India. Information received from Country A revealed that Mr. X, Y and Z had no capacity to gift the said sum because the total income returned by them were only in few thousand pounds.

Case Study 6: Foreign Bank Account not reported

Competent Authority of Country A passed on spontaneous information about remittances to the extent of about USD 5 million in bank accounts of the Indian Company by a Company in Country A. This remittance was made to bank account of the Indian entity maintained in Country B.

Based on the information received, the Income Tax Authorities carried out a survey under section 133A of the Income-tax Act, 1961, at the business premises of Indian Company. During the course of survey, unexplained cash of more than Rs. 10 million was found and the survey was converted into search and seizure operation. During the course of search, when confronted with the information received from Country A, the Managing Director of the Indian Company admitted that the two accounts in Country B were maintained in the name of the Indian Company and its directors. She also admitted that the difference in sale consideration from export of iron ore according to the original contract and addendum agreement was deposited in the above bank accounts in Country B. She admitted the undisclosed income of more than Rs. 210 million.

Case Study 7: Commission Earned Abroad not Offered for Tax

Information was received from Country A under Spontaneous Exchange of Information on commission payments paid by the Company in Country A for engineering and sales services. The tax officers in the field formations have been provided with this information to verify the transactions. On examination of books of accounts and bank statements of this Indian company, it was found that the remittance of Rs. 6 million neither appeared in their regular books of accounts nor their bank statements. The Indian taxpayer admitted that they have suppressed this income and paid taxes on the same.

Case Study 8: Request from a Foreign Jurisdiction Resulted in Detection of Tax Evasion in India

In this case, a request for information was received from Country A in the case of Mr.X being a national of that country but a resident of India about the salary income received by him in Country A. Mr.X was employed as Director in a Company (Z) in Country A. His main nature of work was to look after the sales (marketing) of machines and give technical support to Z in various countries such as India. He stationed himself in India and travels to the other countries for his Company. He received salary only from Z which is credited to his bank account maintained in the foreign country.

When this information was passed on to the field officers, it was found that since services are performed in India, salary income should be taxable in India. On taking this view, an understatement of salary income was determined for five assessment years with amounts varying from Rs. 400,000 to Rs. 5 million. The Investigating officer also found in the course of examination that the taxpayer deducted certain expenses from the salary income, which are not allowable, and thus showed less income. The tax evasion could thus be detected in a case

where the request was made for information by the Foreign Competent Authority and ultimately the information resulted in detection of tax evasion in India.

Case Study 9: Information Provided by Indian Tax Authorities Regarding Beneficiaries of Foreign Trust

Tax Authorities of Country A, while conducting the audit of the Tax Payers of that country Mr. P, M/s Q and M/s R for the years 2006 to 2008, required some information in respect of Mr X, a resident of India who was involved in the management of the business of Mr P who was also a previous officer of M/s Q and Mr Y whom they suspect to be controlling M/s R. Country A, during their audit, noticed that several transactions of the said entities had reflected the involvement of the tax payers of foreign countries viz., India and many other foreign countries. Accordingly, the Competent Authority of Country A made a reference to India to obtain certain information in respect of two individuals Mr X and Mr Y, residents of India, whom they suspect to be having certain transactions with the foreign entities of Mr. P, M/s Q and M/s R. They made the following request

- Evidence showing that Mr Y or his relatives control M/s R;
- Any evidence confirming whether or not Mr Y is the real beneficial owner of this corporation;
- Any other information that may help Canadian Tax Authorities regarding this matter.

On receipt of the above request, a Search and Seizure action under section 132 of the Income-tax Act, 1961, was conducted in the case of Mr X. Though the intra group transactions entered into by the Indian taxpayers with foreign entities does not appear to be immediately relevant since the Settlers, the Trust and the other beneficiaries/entities are non-residents, some documents from the premises of Mr. X which refer to the transactions within the trust group outside India were seized by the Indian Tax Authorities and the same were sent to the tax authorities of Country A. Country A utilized this information after verification of similar information from other countries and provided a feedback that the information from India has resulted in an approximate adjustment of \$ 100,000 in tax and \$ 250,000 in penalty and interest. This result was achieved since the foreign tax authorities could correlate information received from various countries to get a bigger picture of how the tax evasion schemes were carried out through use of offshore trusts.

ANNEXURE-G: Proforma for sending information on requests received under DTAAs/TIEAs/Multilateral Conventions

(to be filled up in duplicate as per Instructions given in the Manual and as per Notes indicated against each column)

1	Name of the foreign taxpayer		Note 1
2	Name and address of all the connected persons in India		Note 2
3	Date on which request was received		Note 3
4	Date on which reply is given		Note 4
5	Whether this is final or interim reply		Note 5
6	Problems in gathering information, if any		Note 6
7	Details of action taken		Note 7
8	Results of Enquiry		Note 8
9	Details of documents attached		Note 9
10	Form in which feedback is requested		Note 10

Signature of the Officer (Note 11)

Notes

Note 1	The name of the foreign taxpayer should be mentioned here
Note 2	The name and address of all the connected persons in India should be mentioned here
Note 3	Date on which the request was received by the Investigating Officer may be mentioned
Note 4	Date on which the reply was given by the Investigating Officer may be mentioned
Note 5	It may be mentioned whether the reply is interim or final. In case it is an interim reply, the likely date on which the final reply will be provided need to be mentioned
Note 6	The problems in gathering information, if any, may be mentioned
Note 7	Details of action taken, for instance, conducting of surveys, taking statements, getting information from a third party etc. should be indicated in detail

	including the fact as to whether the taxpayer has been notified
Note 8	The results of enquiry should be mentioned here in greatest detail and if necessary Annexures may be added
Note 9	Details of documents attached may be mentioned here with number of pages of each
Note 10	The form in which feedback is requested from the foreign tax authorities should be mentioned here
Note 11	The Proforma should be signed by the officer concerned, that is, the Assessing Officer or the ADIT/DDIT, who has conducted the investigation

ANNEXURE-H: Proforma for seeking Assistance in Collection of Taxes under DTAAs/TIEAs/Multilateral Convention

(to be filled up in duplicate as per Instructions given in the Manual and as per Notes indicated against each column)

1	To:		Note 1
2	From:		Note 2
3	Contact Point	Name:	Note 3
		Email:	
		Telephone:	
		Fax:	
4	Legal Basis:		Note 4
5	Reference numbers and related matters	Reference number:	Note 5
		Initial request:	
		Acknowledgment needed:	
		Please check the box: Yes <input type="checkbox"/> No <input type="checkbox"/> If no, please provide reference number(s) and date(s) of any related request(s):	
		Please check the box: Yes <input type="checkbox"/> No <input type="checkbox"/>	
		Number of attachments to the request:	Note 6
		Total number of pages for all attachments:	Note 7
6	Urgency of reply	Date if any, after which assistance would no longer be useful:	Note 8
		Urgent reply required due to:	Please check the box: <input type="checkbox"/> Statute of limitation; date: <input type="checkbox"/> Suspected fraud <input type="checkbox"/> Court case <input type="checkbox"/> Other reasons (please specify):
7	Identity of person(s) from whom the tax claim is due:		Note 10

8	Date of Creation of Tax Claim		Note 11
10	Tax(es) to which the request relates:		Note 12
11	Nature of tax claim:	Please check the box: <input type="checkbox"/> Undisputed tax, <input type="checkbox"/> Tax levied, pending before the appellate authorities, <input type="checkbox"/> Provisional tax , <input type="checkbox"/> Interest <input type="checkbox"/> Penalty <input type="checkbox"/> other (please specify):	Note 13
12	Relevant background:		Note 14
13	Amount of tax claim (Penalty to be stated separately)		Note 15
14	Grounds for believing that the taxpayer has assets in the Requested State or the tax claim can be collected by the Requested state:		Note 16
15	Details of known assets in the Requested Country:		Note 17

16	Mode of transmission of taxes that may be suggested to the Requested state:		Note 18
----	---	--	---------

Signature of the CIT/DIT concerned
Name and Designation (Note 19)

Notes:

Note 1	The name of the country/jurisdiction from where the information is being requested should be mentioned						
Note 2	The designation of the Indian Competent Authority, who will be making the request to his counterpart, may be mentioned in this column as under: <table border="1"><thead><tr><th>Countries</th><th>Competent Authority</th></tr></thead><tbody><tr><td>North America (including countries of Central America and Caribbean), Europe and Japan</td><td>Joint Secretary (FT&TR-I) Room No. 803, 'C' Wing, Bhikaji Cama Place Hudco Vishala Building , New Delhi – 110066 Phone: +91-11-26108402 FAX: +91-11-26177990</td></tr><tr><td>Rest of the World</td><td>Joint Secretary (FT&TR-II) Room No. 804, 'C' Wing, Bhikaji Cama Place Hudco Vishala, New Delhi – 110066 Phone: +91-11-26104504 FAX: +91-11-26104504</td></tr></tbody></table>	Countries	Competent Authority	North America (including countries of Central America and Caribbean), Europe and Japan	Joint Secretary (FT&TR-I) Room No. 803, 'C' Wing, Bhikaji Cama Place Hudco Vishala Building , New Delhi – 110066 Phone: +91-11-26108402 FAX: +91-11-26177990	Rest of the World	Joint Secretary (FT&TR-II) Room No. 804, 'C' Wing, Bhikaji Cama Place Hudco Vishala, New Delhi – 110066 Phone: +91-11-26104504 FAX: +91-11-26104504
Countries	Competent Authority						
North America (including countries of Central America and Caribbean), Europe and Japan	Joint Secretary (FT&TR-I) Room No. 803, 'C' Wing, Bhikaji Cama Place Hudco Vishala Building , New Delhi – 110066 Phone: +91-11-26108402 FAX: +91-11-26177990						
Rest of the World	Joint Secretary (FT&TR-II) Room No. 804, 'C' Wing, Bhikaji Cama Place Hudco Vishala, New Delhi – 110066 Phone: +91-11-26104504 FAX: +91-11-26104504						
Note 3	The contact details of the officers at FT&TR Division needs to be mentioned here and thus the column should be kept blank						
Note 4	The legal basis of making the request, for instance Assistance in Tax Collection Article of the DTAA between India and ----- or Article 7 of the TIEA between India and ----- or Article 11 of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters or Article 6 of the SAARC Limited Multilateral Agreement may be mentioned						
Note 5	This column will be filled up by FT&TR Division						
Note 6	The number of attachments with the Proforma should be mentioned						
Note 7	The total number of pages for all the attachments need to be mentioned						
Note 8	The date after which Assistance will no longer be useful may be mentioned here. This may be due to the statutory time limitation or due to any other reason to be mentioned specifically.						
Note 9	The box stating the reasons for urgent reply needs to be ticked here. If reasons mentioned in more than one box are applicable, all the relevant boxes may be ticked.						
Note 10	The identity of the person or entity under from whom the revenue claim is due such as full name, date of birth, Permanent Account Number (PAN), Full address and other details available on record.						
Note 11	The date on which the tax claim was made on the taxpayer for the first time. Generally it will be the date of issue of notice of demand.						
Note 12	The taxes for which the request are made should be mentioned like Income-Tax, Wealth-Tax, Security Transaction Tax etc.						
Note 13	The relevant box needs to be ticked to provide the nature of revenue claim to the Requested Country.						
Note 14	Detailed background of the case should be mentioned clearly including the facts giving rise to the revenue claim. The efforts carried out by the tax officers of the field formations should be clearly stated. This background information should also include a brief summary of the ongoing efforts to collect the taxes.						

	Copies of relevant documents, if considered relevant for the assistance by the foreign tax authorities, may be included as Annexure. Copy of certificate drawn under section 222 of the Income-tax Act, 1961, should be attached.
Note 15	The information should clearly distinguish the tax, interest and penalty portion of the tax claim. In case if the interest or any other portion of tax claim is likely to vary with the time period, the same should also be mentioned clearly with the method of calculation of the updated tax claim. The same should be clearly mentioned with an example to explain the same to Requested country.
Note 16	The grounds for believing that the taxpayer has assets in Requested country or how the tax claim may otherwise be collected by the Requested State shall be clearly mentioned.
Note 17	The details of the known assets including the details of identification and the addresses are to be provided to facilitate the Requested Country to help us.
Note 18	The mode of the transmission of “tax claim” by the Tax Officials of the Requested Country need to be provided clearly.
Note 19	The name and designation of the Commissioner of Income Tax/Director of Income Tax concerned making the request should be mentioned and he should sign and verify the content of the information contained in the request.

ANNEXURE-I: Proforma for Providing Feedback on Information Received under Automatic or Spontaneous Exchange of Information

1	Name and address of the Indian taxpayer	
2	Permanent Account Number of the Indian taxpayer	
3	Whether the information was useful – Yes or No	
4	If the information was not useful, what are the reasons, e.g. data not readable, taxpayer not identified, incomplete address, period of limitation over, etc.	
5	Whether the taxpayer has disclosed the information in his tax return	
6	If the information received has not been disclosed, the details of actions taken	
7	Results of action taken as on date, for instance assessment made, taxes collected, penalties levied, prosecution launched etc. This information may be updated on new developments and revised Proforma should be sent	