

行政院所屬各機關因公出國人員出國報告書  
(出國類別：其他)

## 資訊交換與銀行保密

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## 目錄

第一章	前言	1
壹、	緣起	1
貳、	議題內容	1
第二章	資訊交換	3
壹、	資訊交換的必要性	3
貳、	資訊交換的法律面	5
參、	資訊交換的實務面	9
第三章	銀行保密	18
壹、	銀行保密的重要性	18
貳、	銀行保密對稅務行政之影響	20
參、	我國銀行保密概況	22
第四章	個案研討	25
第五章	結論與建議	29

參加 OECD 韓國稅務中心二〇〇一年多邊稅務研討會

「資訊交換與銀行保密」會議報告

## 第一章 前言

### 壹、緣起

韓國自一九九六年正式成為經濟合作暨發展組織 (OECD) 會員國，其所設立之稅務中心每年皆舉辦多場相關議題之研討會，今 (二〇〇一) 年舉辦之多邊租稅研討會第三場會議，研討主題為資訊交換與銀行保密，期間為九十年五月二十八日至六月二日，與會者包括來自韓國及中華民國、香港、新加坡、中國大陸、蒙古、菲律賓、泰國、尼泊爾等亞洲非 OECD 會員國家之稅務工作人員，並由 OECD 秘書處、挪威及英國內地稅官員三人擔任指導員，共計二十六人與會。

### 貳、議題內容

本研討會之討論議題包括以下各項：

- 資訊交換的必要性
- 資訊交換的法律面
  - 資訊交換的基礎
  - 資訊交換的特性與範圍
  - 資訊交換的義務
  - 資訊交換的限制
- 資訊交換的實務面
  - 資訊交換的主管人員
  - 資訊交換的形式
  - 資訊的請求
  - 資訊的回復
  - 自發性資訊交換
  - 面臨的實際問題及解決之道
  - 直接取得資訊方式

- 國際租稅合作訓練
- 銀行保密
  - 銀行保密之重要性
  - 銀行保密對稅務行政之影響
  - 我國銀行保密概況
- 個案研討
- 結論與建議

## 第二章 資訊交換

### 壹、資訊交換的必要性

由於經濟的全球化，再上外匯管制與其他限制資本自由移動的障礙解除，對於經濟發展及全球貿易均有所助益，但相對地也提高租稅逃漏與規避的可能性，進而影響財政的公平性、整體預算與扭曲國際競爭力；大量資本移動使得許多國家在決定本國政策(尤

其是資本所得課稅政策)時，失去自主性。因應全球經濟整合日益加深及資本移動加速，每一國家在制定財政政策時，除內部要件外，必需同時考量國外資本影響，而國際間有效稅率之差異，著實限制其資本所得課稅(稅率)政策之擬定，同時亦使其面臨資本所得避稅及逃稅之風險，對課稅主管機關形成相當大的挑戰。

國際化企業係以全球為基礎，通常會利用租稅天堂、租稅條約及國際間的缺少協調來規劃稅務，除被動的克服租稅障礙，也有主動的要減少或消除稅負，而個人或小企業通常利用稅務機關的管理問題來逃稅，因此，在此種經濟全球化後之資本市場交易無國界情況下，為確保租稅條約的正確運用，並消除國際租稅逃漏與規避，實有賴於國際間的租稅合作，而國際間的租稅協定及協議中有關資訊交換之規定，則愈

益顯得重要。

## 貳、資訊交換的法律面

一、 資訊交換的基礎：一般而言，下列的國際法律文件（International legal instruments）

可提供作為稅務方面資訊交換的基礎

（一） 雙邊及多邊租稅協定：大部份租稅協定皆包括與簽約雙方有關課稅事項之資訊交換，僅條款規定有異而產生應用程度上之差異而已，通常係參酌 OECD 稅約範本第二十六條（附件一），或聯合國稅約範本規定訂定，除聯合國稅約範本於條文中明示防制避稅之重要性外，兩種範本有關資訊交換之規定並無實質之不同。

（二） 以相互協助目的所設計的國際文件，包括雙

邊協定（如稅務資訊交換協定, TIEAs），及多邊協定（如一九七七年歐盟指令、一九九二年 EEC 資訊交換規則、一九八九年北歐稅務相互協助協定、歐洲與 OECD 稅務行政相互協助聯合審議協定…等）。

（三）締約國間的相互協助，亦可以在國內法中加以規定，像歐盟會員國已將一九七七年歐盟指令有關相互協助的規定，納入國內法規範。

（四）歐洲與 OECD 稅務行政相互協助聯合審議協定 (Joint Council of Europe/OECD Convention on mutual administrative assistance in tax matters)：

1、 協定國家有比利時、丹麥、芬蘭、冰島、挪威、波蘭、瑞典及美國

2、 廣泛的相互協助，包括資訊交換，稅務



及文件服務協助。

- 3、 涵蓋的稅目包括直接及間接稅、資產稅、及社會捐等。

## 二、 資訊交換的特性與範圍

- (一) 資訊交換之範圍：為正確的運用條約，有效落實締約國國內稅法及避免租稅的規避與逃漏，締約國間資訊交換宜在最大可能的範圍內提供，例如運用 OECD 稅約範本第十二條（版稅方面）規定，居住地國可能要求所得來源國提供支付給該國居民的版稅金額等相關資料，而所得來源國為了計算免扣繳額，亦可能向居住地國詢問納稅義務人是否為該國居民或是否為版稅的受益人。一般而言，締約國間資訊交換可能詢問下列資訊：

- 1、 個人或公司的居留期間。

- 2、 法律個體的稅務狀態。
- 3、 所得特性。
- 4、 所得申報書的所得與費用。
- 5、 商業行為紀錄。
- 6、 銀行交易紀錄。
- 7、 買賣價格。

(二) 涵蓋的納稅義務人：資訊交換並不僅限於締約國雙方的居民，有時為了對非居民的課稅，稅務當局也會要求締約國提供第三國居民在該國所從事活動的相關資訊。

(三) 涵蓋的稅目：二千年 OECD 稅約範本已不再限制資訊交換的稅目僅包括資本及所得稅，資訊交換可涵蓋所有稅目，但因此範本是最近才提出，故實務上大概只有少數雙邊協定提供如此廣泛的資訊交換，如果雙邊協

定未規定廣泛的資訊交換，則締約國無需因

另一締約國之要求，而提供各種稅務資訊。

三、 資訊交換的義務：依照 OECD 稅約範本第二十六條規定，締約國有提供資訊交換的義務，資訊交換的義務是確保國內稅法的課稅不會與租稅條約的課稅相抵觸，尤其在需要正確的資訊時，資訊交換的義務更顯得重要。

四、 資訊交換的限制：OECD 稅約範本第二十六條規定，以下三種情況，可免除資訊交換的義務：

- (一) 缺乏互惠原則。
- (二) 有洩露企業或專業秘密之風險。
- (三) 資訊之揭露有違反公共秩序之虞者。

參、資訊交換的實務面

- 一、 資訊交換的主管人員 ( competent authorities)：除非有授權，一般稅務人員無法直接和外國稅務人員接觸，並取得所需資訊，資訊的交換需由合格的主管人員辦理。一般而言，締約國雙方應指定他們辦理資訊交換的合格主管人員 (通常是財政部部長或其代表)。
- 二、 資訊交換之形式：一般而言，資訊交換形式可分為下列三種：
  - 1、 應請求而提供之交換資訊 ( exchange on request)：因特定案件或問題所產生的資訊需求。
  - 2、 自動交換資訊 ( automatic exchange of information)：有系統地交換與特定所得項目 (如利息、股利或版稅…等) 有關之資訊，藉由其「大量」之特性，以最有效的方式交換資

訊，OECD 並已設計自動交換資訊的標準格式供作參考。

3、自發性資訊交換 (spontaneous exchange of information)：在特定案件下，未經提出要求而主動提供的資訊。OECD 提供自發性資訊交換的標準格式如附件二。

三、資訊的請求：當資訊需求國運用各種方法仍無法獲得所需資訊時，資訊需求國通常會向締約國提出資訊請求。提出資訊請求的型式一般以正式文件方式為之。所提出的資訊請求宜儘量詳細，且涵蓋有關事實，締約國才能瞭解資訊需求國的需要，並以最有效的方式處理，如果所提的請求不完整，可能會因為締約國的主辦人員尚需瞭解更細節的情事，反而會造成更多的延遲。一般而言，請求表包含項目如下：(範

例如附件三)

- 1、 依據的條約及條款。
- 2、 納稅義務人之姓名、生日、稅籍編號、  
及地址。
- 3、 所涉及外國納稅義務人之姓名、稅籍編  
號及地址；如果是法人則需有公司登記號  
碼。
- 4、 納稅義務人間的關係，必要時可以圖表  
方式表示。
- 5、 相關背景資料。
- 6、 所涉及的稅目。
- 7、 調查課稅期間，即起迄之年、月、日。
- 8、 提出資訊請求的課稅目的。
- 9、 納稅義務人銀行資訊，包括納稅義務人  
的姓名、銀行名稱、地址及帳戶號碼。

- 1 0、採行幣別。
- 1 1、如果交易透過中介第三人，亦應提及中介第三人之姓名。
- 1 2、敘明資訊需求的緊急性及理由。
- 1 3、如果需要銀行交易紀錄及文件影本，應敘明所需原始憑證的種類。
- 1 4、如果該資訊需以特定格式供法院之用，應敘明所需格式。
- 1 5、如果將資訊交換通知納稅義務人，會影響事件的調查（如詐欺案），應敘明不應告知納稅義務人之理由。
- 1 6、必要時，可註明聯絡人姓名、電話及傳真號碼。

#### 四、 資訊的回復：

- (一) 期中回復：合格主管人員（Competent

authorities) 應儘可能的在接到資訊請求時，通知對方，並表明預計可以回復的時程。

(二) 合格主管人員 (Competent authorities) 所扮演之角色：辨識取得

資訊的可行性及指導稅務人員取得資訊：

- 1、 資訊請求是否符合資訊交換條約或相關法令之規範。
- 2、 是否由對方的合格主管人員簽發，並已包含取得資訊所需的各項必要訊息。
- 3、 要求提供之資訊是否符合國內法的相關規範。
- 4、 資訊請求國所提供的資料足否確認欲調查之納稅義務人。
- 5、 資訊請求國所提供的資料是否明瞭。



6、 能否確保資訊保密。

(三) 如果無法取得所需資訊，宜及早通知資訊請求國；如果可以取得所需資訊，合格主管人員應將此一資訊請求，轉由有關單位蒐集。

(四) 合格主管人員要提供稅務人員必要的指導，協助所需資訊的蒐集。如有特殊案例，並應強調資訊需求的急迫性，目前有一些國家會設定期限，要求地方稅務機關在一定期間內完成資訊的蒐集。

(五) 回復表包含項目：(範例如附件四)：

1、 依據的條約及條款。

2、 納稅義務人之姓名、生日、稅籍編號、及地址。

3、 相關背景資料。

- 4、所涉及的稅目。
- 5、所需資訊的期間。
- 6、銀行交易紀錄及文件影本。
- 7、未被要求提供但可能有用的額外資訊。
- 8、必要時，可註明聯絡人姓名、電話及傳真號碼。
- 9、重申本次資訊提供所依據相關條約規定。
- 10、敘明納稅義務人是否已被通知此一資訊交換。
- 11、敘明是否涉及交易或商業機密。

五、 資訊交換所面臨之實際問題及可能解決之道：

- (一) 語言問題：可採用國際通用語言及標準

加以解決。

(二) 資訊遺漏：可採用檢核表加以解決

(三) 資訊品質：可加強稅務人員的訓練及激勵。

(四) 資訊的時間性：依一般實務慣例，除有特殊情況，應於三個月內提供資訊交換。

(五) 自動交換資訊的品質：可採用 OECD 標準交換資訊方式加以解決。

(六) 自動交換資訊比對困難：採用 TIN (納稅人稅籍編號)。

六、可直接從締約國取得資訊的方式：

(一) 公共資料庫 (public data bases)。

(二) 稅務檔案 (tax file)。

(三) 稅務當局資料庫 (tax authorities databases)。

- (四) 第三者之資訊報告，如勞工所得、佣金、退休金、資本所得、不動產之購買及汽車之購買等。

七、 國際稅務合作的訓練：訓練方式如下：

- (一) 基礎訓練。
- (二) 研討會。
- (三) 稅務官員的激勵。
- (四) OECD 資訊交換範本 (OECD Model)。

### 第三章 銀行保密

#### 壹、銀行保密的重要性

所謂「銀行保密」，係泛指銀行因經營業務所獲知的顧客秘密，負有不得洩漏之義務。因金融機構與顧客間之往來關係乃基於信賴因素，而金融機構在與顧客交易時，必然從中獲知不少顧客之秘密，如銀行

存、放款及匯款等各項金融交易之商業資料。由於涉及顧客財產權及營業機密，如銀行任意地將所獲知之顧客相關秘密洩漏給第三人，勢必破壞其與顧客間之信賴關係，不僅使得銀行業務之經營橫生阻力，更有使顧客之隱私遭受侵害之虞；另外，在銀行與顧客間之交易契約雖無明文約定銀行應負保密之義務，惟顧客希望銀行不會將其秘密任意地洩漏予他人，係屬合理之期待。因此，銀行為了顧客之利益及自身業務之推展，自有回應顧客期待之必要，此為交易上誠信原則之當然要求。

另外，各國為維持金融體系之穩定，均訂有嚴格之限制，禁止第三者任意向銀行取得資訊，至於稅務機關為蒐集課稅資料而向銀行取得資訊，亦須經適當之程序，例如：取得銀行資訊須經高層主管之核准、透過司法程序或其他形式之核准，同時對誤用或未經

核准而公開資訊者科以罰金或刑事罰。為課稅目的而放寬銀行保密規定，須配合嚴格之保護規定，以確保該資訊僅用於法律明定之目的。此外，資料一旦提供給稅務當局，各國均建立嚴謹的程序，以避免資料未經核准而公開，此乃維持銀行制度及租稅制度信心之重要關鍵。

## 貳、銀行保密對稅務行政之影響

### 一、國內之負面影響

由於銀行保密規定，限制稅捐機關須在某些特殊條件下或採取適當程序始得向銀行取得相關課稅資訊，因而影響稅務當局取得銀行資訊之容易性，進而妨礙稅務行政及法律之執行。更甚者，若納稅義務人濫用銀行保密作為所得隱藏之方式，則稅捐機關在無法藉由取得銀行資訊而課徵正確稅額之情況下，將減低稅務當局稅務行政能力，因而使得租稅結構之完整

性受到質疑。又若因缺乏銀行資訊之取得而導致稅收減少，政府亦將面臨減少其服務或增加借款以滿足其運作成本所須之窘境；此外，為蒐集銀行保密之課稅資料，稅務當局需花費更多之時間與精力，因而提高稅務當局之課稅依從成本。

對租稅制度公平之信心，乃為鼓勵納稅義務人服從納稅之必要條件，若不同納稅義務人因銀行保密之隱藏所得或真實交易而有不同之課稅負擔，將對租稅公平性產生不信任。根據相關研究顯示，當納稅義務人覺得其不公平負擔較高比例之稅負時，則不願順從稅法納稅之比例亦將提高。

## 二、國際面之負面影響

銀行保密規定禁止取得銀行資訊，通常使得該國之稅務當局在訂定租稅協定後，仍無法提供締約國所需之資訊，從而使得透過國際合作蒐集課稅資料之功

能受到嚴重阻礙。

此外，缺乏銀行資訊之取得，亦可能因有害之租稅競爭而導致資本及資金流向之扭曲。為抑制有害之租稅競爭，OECD 呼籲各國須審視其有關取得金融資訊之相關法律、細則及規定，俾消除稅捐機關取得課稅資料之障礙，例如，某些國家因設立於過於嚴苛之規定，使得該地區投資者之金融資訊，不易為稅捐機關所取得，而形成相對經營上之優勢，將嚴重阻礙稅法之公平及效率，同時扭曲金融資源於各國之分配。

#### 參、我國銀行保密概況

我國憲法第十五條規定：「人民之財產權，應予保障。」，財產權之保障不僅是財產之自由使用、收益及處分之權，尚應包括該財產之往來資訊，故人民財產之往來資訊，亦屬憲法所保障之基本人權，而有「法律保留原則」之適用，亦即非法律，不容他人任



意蒐集、利用或洩露。目前銀行法第四十八條第二項規定：「銀行對於客戶之存款、放款或匯款等有關資料，除其他法律或中央主管機關另有規定者外，應保守秘密。」提供銀行對客戶資料應保密之法律基礎，財政部並依該規定，頒布相關命令，明定取得銀行資訊之相關規定。

- (一) 各機關因業務需要，需向商業銀行或專業銀行經營信託或證券業務查詢客戶往來、交易資料時，司法、軍法、稅務、監察、審計及其他法律規定具有調查權之機關，得依據各該法律規定，正式備文逕洽商有關銀行查詢。前揭以外機關因辦理移送法院強制執行、偵辦犯罪或為執行公務之業務上必要時，而有查詢需要者，應敘明案由，所查詢銀行名稱及查詢範圍，在中央應由部（會）、在直轄市應由直轄市政府；

在縣市應由縣市政府具函經財政部同意後，註明核准文號，再洽相關銀行辦理。

- (二) 稅捐稽徵機關因調查課稅需要，依稅捐稽徵法第三十條規定正式備文要求銀行提供前揭客戶往來、交易資料。如涉及「資金往來紀錄」，仍應先敘明案情並說明必須調查之理由，報經財政部核准，始得向銀行進行調查。惟若為瞭解欠稅人在銀行兼營信託或證券業務部門之信託資金或有價證券餘額，以便移請法院就其「欠稅強制執行」，或為「核課遺產稅」需要，而查詢被繼承人死亡日之信託資金或有價證券餘額，仍得逕洽相關銀行辦理。

- (三) 法務部調查局查詢時，以該局局長（副局長）審核認定為必要者為限。

- (四) 警察機關因偵查犯罪需要，得逕由各警察局

行文查詢與該案有關之前揭客戶往來、交易資料，並副知內政部警政署，不需報經財政部核准，以簡化行文流程。惟應表明係為偵辦刑事案件需要，註明案由，並須由警察局長（副局長）判行。

#### 第四章 個案研討

指導員提出六個個案，由與會人員分組討論，有關之問題及結論列述如下：

問題一：A 國在審查其納稅人 X 之 1998 年帳務時，在查核過程中發現 X 與 B 國的數家公司簽署技術服務合約，但 X 從未在其帳簿中列計該等交易之所得。服務合約中僅要求買受人將服務報酬匯入 X 在 B 國的支票存款帳戶內，未列出帳戶號碼。A 國向其租稅協定對方-B 國

主管機關提出資訊交換之請求。則 B 國是否  
可提供資訊予 A 國？

結論：

1. 由於 A 國並無法指出帳號，B 國可能很難查出 X  
在 B 國之帳戶
2. B 國是否能提供銀行帳戶資料，仍須視該國有關  
銀行保密之法律規定(Bank Secrecy Laws)

問題二：X 國正審查 A 公司之 1991 至 1996 年的所得  
稅，A 公司申報在 Z 國由 B 公司扣繳稅款的國  
外稅額扣抵，X 國請求 Z 國確認該扣繳稅。Z  
國的法令有五年的限制。Z 國可否提供資訊予  
X 國？

結論：如果該項資訊交換之要求係於 1996 年提出，  
則 Z 國可提供 1991-1996 年之資訊，如果是在

2001 年提出，則已超過法令上的時限，Z 國無法提供任何資料。

問題三：A 國的稅務單位負責內地稅與關稅之審查，在查核時審查人員發現 A 公司有一些向 B 國之 B 公司購貨之發票未列帳，A 國在 B 國要求提供資訊，證實 A 公司漏進漏銷，逃漏所得稅、營業增值稅及關稅。該項資訊可用來調整何種租稅？

結論：有些資訊可提供其他租稅之查核解答，但不能直接用來核課租稅協定所涵蓋租稅以外之稅目或其他目的，稽徵機關可就其所掌握之資訊另外尋求其他方式來證實其查核結果。

問題四：A 國的 A 公司供貨予位於 B 國中與其互不聯

屬的獨立企業，A 國希望從 B 國取得 B 國之獨立企業購買該等貨物的價格，以正確執行其國內法規定。B 國可否提供該等資訊予 A 國？

結論：A 國在其請求函中必須明確指出資訊交換的相關稅目，如符合協定之交換範圍，不應以其國內法之保密規定拒絕交換，因為國際條約凌駕國內法規定。

問題五：A 國之 A 公司經由位於 C 國（低稅負地區）的公司銷售貨物予 B 國的公司，各公司間並無聯屬關係，A 國與 C 國間，或 B 國與 C 國間均無租稅協定，依據 A 國與 B 國的租稅協定，A 國要求 B 國提供 B 國公司的進貨價格，B 國可否提供該項資訊予 A 國？

結論：首先要看此一資訊交換在法律上有無限制，如

資訊交換條款屬於廣泛的交換，則實務上是否提供應視雙方之相互合作關係如何。

問題六：A 國要求 B 國提供 B 國公司收取的價格，以便比較 A 國公司收取的價格（直接比較：特定公司或具市場支配力之集團所收取的價格），但 A 國並無任一公司與 B 國公司有營業往來。B 國可否提供資訊予 A 國？

結論：同上題之結論，實務上是否提供應視雙方之相互合作關係。

## 第五章結論與建議

過去十年來因自由化及全球化的趨勢，已助成跨國交易之快速成長，而科技的進步，特別是電子商務之發展及銀行之跨業經營，更進一步擴大國際金融往

來之範疇。跨國投資、生產活動之活絡，雖提供經濟成長之新機會及增進全球生活品質之提昇，然同時亦對稅務行政形成新的挑戰。為增進稅務行政效率，和避免租稅逃漏及規避，各國均應加強國際間之資訊交換，並在保護消費者之權益下，適度開放銀行資訊的取得。

適度開放銀行資訊具有多項優點，如（一）採行自動申報課稅制度之國家，在其納稅義務人瞭解銀行可能提供相關資訊給稅務當局之壓力下，將更誠實申報其所得；（二）藉由銀行取得資訊之容易及便捷，將可降低稅務機關之課稅依從成本；（三）納稅義務人在瞭解其他納稅義務人較不易逃稅之情況下，對租稅制度將更具信心，因而更願意誠實納稅；（四）租稅負擔之分配將更公平。

然而部分影響銀行資訊取得及交換之阻礙仍然存



在，例如，(一)並非所有國家均允許其稅務當局為稅務行政或資訊交換之目的而取得銀行資訊；(二)大部分國家對銀行客戶有嚴格之消費者認證需求；(三)在要求獲得國內課稅利息及提供銀行資訊予租稅協定締約國之國家，其與租稅協定締約國之潛在資訊交換障礙存在；(四)對某些國家而言，互惠原則之要求亦為資訊交換之障礙。上述障礙需由締約國間彼此密切合作，透過修改該國銀行法中有關資訊取得之規定，並藉由資訊交換作業程序之改進加以解決。

我國之租稅協定政策係為避免雙重課稅、防杜逃漏稅及增進實質關係，至九十年五月底，約與二十六個國家或地區簽訂租稅協定，所簽訂之租稅協定雖係遵照 OECD 稅約範本，並考量雙方之政治、財政、經濟及貿易狀況，惟在資訊交換作業方面，仍傾向於回應締約國之資訊請求，較少要求提供資訊；實務上雖

以專案方式處理，然對於資訊的回應或請求，尚未依一定的格式辦理，因而可能減低資訊交換的品質；另外，在資訊交換的訓練方面，除派員參加研討會外，國內訓練機構均甚少辦理類似之專業訓練，除造成資訊交換專業技能尚未普及，亦顯示主管當局似未重視資訊交換相關課題；又由於資訊交換重要性的觀念尚未普及，亦缺乏鼓勵稅務人員主動提供資訊的激勵措施，因此幾乎沒有自發性資訊交換之案例。

此次參加 OECD 韓國稅務中心二〇〇一年多邊稅務研討會，獲益良多，謹就所知，提出下列建議供參：

- (一) 為確保資訊之有效性和及時性，宜依 OECD 相關作業程序規定，與締約國進行資訊交換；  
另宜加強資訊交換之專業訓練，除派員出國參加研討會，亦宜於財稅人員訓練中心等訓練單位開辦資訊交換相關課程，或舉辦國際稅務合

作訓練，透過對資訊交換專業技能之普及與重視，才能充份發揮資訊交換應有效益。

(二) 自動資訊交換及自發性資訊交換，是相當有價值的資訊交換方式，稅務機關可依 OECD 設計之交換資訊標準格式辦理，然因自發性資訊交換有賴於地方稅務人員的主動辦理，如何激勵地方稅務人員在進行稽核或調查時，將所發現的特別且有用的資訊，透過該國合格主管人員傳送給締約國，是一個非常重要的課題。

(三) 為課稅目的而取得銀行資訊限制有逐漸放寬的趨勢，由於銀行保密係維護金融交易安全及私人財務隱私之重要因素，在放寬銀行保密限制以支援課稅資料之蒐集之同時，仍不應減少銀行保密之基本要求。為促其平衡，我國仍應衡酌國際發展趨勢及國內現況，檢視相關法令

規定並適時檢討修正，以確保稅務當局能迅速  
自銀行取得納稅義務人資料，並使納稅義務人  
資料獲得適當之保護。

Article 26

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2. 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 State and shall 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 referred to in the first sentence. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to 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*).

COMMENTARY ON ARTICLE 26  
CONCERNING THE EXCHANGE OF INFORMATION

I. Preliminary remarks

1. There are good grounds for including in a convention for the avoidance of double taxation provisions concerning co-operation between the tax administrations of the two Contracting States. In the first place it appears to be desirable to give administrative assistance for the purpose of ascertaining facts in relation to which the rules of the convention are to be applied. Moreover, in view of the increasing internationalisation of economic relations, the Contracting States have a growing interest in the reciprocal supply of information on the basis of which domestic taxation laws have to be administered, even if there is no question of the application of any particular article of the Convention.

2. Therefore the present Article embodies the rules under which information may be exchanged to the widest possible extent, with a view to laying the proper basis for the implementation of the domestic laws of the Contracting States concerning taxes covered by the Convention and for the application of specific provisions of the Convention. The text of the Article makes it clear that the exchange of information is not restricted by Article 1, so that the information may include particulars about non-residents.

3. The matter of administrative assistance for the purpose of tax collection is not dealt with in the Article. This matter is dealt with in the Convention on Mutual Administrative Assistance in Tax Matters, a multilateral convention that entered into force on 1 April 1995. This Convention was drawn up within the Council of Europe on the basis of a first draft prepared by the Committee on Fiscal Affairs and is open to the signature of the Member States of the Council of Europe and Member countries of the OECD. This matter can also form the subject of a separate bilateral agreement that can be negotiated between the Contracting States on the basis of the Model Convention for Mutual Administra-

tive Assistance in the Recovery of Tax Claims adopted by the Committee on Fiscal Affairs on 29 June 1979; alternatively, provisions on assistance in the field of tax collection may be introduced in a double taxation convention, whenever Contracting States find it preferable.

(Amended on 21 September 1995; see HISTORY)

4. Experience between 1963 and 1977 had shown that the text of the Article in the 1963 Draft Convention left room for differing interpretations. Therefore it was felt desirable to clarify its meaning in the 1977 Model Convention by a change in the wording of the Article and its Commentary without altering its effects. Apart from a single point of substance (cf. paragraph 13 below) the main purpose of the changes made has been to remove grounds for divergent interpretations.

(Amended on 23 July 1992; see HISTORY)

## II. Commentary on the provisions of the Article

### *Paragraph 1*

5. The main rule concerning the exchange of information is contained in the first sentence of the paragraph. The competent authorities of the Contracting States shall exchange such information as is necessary to secure the correct application of the provisions of the Convention or of the domestic laws of the Contracting States concerning taxes of every kind and description imposed in these States even if, in the latter case, a particular Article of the Convention need not be applied. Some countries replace "necessary" with "relevant" in their bilateral conventions, regarding this as a better way to express the sense of the provision; in the view of the Committee on Fiscal Affairs, either word may be used in that context. In order to keep the exchange of information within the framework of the Convention, a limitation to the exchange of information is set so that information should be given only insofar as the taxation under the domestic taxation laws concerned is not contrary to the Convention.

(Amended on 29 April 2000; see HISTORY)

6. The following examples may clarify the principle dealt with paragraph 5 above. In all such cases information can be exchanged under paragraph 1.

7. Application of the Convention
  - a) When applying Article 12, State A where the beneficiary is resident asks State B where the payer is resident, for information concerning the amount of royalty transmitted.
  - b) Conversely, in order to grant the exemption 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).
  
8. Implementation of the domestic laws
  - 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



OECD MODEL CONVENTION

matter owing in particular to the provisions of sub-paragraph c) of paragraph 2 relating to business and other secrets.

9. The rule laid down in paragraph 1 allows information to be exchanged in three different ways:

- a) on request, with a special case in mind, it being understood that the regular sources of information available under the internal taxation procedure should be relied upon in the first place before request for information is made to the other State;
- b) automatically, for example when information about one or various categories of income having their source in one Contracting State and received in the other Contracting State is transmitted systematically to the other State (cf. the OECD Council Recommendation C(81)39, dated 5 May 1981, entitled "Recommendation of the Council concerning a standardised form for automatic exchanges of information under international tax agreements" and the OECD Council Recommendation C(92)50, dated 23 July 1992, entitled "Recommendation of the Council concerning a standard magnetic format for automatic exchange of tax information");<sup>1</sup>
- c) spontaneously, for example in the case of a State having acquired through certain investigations, information which it supposes to be of interest to the other State.

(Amended on 29 April 2000; see HISTORY)

9.1 These three forms of exchange (on request, automatic and spontaneous) may also be combined. It should also be stressed that the Article does not restrict the possibilities of exchanging information to these methods and that the Contracting States may use other techniques to obtain information which may be relevant to both Contracting States such as simultaneous examinations, tax examinations abroad and industry-wide exchange of information. These techniques are fully described in the publication *Tax Information Exchange between OECD Member Countries: A Survey of Current Practices*<sup>2</sup> and can be summarised as follows:

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1. These two recommendations are reproduced and discussed in *Tax Information Exchange between OECD Member Countries: A Survey of Current Practices*, OECD, Paris, 1994.
  2. Id.

- 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 or related interest, with a view of exchanging any relevant information which they so obtain (see the OECD Council Recommendation C(92)81, dated 23 July 1992, on an OECD Model agreement for the undertaking of simultaneous examinations);
- a tax examination abroad allows for the possibility to obtain information through the presence of representatives of the competent authority of the requesting Contracting. This type of assistance is granted on a reciprocal basis. Countries' laws and practices differ as to the scope of rights granted to foreign tax officials. For instance, there are States where a foreign tax official will be prevented from any active participation in an investigation or examination on the territory of a country; there are also States where such participation is only possible with the taxpayer's consent;
- an industry-wide exchange of information is the exchange of tax information especially concerning a whole economic sector (e.g. the oil or pharmaceutical industry, the banking sector, etc.) and not taxpayers in particular.

(Added on 29 April 2000; see HISTORY)

10. The manner in which the exchange of information agreed to in the Convention will finally be effected can be decided upon by the competent authorities of the Contracting States.

11. Reciprocal assistance between tax administrations is feasible only if each administration is assured that the other administration will treat with proper confidence the information which it will receive in the course of their co-operation. At the same time maintenance of such secrecy in the receiving Contracting State is a matter of domestic laws. It is therefore provided in paragraph 1 that information communicated under the provisions of the Convention shall be treated as secret in the receiving State in the same manner as information obtained under the domestic laws of that State. Sanctions for the violation of such secrecy in that State will be governed by the administrative and penal laws of that State.

11.1 Before 2000, the paragraph only authorised the exchange of information, and the use of the information exchanged, in relation to the taxes covered by the Convention under the general rules of Article 2. As drafted, the paragraph did not oblige the requested State to comply with a request for information concerning the imposition of a sales tax as such a tax was not covered by the Convention. The paragraph was then amended so as to apply to the exchange of information concerning any tax imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, and to allow the use of the information exchanged for purposes of the application of all such taxes. Some Contracting States may not, however, be in a position to exchange information, or to use the information obtained from a treaty partner, in relation to taxes that are not covered by the Convention under the general rules of Article 2. Such States are free to restrict the scope of paragraph 1 of Article 26 by adopting bilaterally the following previous wording of the paragraph:

"1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1. 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 State and shall 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 Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions."

(Added on 29 April 2000; see HISTORY)

11.2. Since the exchange of information concerning the application of custom duties is governed by other international conventions, the provisions of these more specialised conventions will generally prevail and the exchange of information concerning custom duties will not, in practice, be governed by the Article.

(Added on 29 April 2000; see HISTORY)

COMMENTARY ON ARTICLE 26

12. The information obtained may be disclosed only to persons and authorities involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes with respect to which information may be exchanged according to the first sentence of the paragraph. This means that the information may also be communicated to the taxpayer, his proxy or to the witnesses. The information received by a Contracting State may be used by such persons or authorities only for the purposes mentioned in paragraph 1. If the information appears to be of value to the receiving State for other purposes than those referred to, that State may not use the information for such other purposes but it must resort to means specially designed for those purposes (e.g. in case of a non-fiscal crime, to a treaty concerning judicial assistance).

(Amended on 29 April 2000; see HISTORY)

12.1 Under this Article, information may not be disclosed to authorities that supervise the general administration of the Government of a Contracting State, but are not involved specifically in tax matters. In their bilateral negotiations, however, Member countries may agree to provide for disclosure to such supervisory bodies.

(Added on 21 September 1995; see HISTORY)

13. As stated above, the information obtained can be communicated to the persons and authorities mentioned but it does not follow from this that it can be disclosed by them in court sessions held in public or in decisions which reveal the name of the taxpayer. The last sentence of the paragraph, however, opens up this possibility. Once information is used in public court proceedings or in court decisions and thus rendered public, it is clear that from that moment such information can be quoted from the court files or decisions for other purposes even as possible evidence. But this does not mean that the persons and authorities mentioned in paragraph 1 are allowed to provide on request additional information received. If either or both of the Contracting States object to the information being made public by courts in this way, or, once the information has been made public in this way, to the information being used for other purposes, because this is not the normal procedure under their domestic laws, they should state this expressly in their convention.

*Paragraph 2*

14. This paragraph contains certain limitations to the main rule in favour of the requested State. In the first place, the paragraph contains the clarification that a Contracting State is not bound to go beyond its own internal laws and administrative practice in putting information at the disposal of the other Contracting State. However, types of administrative measures authorised for the purpose of the requested State's tax must be utilised, even though invoked solely to provide information to the other Contracting State. Likewise, internal provisions concerning tax secrecy should not be interpreted as constituting an obstacle to the exchange of information under the present Article. As mentioned above, the authorities of the requesting State are obliged to observe secrecy with regard to information received under this Article. A Contracting State that under its domestic law is required to notify the taxpayer that an exchange of information is proposed should inform its treaty partners in writing that it has this requirement and what the consequences are for its obligations in relation to mutual assistance.

(Amended on 21 September 1995; see HISTORY)

15. Furthermore, the requested State does not need to go so far as to carry out administrative measures that are not permitted under the laws or practice of the requesting State or to supply items of information that are not obtainable under the laws or in the normal course of administration of the requesting State. It follows that a Contracting State cannot take advantage of the information system of the other Contracting State if it is wider than its own system.

16. Information is deemed to be obtainable in the normal course of administration if it is in the possession of the tax authorities or can be obtained by them in the normal procedure of tax determination, which may include special investigations or special examination of the business accounts kept by the taxpayer or other persons, provided that the tax authorities would make similar investigations or examination for their own purposes. This means that the requested State has to collect the information the other State needs in the same way as if its own taxation was involved, under the proviso mentioned in paragraph 15 above.

## COMMENTARY ON ARTICLE 26

17. The requested State is at liberty to refuse to give information in the cases referred to in the paragraphs above. However if it does give the requested information, it remains within the framework of the agreement on the exchange of information which is laid down in the Convention; consequently it cannot be objected that this State has failed to observe the obligation to secrecy.

18. If the structure of the information systems of two Contracting States is very different, the conditions under sub-paragraphs *a)* and *b)* of paragraph 2 will lead to the result that the Contracting States exchange very little information or perhaps none at all. In such a case, the Contracting States may find it appropriate to broaden the scope of the exchange of information.

19. In addition to the limitations referred to above, sub-paragraph *c)* of paragraph 2 contains a reservation concerning the disclosure of certain secret information. Secrets mentioned in this sub-paragraph should not be taken in too wide a sense. Before invoking this provision, a Contracting State should carefully weigh if the interests of the taxpayer really justify its application. Otherwise it is clear that too wide an interpretation would in many cases render ineffective the exchange of information provided for in the Convention. The observations made in paragraph 17 above apply here as well. The requested State in protecting the interests of its taxpayers is given a certain discretion to refuse the requested information, but if it does supply the information deliberately the taxpayer cannot allege an infraction of the rules of secrecy. It is open to the Contracting States to add further dispensations from the obligation to supply information to the items listed in sub-paragraph *c)*, for example, information protected by provisions on banker's discretion. It has been felt necessary also to prescribe a limitation with regard to information which concerns the vital interests of the State itself. To this end, it is stipulated that Contracting States do not have to supply information the disclosure of which would be contrary to public policy (*ordre public*).

### Observations on the Commentary

20. *Japan* wishes to indicate that with respect to paragraph 11 above, it would be difficult for Japan, in view of its strict domestic laws and administrative practice as to the procedure to make public the information obtained under the

domestic laws, to provide information requested unless a requesting State has comparable domestic laws and administrative practice as to this procedure.

21. Contrary to the interpretation put forward in paragraphs 14 to 16 above, *Japan* and the *United Kingdom* take the view that the Article imposes no obligation on them to carry out enquiries on behalf of a Contracting State in cases where no liability to their own tax is at issue, since to carry out such enquiries would be contrary to their laws and administrative practice.

(Replaced on 31 March 1994; see HISTORY)

22. [Merged with paragraph 21 on 31 March 1994; see HISTORY]

#### Reservations on the Article

23. *Germany* reserves the right to propose in bilateral negotiations additional specific provisions on data protection.

(Replaced on 29 April 2000; see HISTORY)

24. *Switzerland* reserves its position on this Article. It will propose to limit the scope of this Article to information necessary for carrying out the provisions of the Convention.

(Amended on 23 October 1997; see HISTORY)

25. [Deleted on 29 April 2000; see HISTORY]

## HISTORY

**Paragraph 1:** Unchanged from the 1977 Model Convention.

**Paragraph 2:** Unchanged from the 1977 Model Convention.

**Paragraph 3:** Amended, by replacing the words "which was opened for signature on 25 January 1988" by the words "that entered into force on 1 April 1995"; by the Report entitled "The 1995 Update to the Model Tax Convention", adopted by the Council of the OECD on 21 September 1995.

Paragraph 3 was included in the 1977 Model Convention but subsequently amended by the Report entitled "The Revision of the Model Convention", adopted by the Council of the OECD on 23 July 1992. In the 1977 Model Convention, paragraph 3 read as follows:

"3. The matter of administrative assistance for the purpose of tax collection is not dealt with in the Article. This matter often forms the subject of a separate agreement, whether bilateral or multilateral, between the Contracting States; alternatively, the provisions on assistance in the field of tax collection may be introduced in the double taxation convention, whenever Contracting States find it preferable."

**Paragraph 4:** Included in the 1977 Model Convention. Amended by the Report entitled "The Revision of the Model Convention", adopted by the Council of the OECD on 23 July 1992. In the 1977 Model Convention, paragraph 4 read as follows:

"4. Experience in recent years has shown that the text of the Article in the 1963 Draft Convention left room for differing interpretations. Therefore it was felt desirable to clarify its meaning by a change in the wording of the Article and its Commentary without altering its effects. Apart from a single point of substance (cf. paragraph 13 below) the main purpose of the changes made has been to remove grounds for divergent interpretations."

**Paragraph 5:** Amended by the Report entitled "The 2000 Update to the Model Tax Convention", adopted by the OECD Committee on Fiscal Affairs on 29 April 2000. Paragraph 5 previously read as follows:

"5. The main rule concerning the exchange of information is contained in the first sentence of the paragraph. The competent authorities of the Contracting States shall exchange such information as is necessary to secure the correct application of the provisions of the Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention even if, in the latter case, a particular Article of the Convention need not be applied. Some countries replace "necessary" with "relevant" in their bilateral conventions, regarding this as a better way to express the sense of the provision; in the view of the Committee on Fiscal Affairs, either word may be used in that context. In order to keep the exchange of information within the framework of the Convention, a limitation to the exchange of information is set so that information should be given only insofar as the national tax in question is covered by the Convention and the taxation under the domestic taxation laws concerned is not contrary to the Convention. An illustration may be cited in this connection: a request for information concerning the imposition of a sales tax need not be complied with by the requested State as it is not covered by the Convention."



## OECD MODEL CONVENTION

Paragraph 5 was included in the 1977 Model Convention but was subsequently amended, by adding the third sentence, by the Report entitled "The 1997 Update to the Model Tax Convention", adopted by the Council of the OECD on 23 October 1997. Paragraph 5 previously read as follows:

"5. The main rule concerning the exchange of information is contained in the first sentence of the paragraph. The competent authorities of the Contracting States shall exchange such information as is necessary to secure the correct application of the provisions of the Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention even if, in the latter case, a particular Article of the Convention need not be applied. In order to keep the exchange of information within the framework of the Convention, a limitation to the exchange of information is set so that information should be given only insofar as the national tax in question is covered by the Convention and the taxation under the domestic taxation laws concerned is not contrary to the Convention. An illustration may be cited in this connection: a request for information concerning the imposition of a sales tax need not be complied with by the requested State as it is not covered by the Convention."

**Paragraph 6:** Unchanged from the 1977 Model Convention.

**Paragraph 7:** Unchanged from the 1977 Model Convention.

**Paragraph 8:** Unchanged from the 1977 Model Convention.

**Paragraph 9:** Included in the 1977 Model Convention. Sub-paragraph *b*) was amended by the Report entitled "The 2000 Update to the Model Tax Convention", adopted by the OECD Committee on Fiscal Affairs on 29 April 2000. Sub-paragraph *b*) previously read as follows:

"*b*) automatically, for example when information about one or various categories of income having their source in one Contracting State and received in the other Contracting State is transmitted systematically to the other State (see OECD Council Recommendation C(81)39/Final (5 May 1981) ("Recommendation of the Council Concerning a Standardised Form for Automatic Exchanges of Information under International Tax Agreements") and OECD Council Recommendation C(92)50/Final (23 July 1992) ("Recommendation of the Council Concerning a Standard Magnetic Format for Automatic Exchange of Tax Information"), both of which are discussed in "Tax Information Exchange Between OECD Member Countries: A Survey of Current Practices", OECD, Paris, 1994);"

Sub-paragraph *b*) had been previously amended by the Report entitled "The 1995 Update to the Model Tax Convention", adopted by the Council of the OECD on 21 September 1995. Sub-paragraph *b*) previously read as follows:

"*b*) automatically, for example when information about one or various categories of income having their source in one Contracting State and received in the other Contracting State is transmitted systematically to the other State;"

**Paragraph 9.1:** Added by the Report entitled "The 2000 Update to the Model Tax Convention", adopted by the OECD Committee on Fiscal Affairs on 29 April 2000.

**Paragraph 10:** Unchanged from the 1977 Model Convention.

**Paragraph 11:** Unchanged from the 1977 Model Convention.

**Paragraph 11.1:** Added by the Report entitled "The 2000 Update to the Model Tax Convention", adopted by the OECD Committee on Fiscal Affairs on 29 April 2000.

## COMMENTARY ON ARTICLE 26

**Paragraph 11.2:** Added by the Report entitled "The 2000 Update to the Model Tax Convention", adopted by the OECD Committee on Fiscal Affairs on 29 April 2000.

**Paragraph 12:** Included in the 1977 Model Convention. Amended by the Report entitled "The 2000 Update to the Model Tax Convention", adopted by the OECD Committee on Fiscal Affairs on 29 April 2000. In the 1977 Model Convention, paragraph 12 read as follows:

"12. The information obtained may be disclosed only to persons and authorities involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. This means that the information may also be communicated to the taxpayer, his proxy or to the witnesses. The information received by a Contracting State may be used by such persons or authorities only for the purposes mentioned in paragraph 1. If the information appears to be of value to the receiving State for other purposes than those referred to, that State may not use the information for such other purposes but it must resort to means specially designed for those purposes (e.g. in case of a non-fiscal crime, to a treaty concerning judicial assistance)."

**Paragraph 12.1:** Added by amended by the Report entitled "The 1995 Update to the Model Tax Convention", adopted by the Council of the OECD on 21 September.

**Paragraph 13:** Unchanged from the 1977 Model Convention.

**Paragraph 14:** Included in the 1977 Model Convention. Amended, by adding the last sentence, by the Report entitled "The 1995 Update to the Model Tax Convention", adopted by the Council of the OECD on 21 September 1995. Paragraph 14 previously read as follows:

"14. This paragraph contains certain limitations to the main rule in favour of the requested State. In the first place, the paragraph contains the clarification that a Contracting State is not bound to go beyond its own internal laws and administrative practice in putting information at the disposal of the other Contracting State. However, types of administrative measures authorised for the purpose of the requested State's tax must be utilised, even though invoked solely to provide information to the other Contracting State. Likewise, internal provisions concerning tax secrecy should not be interpreted as constituting an obstacle to the exchange of information under the present Article. As mentioned above, the authorities of the requesting State are obliged to observe secrecy with regard to information received under this Article. As mentioned above, the authorities of the requesting State are obliged to observe secrecy with regard to information received under this Article."

**Paragraph 15:** Unchanged from the 1977 Model Convention.

**Paragraph 16:** Unchanged from the 1977 Model Convention.

**Paragraph 17:** Unchanged from the 1977 Model Convention.

**Paragraph 18:** Unchanged from the 1977 Model Convention.

**Paragraph 19:** Unchanged from the 1977 Model Convention.

**Paragraph 20:** Unchanged from the 1977 Model Convention.

**Paragraph 21:** Replaced paragraphs 21 and 22, which were merged, by the Report entitled "1994 Update to the Model Tax Convention", adopted by the Council of the OECD on 31 March 1994. Paragraph 21 previously read as follows:

## OECD MODEL CONVENTION

"21. With respect to paragraphs 14 to 16 above, *Japan* can only supply information obtained through special investigation or special examination as long as such investigation or examination is concerned with taxation in Japan."

**Paragraph 22:** Paragraph 22 was merged with paragraph 21 (cf. history of paragraph 21) by the Report entitled "1994 Update to the Model Tax Convention", adopted by the Council of the OECD on 31 March 1994. Paragraph 22 previously read as follows:

"22. The *United Kingdom* takes the view that the Article imposes no obligation on it to carry out enquiries on behalf of a Contracting State in cases where no liability to United Kingdom tax is at issue, since to carry out such enquiries would be contrary to its laws and administrative practice (cf. the last sentence of paragraph 16 above)."

Paragraph 22, as it read after 23 July 1992 and before 31 March 1994, replaced paragraph 22 of the 1977 Model Convention. Paragraph 22 of the 1977 Model Convention had been renumbered as paragraph 23 (cf. history of paragraph 23) and a new paragraph 22 had been added by the Report entitled "The Revision of the Model Convention", adopted by the Council of the OECD on 23 July 1992.

**Paragraph 23:** Replaced by the Report entitled "The 2000 Update to the Model Tax Convention", adopted by the OECD Committee on Fiscal Affairs on 29 April 2000. Paragraph 23 previously read as follows:

"23. *Portugal* reserves the right to apply Article 26 of the 1963 version of the Draft Convention."

Paragraph 23, as it read before 29 April 2000, corresponded to paragraph 22 of the 1977 Model Convention. Paragraph 23 of the 1977 Model Convention was renumbered as paragraph 24 (cf. history of paragraph 24) and paragraph 22 was renumbered as paragraph 23 by the Report entitled "The 1977 Revision of the Model Convention", adopted by the Council of the OECD on 23 July 1992.

**Paragraph 24:** Amended by the Report entitled "The 1997 Update to the Model Tax Convention", adopted by the Council of the OECD on 23 October 1997. Paragraph 24 previously read as follows:

"24. *Switzerland* reserves its position on this Article. When negotiating with other Member countries, Switzerland will propose to limit the scope of this Article to information necessary for carrying out the provisions of the Convention."

Paragraph 24 was previously amended by the Report entitled "1994 Update to the Model Tax Convention", adopted by the Council of the OECD on 31 March 1994. Paragraph 24 previously read as follows:

"24. Under the *Swiss* concept a double taxation convention aims at avoiding international double taxation; the information necessary for the correct application and for the prevention of an abuse of such a convention can be exchanged already within the existing framework of its provisions on the mutual agreement procedure, the reduction of taxes withheld at the source, etc. Switzerland considers a particular provision on the exchange of information as unnecessary since even such an express clause could not, according to the purpose of the Convention, provide for more than for an exchange of information necessary for the correct application and prevention of an abuse of the Convention. Accordingly Switzerland has an express reservation on the Article on the exchange of information."

## COMMENTARY ON ARTICLE 26

Paragraph 24 corresponds to paragraph 23 of the 1977 Model Convention. Paragraph 24 of the 1977 Model Convention was renumbered as paragraph 25 (cf. history of paragraph 25) and paragraph 23 was renumbered as paragraph 24 by the Report entitled "The 1977 Revision of the Model Convention", adopted by the Council of the OECD on 23 July 1992.

**Paragraph 25:** Deleted by the Report entitled "The 2000 Update to the Model Tax Convention", adopted by the OECD Committee on Fiscal Affairs on 29 April 2000. Paragraph 25 previously read as follows:

"25. *Mexico and the United States* reserve the right to extend the application of this Article to all taxes imposed by a Contracting State, not just taxes covered by the Convention pursuant to Article 2."

Paragraph 25, as it read before 29 April 2000, was amended, by adding Mexico to the list of countries making the Reservation, by the Report entitled "The 1995 Update to the Model Tax Convention", adopted by the Council of the OECD on 21 September 1995. After 31 March 1994, but before 21 September 1995, paragraph 25 read as follows:

"25. *The United States* reserves the right to extend the application of this Article to all taxes imposed by a Contracting State, not just taxes covered by the Convention pursuant to Article 2."

Paragraph 25 was previously amended by the Report entitled "1994 Update to the Model Tax Convention", adopted by the Council of the OECD on 31 March 1994. Paragraph 25 previously read as follows:

"25 *The United States* believes that this Article should apply to all taxes imposed by a Contracting State, not just taxes covered by the Convention."

Paragraph 25, as it then read, corresponded to paragraph 24 of the 1977 Model Convention, which was renumbered as paragraph 25 by the Report entitled "The 1977 Revision of the Model Convention", adopted by the Council of the OECD on 23 July 1992.

附件二

OECD STANDARDISED FORM FOR SPONTANEOUS EXCHANGE OF INFORMATION

STANDARD FORM FOR SPONTANEOUS EXCHANGE OF INFORMATION  
AND FEEDBACK

TAX PERIOD CONCERNED

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To: Country:<sup>3</sup>  
Name of Competent authority:  
Address:  
Phone:  
Fax:

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From: Country:<sup>2</sup>  
Name of Competent authority:  
Address:  
Phone:  
Fax:  
Official responsible:

---

Information provided spontaneously under Article .. of the tax convention between our countries. It is to be used according to the provisions concerning confidentiality of this Article and only for the tax purposes mentioned therein.

(If needed) The concerned taxpayer has been notified about this exchange of information.

There are objections (no objections)<sup>4</sup> to the disclosure to the taxpayer of these original documents containing information.

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<sup>3</sup> To be filled in by the competent authority.

<sup>4</sup> Cross out what is inappropriate.

---

1.

**RECIPIENT (Beneficial owner)**

**Name:**

**Residence country TIN:**

**Originating country TIN:**

**Date of birth:**

**Street address:**

**City-postal code:**

**Sub-entity:**

**Country:**

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2.

**PAYOR OF INCOME**

**Name:**

**TIN:**

**Date of birth:**

**Street address:**

**City-Postal code:**

**Sub-entity:**

**Country:**

---

3.

**AMOUNT AND NATURE OF INCOME**

**Amount (currency):**

**Date of payment: DD MM YY**

**Nature of payment:**

**OECD type of income:**

**Reason for payment: (goods delivered, services rendered, other, date of invoice, n° of invoice, bank account number, etc.)**

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4.

**TAX EVASION SCHEME IDENTIFIED AND REASONS WHY IT IS ASSUMED THAT  
THE INFORMATION MAY BE OF INTEREST**

(Use of tax havens, etc.)

Please provide feedback on the usefulness of the information by returning a copy of this form plus the attached form for feedback, indicate eventually whether the recipient of the amounts mentioned is not the actual beneficial owner.

**REMARKS**

**COPIES OF DOCUMENTS ENCLOSED:**

YES

NO

NUMBER OF PAGES:

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### 附件三

#### EXAMPLE OF REQUEST FOR INFORMATION<sup>1</sup>

• FROM

Mr Competent Authority of Country X  
Director of Taxes Director of Taxes 567 Free Street  
1234 Tax Boulevard, Freedom City 34002 Country Y  
Capital city 21001 Country X  
phone/fax

TO

Mr Competent Authority of Country Y

Reference CA/10 01 94 U

10 January, 1994

Taxpayer under investigation: PC Company  
TIN: 89 67 89 02  
56 A Street  
Blueville 10001  
Country X

**Tax years under investigation:**

01/10/90 - 31/09/91

01/10/91 - 31/09/92

01/10/92 - 31/09/93

**Years for which information is requested:** same years

Dear Mr. Competent authority of Country Y

**Re: Request for information under Article 26 of the tax Convention between Country X and Country Y**

This request is presented according to Article 26 of the tax convention between our two countries. Our request concerns PC Company above mentioned. The local tax office of Blueville is presently examining its income tax returns for the tax periods referred to above.

PC company is in the business of importing high tech equipment in the computer industry and selling this equipment to its domestic subsidiaries. During the tax examination it was discovered that funds have been deposited into a bank account (number: 001 678 543 at the State Bank , 1 Bank Street Freedom City 34001 Country Y. We believe the account is in the name of Mr John Smith TIN 57 06 2345 born 15 06 57 address 1 Blue street Blueville 10003 who owns 65% of the shares of PC Company and is the executive manager. We believe that the funds deposited into this account are taxable in Country X and have not been reported.

We therefore request the following information for the period under investigation:

Bank records including bank statements, concerning account n° 001 678 543 identified as being used directly or indirectly by PC Company or by Mr John Smith. If you need more information please contact Mr Green phone: 1234567 fax 12344568. Could you acknowledge receipt of this request and indicate when the information is likely to be provided.

This request is presented according to Article 26 of our tax treaty and the information provided will be used only as provided for in such Article.

Sincerely,

Mr Competent authority of Country X

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<sup>1</sup> Not all Member countries are able to provide bank information.



## 附件四

### EXAMPLE OF RESPONSE TO A REQUEST<sup>2</sup>

FROM	TO
Mr. Competent Authority of Country Y	Mr. Competent Authority of Country X
Director of ...      Director of Taxes	
567 Free street      1234 Tax Boulevard	
Freedom City 34002 Country Y	Capital City 21001
Phone:	Country X
Fax:	
Person to contact: Mr. Freed	6 June 1994

Dear Mr. Competent Authority,

**Re: your request for information under Article 26 of the Tax Convention between Country X and Country Y**

Your reference CA/1001 94 U  
Taxpayer PC Company  
TIN 89 67 89 02  
56 A street  
Blueville 10001

Tax Years for which information is requested:

01/10/90-31/09/91  
01/10/91-31/09/92  
01/10/92-31/10/93

On 10 January 1994, you presented a request for information under Article 26 of the Tax Convention between our two countries concerning bank accounts identified as being used directly or indirectly by PC Company or by Mr. John Smith the executive manager of PC Company.

Please find enclosed the bank records of the account number n 001 678 543). Our Central file of Bank Accounts allowed to identify another account opened on 5.08.92 by Mr. John Smith, City Bank n 001 725 613, at the Branch located 56 City Street in Freedom City.

This information is provided under Article 26 above-mentioned and its use is covered accordingly. Please provide information on the usefulness of the information supplied.

Yours sincerely,

Mr. Competent authority of country Y

Enclosures:

Bank account State Bank n 001 678 543  
Copies of 36 bank statement  
Bank account City Bank n 001 725 613  
Copies of 17 bank statement

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<sup>2</sup>. Not all Member countries are able to provide bank information.