

## 8<sup>TH</sup> SGATAR JOINT TRAINING PROGRAM FOR SGATAR MEMBERS

Theme: "Development in the Exchange of Information

Organized by the Bureau of Internal Revenue of the Philippines

27-29 October 2010

EDSA Shangri-la Hotel, Philippines

### PROGRAMME

Time	Activity	Venue
<b>Day 1</b> <b>27 Oct 10</b> <b><u>Wednesday</u></b>		
10:00 am to 10:30 am	Registration	Boracay Function Room
10:30 am to 11:00 am	Opening Ceremony <ul style="list-style-type: none"> <li>• Welcome Remarks by Kim S. Jacinto - Henares, Commissioner of the Bureau of Internal Revenue</li> <li>• Group Picture</li> </ul>	
11:00 am to 12:00 noon	Lunch	(Function Room to be announced)
12:30 pm	Leave Hotel for the Day Tour	
2:00 pm to 3:30pm	Day Tour	Malacañang Museum (Malacañang Palace, Manila)
3:30 pm to 4:30 pm	Travel Back to Hotel	
4:00 pm to 6:00 pm	Free Time	
6:00 pm to 8:00 pm	Welcome Dinner (hosted by the Commissioner of the Bureau of Internal Revenue)	Bohol Function Room (Ground Flr. EDSA-Shangri-la Hotel)
	End of Day 1	

Time	Activity	Venue
<b>Day 2</b> <b>28 Oct 10</b> <b><u>Thursday</u></b>		
9:00 am to 10:00 am	Self-Introduction of Delegates/Participants	Boracay Function Room
10:00am to 10:30 am	Country Presentation from Philippines	
10:30 am to 10:45am	Snacks	
10:45 am to 11:15 am	Country Presentation from People's Republic of China	
11:15 am to 11:45 am	Country Presentation from Hongkong SAR	
11:45 am – 1:30 pm	Lunch	The HEAT Restaurant (Ground Flr, EDSA-Shangri-la Hotel)
1:30 pm – 2:00 pm	Country Presentation from Indonesia	Boracay Function Room
2:00 pm to 2:30 pm	Country Presentation from Japan	
2:30 pm to 3:00 pm	Snacks	
3:00 pm to 3:30pm	Country Presentation from Republic of Korea	
3:30 pm to 4:00 pm	Country Presentation from Malaysia	
4:00 pm to 4:30 pm	Wrap-up for the Day	
	End of Day 2	
4:30 pm onwards	Personal Free time for Delegates	

Time	Activity	Venue
<b>Day 3</b> <b>29 Oct 10</b> <b>Friday</b>		
9:30 am to 10:00am	Country Presentation from Singapore	Boracay Function Room
10:00 am to 10:30 am	Country Presentation from Chinese Taipei	
10:30 am to 10:45 am	Snacks	
10:45am to 11:15 am	Country Presentation from Thailand	
11:15 am to 11:45 am	Country Presentation from Vietnam	
11:45am to 1:30pm	Lunch	The HEAT Restaurant (Ground Flr, EDSA-Shangrila Hotel)
1:30pm to 2:30 pm	Closing Ceremony  Evaluation of the Training Program  Distribution of Certificates of Attendance	Boracay Function Room
2:30pm to 3:00pm	Commissioner's Address	
3:00pm to 3:30 pm	Snacks	
3:30pm	Official End of the 8th SGATAR Joint Training Program	

## International Tax Cooperation Agreement On Exchange of Information

By Ms. Deng Xiaoyan  
China

### 1. Introduction

The international network of Eol  
has become a high wall for tax  
evaders to stride over.

#### 1.1.1 Double Taxation Conventions (DTCs)

- DTCs (or arrangements) with 95 countries (or regions)
- 92 of them had come into effect
- 3 signed with Czech Republic, Ethiopia, and Nepal haven't taking effect yet.

#### 1.1.2 Tax Information Exchange Agreements (TIEAs)

- TIEAs with Bahamas and British Virgin Islands
- completed the negotiation of TIEAs with Guernsey, Jersey, Isle of Man, Bermuda and Argentina

#### 1.1.4 upgrading Eol article in DTCs

upgraded Eol articles in bilateral  
convention or arrangement with Singapore  
and Hongkong to internationally accepted  
standards.

#### 1.3 Domestic Laws and Regulations

- Law of Tax Collection and Administration and other substantive laws
- special requirements in domestic rules touched upon the scope and target of information reveal
- laws may limit the provision of assistance
- The Administrative Regulation of Eol for Tax Matters (hereinafter referred to as the Regulation)

## 2. Overview of China's Eol Achievements

### Participation in international events

- Global Forum on Transparent and Effective Eol
- training courses held by international organizations
- system to exchange EOI certificates among Leeds Castle Group
- become JITSIC observer in 2008 and will be a formal member soon

## 2.2 Eol achievements in 2009

- received 258 pieces of specific information request from 41 jurisdictions
- sent out 68 pieces of specific information request to 20 jurisdictions
- 11 pieces of spontaneous information to the Netherlands

- automatic and spontaneous information : 4000 pieces, 10,000 pieces.

- investigated and collected tax revenue about 480,000,000 Yuan

## 2.3 Operational problems

- legal basis is still weak.
- grant of rights to tax authorities to collect and verify bank information is obviously blank.
- promote the Eol awareness is urgent.
- coordination between internal departments
- Development of technologies supporting Eol is comparatively slow
- language obstacles

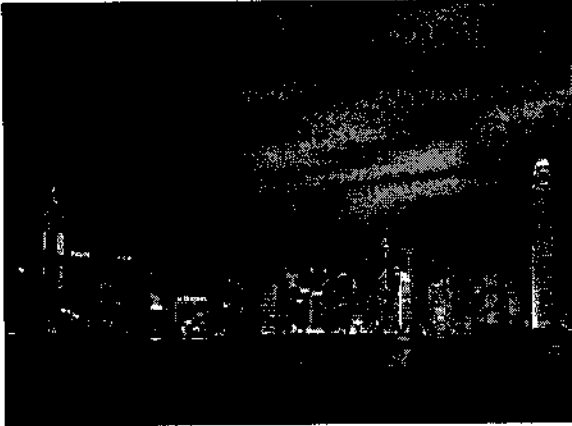
## 3. Future of Development

- expand Eol net
- perfecting of legal framework
- Suiting Eol to overall tax administration
- Improve IT standard
- Introduce foreign talents
- Introduce risk management conception

**Thank You!**



**Waiting for a win-win strategy in international tax compliance cooperation.**



## Background

Taxation system of Hong Kong :

- ❖ Simple with low rates
- ❖ Taxes are levied on 3 types of income:
  - Profits
  - Salaries
  - Property rental

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## Background

Taxation system of Hong Kong :

- ❖ Territorial based
- ❖ No tax on –
  - General consumption
  - Capital gains
  - Dividends

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## Background

Inland Revenue Department (“IRD”):

- ❖ Executive arm of the Government of Hong Kong
- ❖ Operates under the Financial Services and the Treasury Bureau
- ❖ Administers the Inland Revenue Ordinance (“IRO”), Stamp Duty Ordinance, Betting Duty Ordinance and Business Registration Ordinance

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## Necessity of EoI

- ❖ Economic globalization
- ❖ Multinational enterprise (“MNE”)
- ❖ Double taxation
- ❖ Tax evasion
- ❖ Allocation of taxing rights
- ❖ Effective EoI is one of the important and essential keys to international tax cooperation

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## Mode of International Cooperation

Agreement for the Avoidance of Double Taxation (“DTA”)

- ❖ Most commonly adopted form of international cooperation
- ❖ Bring about certainty
- ❖ Provide basis for EoI

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## Mode of International Cooperation

### Tax Information Exchange Agreement ("TIEA")

- ❖ An increasing trend of adopting TIEA as a form of international cooperation
- ❖ Hong Kong law and policy require that any EoI have to be done under the framework of a DTA only

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## Hong Kong Regime

- ❖ Hong Kong has been seeking to establish a DTA network since 1998
- ❖ has been very supportive of international efforts to promote transparency of tax administration
- ❖ openly endorsed the Principles of Transparency and Effective EoI in the OECD Global Forum on Taxation held in 2005
- ❖ conducted consultation on the liberalization of EoI under DTA in 2005 and 2008, within the domestic business sector

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## Hong Kong Regime

### Old Regime

- ❖ Prior to March 2010, Hong Kong adopted OECD 1995 version of EoI Article
- ❖ Domestic tax interest requirement

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## Hong Kong Regime

### Old Regime

- ❖ Five treaties signed with the 1995 version of EoI

Belgium  
(2004)

The Mainland  
of China  
(2006)

Vietnam  
(2009)

Thailand  
(2005)

Luxembourg  
(2008)

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## Hong Kong Regime

### Old Regime

- ❖ Hong Kong cannot adopt OECD 2004 version of EoI Article
- ❖ Legal constraint
- ❖ IRD's information gathering power restricted by domestic tax interest
- ❖ Major hurdle in expanding DTA network

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## Hong Kong Regime

### New Regime

- ❖ The legislation enabling Hong Kong to adopt the OECD 2004 version of EoI Article entered into force in March 2010
- ❖ Hong Kong is moving a big step forward

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 **Hong Kong Regime**

**New Regime**

- ❖ Nine treaties signed with the 2004 version of EoI

<b>Brunei</b> (Mar 2010)	<b>Netherlands</b> (Mar 2010)	<b>Indonesia</b> (Mar 2010)
<b>Hungary</b> (May 2010)	<b>Kuwait</b> (May 2010)	<b>Austria</b> (May 2010)

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 **Hong Kong Regime**

**New Regime**

- ❖ Nine treaties signed with the 2004 version of EoI

<b>United Kingdom</b> (Jun 2010)	<b>Ireland</b> (Jun 2010)
<b>Liechtenstein</b> (Aug 2010)	

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 **Hong Kong Regime**

**New Regime**

- ❖ Upgraded the EoI Article in our DTA with the Mainland to the 2004 version


<b>The Mainland of China</b> (May 2010)
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 **OECD Standards of Transparency and Effective EoI**

- ❖ existence of mechanisms for EoI upon request
- ❖ EoI for purposes of domestic tax law in both criminal and civil matters
- ❖ no restrictions of EoI caused by application of dual criminality principle or domestic tax interest requirement
- ❖ respect for safeguards and limitations
- ❖ strict confidentiality rules for information exchanged
- ❖ availability of reliable information and powers to obtain and provide such information in response to specific request


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 **OECD Standards of Transparency and effective EoI**

In the case of Hong Kong :

- ❖ No bank secrecy laws
- ❖ Strict confidentiality rules for information exchanged
- ❖ No restriction on EoI caused by application of dual criminality
- ❖ Domestic tax interest requirement removed

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 **Safeguards provided under DTAs**

Safeguards adopted by Hong Kong include

- ❖ No fishing expedition
- ❖ EoI upon request only
- ❖ EoI on taxes covered by the DTA only
- ❖ Confidentiality
- ❖ No data sharing with third party or third jurisdiction
- ❖ No disclosure to oversight authorities unless with legitimate reasons
- ❖ No retrospective effective

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## Organization and Management

In the case of Hong Kong :

- ❖ The competent authority is the Commissioner of Inland Revenue or his authorized representatives
- ❖ A written request in English
- ❖ Notification requirements
- ❖ Standard response time of 90 days
- ❖ Tax Treaty section in IRD is responsible for the negotiation and implementation of DTAs

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## Problems and Emerging Concerns

Concerns

- ❖ Language problem
- ❖ Identification of target person
- ❖ Time constraint

Possible Solutions

- ❖ Working meetings between competent authorities
- ❖ Use of tax identification numbers
- ❖ Standardization of request
- ❖ Information technology

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## Expectations

- ❖ Eliminate double taxation
- ❖ Prevent fiscal evasion
- ❖ Get the fair share of tax revenue
- ❖ Move closer to building a level playing field

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*Thank You*

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# International Tax Cooperation Agreements on Exchange of Information

Directorate General of Taxes  
Republic of Indonesia



## OUTLINE

1. Addressing international evasion and avoidance through EOI
  - Bilateral Agreements: DTC, TIEA
  - Domestic Law
2. Operational aspects involved in EOI
  - Best practice and common procedures
  - Technology Required
  - Assistance
3. Future of international tax cooperation
  - Effectiveness of international agreements
  - Problems and emerging concerns
  - Possible Solutions




## INTRODUCTION

**Tax Evasion  
and Tax  
Avoidance**


→

Exchange of Information  
and  
Bilateral Tax Cooperation




## Double Tax Convention

- Indonesia has 59 DTCs, 57 of which provide for EOI article
- EOI provision must meet OECD model standard
- 53 EOI provisions have met the standard
- Indonesia is updating EOI provision in DTCs that have not met the standard



## Tax Information Exchange Agreement (TIEA)

- There is need to identify the beneficial owner of offshore accounts
- TIEA is the key in dealing with offshore non-compliance
- G20 countries agreed on initiating TIEAs with low income tax jurisdictions
- Indonesia has conducted negotiation with 5 jurisdictions and next month will negotiate with other 4 jurisdictions



## Domestic Law

### LEGAL INSTRUMENTS

1. Law on General Provision and Procedures (No. 28/2007)
2. Law on Income Tax (Law No. 36/2008)
3. Regulation of DGT (No. PER-67/PJ/2009)

### Reason on requesting EOI

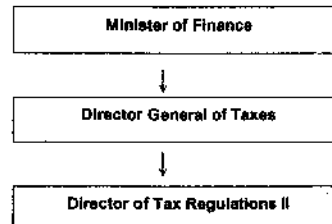
1. Conducting verification, audit, investigation, and examination regarding international transactions
2. Suspecting transaction is being used for tax avoidance or treaty shopping.

## PROCEDURES AND LEGAL BASES

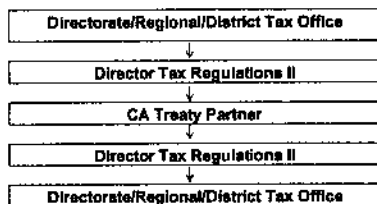
### The Information that can be Exchanged

- All income tax related information
- Individual and corporate tax information documentation
- Indirect taxes in some DTA
- Tax investigation information

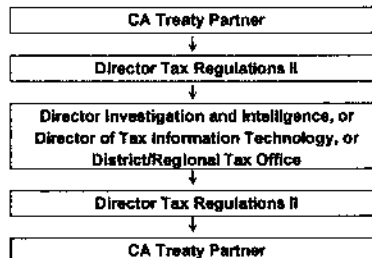
## Competent Authority



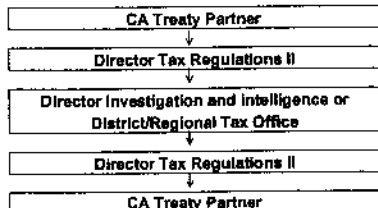
## Sending A Request



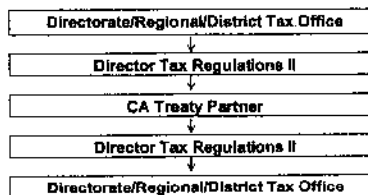
## Replying To A Request

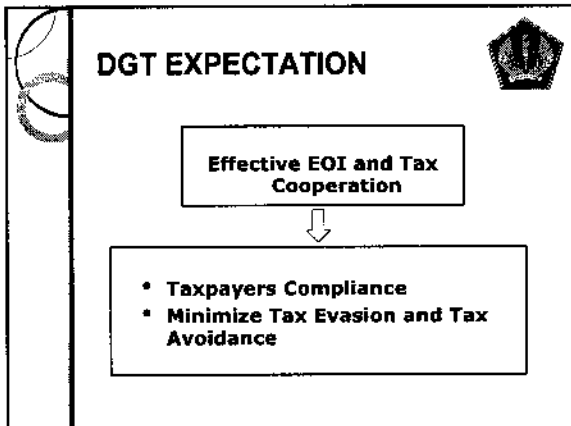


## Receiving Information Provided Spontaneously



## Sending Spontaneous EOI





- ### Effectiveness of International Agreements
- important and effective means in combating international tax evasion
  - ensure the correct allocation of taxing rights between tax treaty partners.

- ### Problems and Concerns
- lack of transparency and strict secrecy rules applicable in some jurisdictions
  - lack of capacity to produce required information in usable forms
  - incomplete and unsynchronized exchange information domestic regulation
  - a limited professional in exchange information officer
  - difficulties in meeting standard time objectives
  - use of IT

- ### Possible Solution
- better level of coordination: coordinated timing, conditions, and information sharing
  - comprehensive, regular and properly targeted awareness training to local tax officials
  - set up the rules, procedures and standards for exchange of information
  - use of IT in the registering, monitoring and, reporting EOI functions.

**THANK YOU**

## Promoting the Effective Exchange of Information

Atsushi Komori  
National Tax Agency of JAPAN

## Introduction

Two Main Areas  
focused by Tax Administrations

- Strengthening Enforcement  
to Confront Cross Border/Offshore Non-compliance
- Establishing Enhanced Relationship  
with Taxpayers to Create a Cooperative Approach to Voluntary  
Compliance (Grounded in Corporate Governance)

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## Greater Need for Exchange of Information(Background)

- Globalization in National Economies
- Growing Opportunity for Cross Border/Offshore  
Non-compliance
- Global Financial/Economic Crisis
- Greater Need for EOI with International Standards  
(incl. Bank-holding Information)

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## Legal Framework of EOI

- 48 Bilateral Tax Treaties with 59 countries concluded by  
JAPAN  
incl. 10 SGATAR Members – Australia, China, Indonesia, Malaysia,  
New Zealand, the Philippines, Singapore, South Korea, Thailand, and  
Vietnam.
- 8 Treaties agreed Since April 2009 G20 Summit  
for the purpose of implementing EOI consistent with international  
standards
- 47 Treaties contain EOI provisions  
In addition, the revised treaty with Switzerland including EOI was  
signed in May 2010, and is expected to be approved in the Diet by the  
end of this year.

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## Tax Information covered by EOI

- 1) Information related to the administration or enforcement  
of domestic laws of the contracting parties concerning  
taxes of *every kind*  
← Japan's Treaty Policy, in accordance with Article 26 of the  
*OECD Model Tax Convention*
- 2) Information related to the administration or enforcement  
of taxes covered by the treaties  
← Most of Treaties concluded by Japan in force fall into this  
category.
- 3) Information necessary for implementing the treaties

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## Exchange of Information held by Banks and Fiduciaries

- Dental of "Banking Secrecy" as grounds against EOI is the  
core of the International Standards.  
*"The era of Banking Secrecy is over."* The Global Plan for Recovery  
and Reform, London, 2 April 2009
- In Japan, Bank-holding Information can be obtained through  
normal administrative procedures  
i.e., by exercising the authority for inquiry and inspection
- Between Japan and most of its treaty partners, information held  
by banks are generally exchanged in the same way as other  
information, although only a few treaties in force provide  
explicit stipulations.

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## Domestic Tax Interest (DTI)

- Contracting Parties shall use their Information Gathering Measures to obtain the information requested, regardless whether the requested party has any Domestic Tax Interest (DTI) in the information.
- The Special Act on the Implementation of Tax Treaties clarifies Japan's full commitment to these international standards, by providing the authority for inquiry and inspection for supplying information requested by a contracting party.
- Between Japan and the majority of its treaty partners, requested information is exchanged in accordance with these standards, while only a few treaties concluded have explicit provisions about the treatment of DTI.

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## Requirements for the Implementation of EOI

- Reciprocity
- Taking Internal Measures for Information Gathering
- Confidentiality
- Protection of Trade, Business, and other Types of Secrets

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## Reciprocity

- Japan cannot furnish requested information if the applicant party is considered to be unable to take measures to collect information in order to provide information to the requested party to the tax treaty.  
Article 8-2, Clause 1, *Special Act on the Implementation of Tax Treaties*
- **Reciprocity** should be interpreted in *broad* and *practical* terms.

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## Taking Internal Measures for Information Gathering

- Japan cannot furnish requested information, if it finds that the applicant party did not carry out its information gathering measures according to the normal course of administration for obtaining requested information. Article 8-2, Clause 5, *Special Act on the Implementation of Tax Treaties*
- These provisions are also intended to prevent a contracting party from engaging "fishing expeditions." for collecting uncovering evidences.

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## Confidentiality

- Japan cannot provide information (when requesting or replying to EOI) if it does not find that the contracting party will treat such information as secret in the same manner as information obtained under the domestic law of the contracting party and that the contracting party will disclose such information only for tax purposes. Article 8-2, Clause 2 and 3, *Special Act on the Implementation of Tax Treaties*
- Under Japan's self-assessment system, maintaining people's trust in our compliance with the confidentiality rule is critically important.

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## Protection of Trade, Business, and other Types of Secrets

- Most of the treaties concluded by Japan also restrict exchanging information revealing trade, business, industrial, commercial, or professional secrets or transaction processes, or information for which disclosure would result in conditions undermining public order.

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## Types of EOI

### 1) Exchange of Information on Request:

- A contracting party requests particular information related with specific cases from the other contracting party, and the other contracting party furnishes such information upon request.

### 2) Spontaneous Exchange of Information:

- A contracting party furnishes information which is obtained in the normal course of its administration and is deemed to be of interest to the other contracting party, without a request from the other contracting party.

### 3) Automatic Exchange of Information:

- A contracting party regularly provides standardized information about various categories of income (interest, dividends, royalties, pensions, etc.) related to multiple residents of the other contracting party. Information provided is usually sourced from information returns stipulated in the domestic law of the first mentioned party.

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## Trends of the Implementation of EOI

- Japan implements all three types of EOI with its treaty partners.
- The number of information exchanges has continuously increased, reaching 500,000 in FY 2009.
- While the majority of these 500,000 cases consist of automatic EOI, EOI on Request and Spontaneous EOI are also increasing rapidly.

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## Organization/Management of EOI

### • Organization

- The competent authorities = the Minister of Finance, and the Director of the International Operations Division of the National Tax Agency
- Under the Director's control, the EOI Section at the headquarters is in charge of the practical implementation.

Officials responsible for EOI are also appointed at regional taxation bureaus and tax offices.

### • Management Tools

- "Administrative Guidelines on Procedures for the Exchange of Information under Tax Treaties" issued by the Commissioner
- "Manual on the Exchange of Information" issued by the International Operations Division

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## Practices Implemented for Effective EOI

- Timely EOI on Request
- Holding Face-to-Face Meetings for EOI on Request
- Utilizing the Database for Prompt Response to Request
- Compiling Examples for Promoting Spontaneous EOI
- Presenting Letters of Appreciation for Promoting EOI
- Using the SMF Format for Sending Automatic EOI

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## Timely EOI on Request

- Because EOI on Request can take a considerable length of time, competent authorities are facing two competing requirements:
  - 1) The internal procedure shall be relied upon in the first place before a request, i.e., the applicant party shall pursue all means available in its own territory except those that would give rise to disproportionate difficulties.
  - 2) Requests should be used at the earliest stage possible, for information on which to be utilized most effectively in the assessment.
- The NTA made it clear that "EOI on request can be used even before the commencement of field audits if tax officials reasonably believe and can explain based on the grounds of taxpayers' past of non-cooperation, etc. that they cannot expect to obtain the necessary information by inquiring or inspecting at coming field audits."

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## Holding Face-to-Face Meetings for EOI on Request

- **What?**
  - Japan's competent authorities and their representatives have visited multiple contracting parties and held face-to-face meetings for EOI on Request with the contracting parties' competent authorities.
  - Visiting to a contracting party and having a face-to-face meeting is grounded in the EOI provisions of the treaty, and is conducted with the advance consent of the other contracting party.
  - At a meeting, our tax officials in charge of the relevant case, accompanied by our competent authorities, explain the whole picture of the case, the details of the transactions in question, and the information that we really need.
  - Depending on the discretionary decisions by the other contracting party, we sometimes can provide such explanations directly to the tax officials of the other contracting party who are in charge of gathering the information requested.

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### • For What?

- **Face-to-face meetings for EOI on Request** are particularly expected to be effective in the following cases:
  - 1) **Cases containing complex schemes or transactions**  
where the conventional method of EOI, that is, by written letter, is possibly inadequate for conveying the details of the request and for providing the appropriate explanation in response to the request.
  - 2) **Cases that need to be processed with exceptional urgency**
    - e.g., cases close to the statute of limitations, cases with a risk that taxation and collection will become difficult due to assets being removed to a third-party State, etc.
  - 3) **Cases expected to yield spillover effects**
    - e.g., cases containing broadly used aggressive tax schemes, clarification of which through EOI or joint research by the competent authorities is likely to have a positive and wide-spread influence on other audits conducted by the contracting parties.
- Additionally, face-to-face meetings for EOI are expected to have an educational effect on the tax officials involved in them and to strengthen *mutual understanding and cooperative relationships* between the competent authorities.

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## Utilizing the Database etc. for Prompt Response to Request

- Promptly replying to an EOI request is extremely important.
  - "(a) competent authority should seek to provide the requested information within 90 days of receipt of a request." Paragraph 21 of Module 1, the *OECD Manual on the Implementation of Exchange of Information Provided for Tax Purposes*
- In order to speed up replies to requests, the NTA;
  - has prepared a *Manual on the Exchange of Information*.
  - holds various types of Seminars for educating tax officials,
  - utilizes the *Internal Online Database* in response to comparatively easy requests, such as requests to confirm whether the taxpayer in question has returned to Japan.

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## Compiling Examples for Promoting Spontaneous EOI

- **Spontaneous EOI** relies on active participation and cooperation by the tax officials. In particular, it depends on whether tax officials know *what kinds of information constitutes the potential interests of the contracting parties*, and whether tax officials have the motivation to report such information.
- The NTA has compiled a **collection of precedents and examples** where spontaneous EOI should be considered in similar cases, and has included this information in a Manual on the Exchange of Information.

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### • Example 1:

- The person being audited had wire-transferred a portion of a sales fee to savings accounts held by the representative of the payment recipient and by another corporation, leading support to the view that income was being excluded by the seller in the other state.

### • Example 2:

- The person being audited, an exporter of mechanical devices, carried out a price discount for reasons based on delays in shipping. While it was requested that the invoice (original) based on initial prices be returned, only a copy was provided, leading support to the view that the company to which sales were conducted posted a fictitious purchase of inventory.

### • Example 3:

- Upon using automatic EOI regarding the receipt of interest in the audit, it was discovered that the recipient in question had lent his name to a sibling residing in the other state. It is believed that the intention was to help his sibling avoid taxation on interest as a resident of the other state.

### • Example 4:

- Information was provided in regard to fees for a singular transaction in the form of a database purchase.

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## Presenting Letters of Appreciation for Promoting EOI

- **Feedback from the applicant party of EOI on Request is important** as it enables:
  - the **quality improvements** to be made for future EOI on request
  - the **enhancement of the motivation** of tax officials to provide information.
- Spontaneous EOI also depends on the motivation of the officials supplying the information.
- Japan exchanges **Letters of Appreciation** with several contracting parties, for tax officials who provide significantly effective information spontaneously or in response to a request.

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## Using the SMF Format for Sending Automatic EOI

- In Japan, **information returns** are submitted by both through paper documents and electronic media.
- The EOI Section at NTA headquarters converts all these materials into the *OECD Standard Magnetic Format (SMF)* and sends them to the contracting parties in order to enable their effective use.

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## Practices for More Effective EOI

- Holding Regular Meetings for EOI
- Providing Technical Assistance for Automatic EOI
- Incorporating EOI into Performance Assessment
- Reinforcement of Staff Resources for EOI

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## Holding Regular Meetings for EOI

- Face-to-Face Meetings for EOI on Request can be one of the most effective and prompt means of EOI.
- However, it also takes some time to be conducted, especially in confirming whether the requested party gives its consent for each visit.
- To minimize the amount of time, Regularizing the Meetings for EOI is another choice.
- Particularly, if the contracting parties frequently request or respond to EOI, they could hold meetings quarterly or semiannually (for example) in alternating jurisdictions under a general agreement made in advance.
- Regular Meetings for EOI also help to further strengthen the mutual understanding and the cooperative relationships between the competent authorities of the contracting parties.

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## Providing Technical Assistance for Automatic EOI

- Automatic information received from the contracting parties has an important role in Japan in the processes of reviewing returns and selecting cases to be audited.
- Japan hopes to provide technical assistance to resolve the problems in processing automatic EOI, and to promote EOI among SGATAR members in this field.

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## Incorporating EOI into Performance Assessment

- To enhance voluntary participation and cooperation of tax officials in the field of EOI, the NTA believes that tax administrations should actively evaluate participation in EOI, and incorporate this evaluation into the regular process of tax officials' performance assessments.

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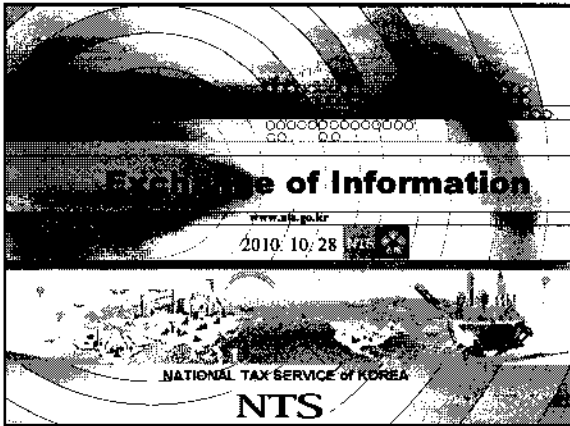
## Reinforcement of Staff Resources for EOI

- To assure the quantitative and qualitative improvements of the implementation of EOI, the contracting parties should consider strengthening their capabilities to address EOI cases by:
  - increasing the number of staffs in charge of EOI,
  - providing further trainings to their tax officials.

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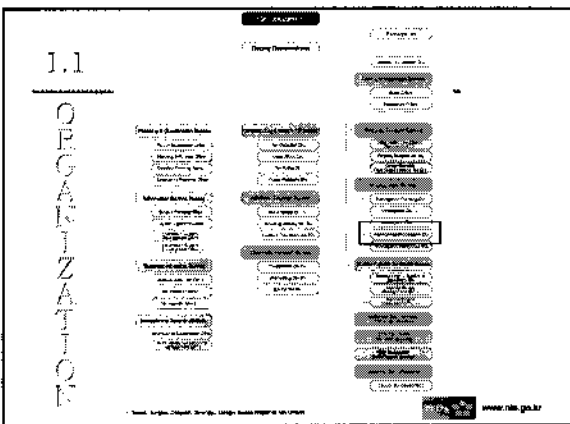
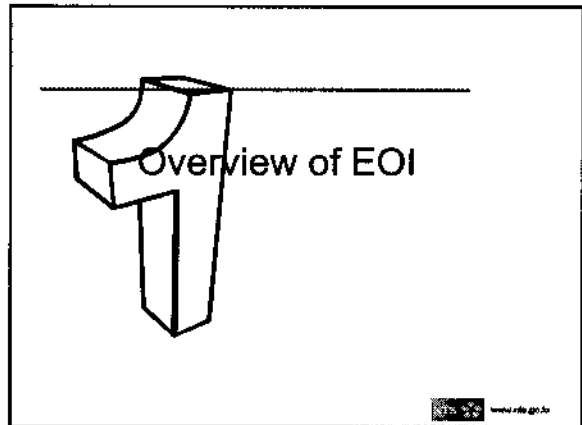
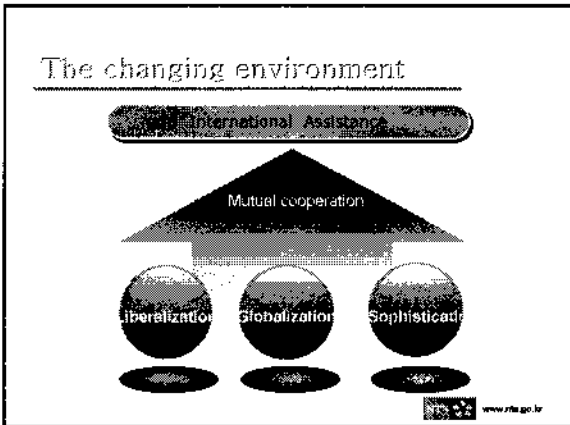
Thank You!

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## Contents

- 1. Exchange of Information
- 2. The changing environment
- 3. Overview of EOI
- 4. Scope of EOI
- 5. EOI in Korea
- 6. EOI in Korea
- 7. EOI in Korea
- 8. EOI in Korea



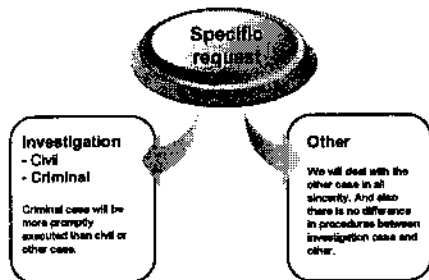
- ## 1.2 Scope of EOI
- Tax information required for the imposition and collection of taxes, review of tax appeals, and criminal prosecution, and generalized with international practice
    - as not conflicting with other Acts
      - \* the tax status of a legal entity
      - \* the income and expense shown on a tax return
      - \* Business records
      - \* accounting records and financial statements
      - \* banking records
      - \* copies of invoices, commercial contracts, etc.

### 1.3 Banking records

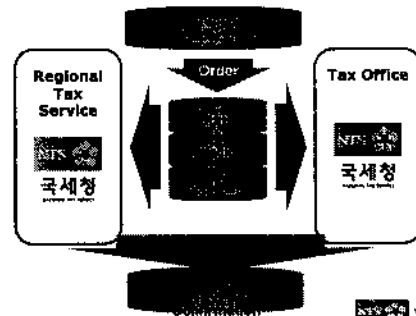
- We may request to a **SPECIFIC** branch of a financial institute to offer the financial information where it is necessary for the competent authority to verify any data sufficient to prove the suspicion of tax dodging.
- <Requirements needed to request a financial information>
  - \* Personal information on the holder of a title deed
  - \* Trade period subject to a request
  - \* Legal ground for a request
  - \* Purpose of the use of information
  - \* Contents of transaction information requested
  - \* Personal information - name and duties, etc.,



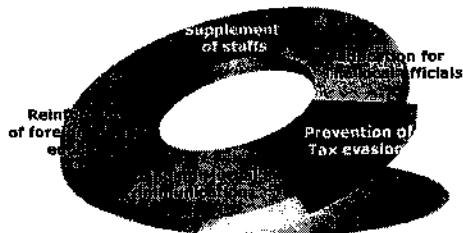
### 2.1 Classification



### 2.2 Procedures



### 2.3 Vitalization



### 3. Encouraging

- The efficiency of spontaneous exchange depends on the motivation and the initiative of the officials in the supplying country
- Important that local tax officials have the reflex to pass on to a competent authority information which would potentially be of use to a tax treaty
- Sending useful information to another country will increase the likelihood of receiving useful information in return.



### Automatic EOI

### 4.1 Targeted income

- Income generated from sources in the Republic of Korea of non resident



Interest on loans and profits from trusts  
Dividend that is paid in Korea by any domestic corporation or any organization



Income generated from human services  
Income generated from a business



Income from the transfer of assets and rights  
Income from the inheritance of assets

### 4.2 Procedures



Gathering the targeted income data of non resident in Korea from the tax returns or statements of payment

Excluding the data which is not useful to tax treaty partners, such as unknown nationality, very tiny amount of income, etc.

Offering the information to the Contracting Country in the form of OECD Format



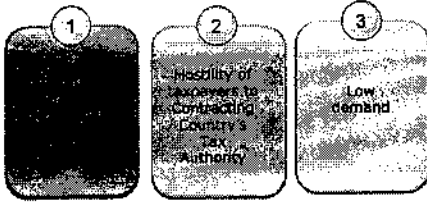
### Tax Examination Abroad

### 5.1 Usefulness

- Reduction of the compliance burden
  - cooperation ensures duplication is minimized or avoided
  - costs are reduced and time is saved
- Need a prior written consent of the persons concerned
  - enter the territory of the requested country to interview individuals and examine records

## 5.2 Difficulties

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**8<sup>TH</sup> SGATAR JOINT TRAINING PROGRAM**  
MANILA  
27 – 29 OCTOBER 2010

**INTERNATIONAL TAX COOPERATION AGREEMENTS  
ON EXCHANGE OF INFORMATION**

PRESENTATION BY MALAYSIA



**Introduction**

- Eol is the current subject of discussion at various conferences and meetings
- The practice of Malaysia dealing with international tax evasion and avoidance
- The practice of Eol
- Future international cooperation



**Addressing International Evasion  
and Avoidance through  
Exchange of Information**



**The need for Exchange of Information**

- Economy being globalised and borderless
- Tax authorities are confined within their own jurisdictions
  - taxpayers engage freely in their cross-border transactions
- The importance of information exchange
- Establish a better understanding and finding a common solution
- Malaysia has associated 68 Double taxation Agreements plus a handful that is still under negotiations

Cont'd



**The need for Exchange of Information**

- International tax cooperation by mode of bilateral agreements
- "...to prevent fiscal avoidance and evasion in cross border transactions..." has always been key objective for Malaysia's bilateral tax agreements
- Creating a favorable climate for inbound and outbound investment
- Proper application of its domestic law



**Bilateral Agreements**



### Bilateral Tax Agreements

- Bilateral agreements have always been the resolution on issues of information exchange
- Vital changes for the past few years on the article of EoI
- June 2009 – Malaysia adopted the acclaimed standard principles of information exchange to its draft model
- Continuously associating protocols reviewing its article of EoI



### Tax Information Exchange Agreements (TIEAs)



### Tax information Exchange Agreements (TIEAs)

- No TIEAs with other jurisdictions
- Focus on the subject of information exchange
- Positive outcomes – sufficient and reliable information from counterparts
- More applicable to jurisdictions with lower tax or no tax
- The Ministry of Finance of Malaysia is looking into having TIEAs between Malaysia with other jurisdictions



### Multilateral Agreements



### Multilateral Agreements

- A possible solution
- Debates and opinion on the practicability of multilateral agreements
- Concerns are mainly on the domestic laws of the concerning states and requesting procedures
- Must be done with the existing tax treaties – the need for multilateral understandings
- Requested states have many ways to protect the secrecy of a person's related information

Conf'd...



### Multilateral Agreements

- Standardization and formats must exist first
- Members must be made to see the importance and not judging it by amount of 'return' and what's in it for them
- Factors such as the existing 'systems', legal requirements and administrative measures
- Addressing requested information agreeable by all parties
- No existing Multilateral Agreements



## Domestic Law



### Domestic Law

- Introduction of Income (Request for Information) Rules 2009 – came into force 26 August 2009 – the procedures of exchanging information with treaty partners
- Blanket Authorization – in addition blanket Authorization has been obtained for DGIR to have access to bank information held by financial institutions
- Section 132(2) Income Tax Act 1967 – empowers the Ministry of Finance to enter into DTAs and overrides the Income Tax Act

Cont'd...



### Domestic Law

- Subsection 2 of Section 132 allows the disclosure of information to country which entered into agreement
- "...shall not prevent the disclosure..." Section 81, Income Tax Act 1967 – Power to call for information
- Competent Authorities (CAs) for Malaysia – Minister of Finance, Undersecretary and Deputy, Tax Analysis Division and Inland Revenue Board Malaysia (IRBM): CEO/DGIR, Deputy Director Generals of IRBM and the Director of Department of International Taxation
- Adaptation of the Internally Agreed Tax Standards incorporated with the application of Domestic Law



## Operational Aspects Involved in Exchange of Information



### Best practices and common procedures

#### Three categories of exchange;

- Specific Exchange of Information
  - Automatic Exchange of Information
  - Spontaneous Exchange of Information
- Treatments to these information requests are based on the same principles and guidelines
  - Treatment of Information gatherings for each nature of information vary from one to another



### Common Procedures

- Received via 'snail-mail' for every class of information through appointed CAs
- Acknowledgements receipts are sent out to requesting treaty partners
- Classified and sorted accordingly to In-house Departments
- Straightforward cases are resolved at the Department of International Taxation level

Cont'd...





### Common Procedures

- Inter Departments, banks and related network – managing secrecy
- Communications via snail-mail – not in any form that could potentially divulge the information
- Request are broken into manner and not in the form of the originally intended full request
- Applicable to all forms of information

Conf'd...



### Automatic Exchange of information

- A different practice apart from basic procedures
- In the form of listed individuals' details in encrypted CD-ROMs in Standard Magnetic Format (SMF) paired with 'key-files' and passwords
- Encrypting process is done by the Forensic Department of IRBM
- Returned decrypted data will be extracted, listings will be sent to the Compliance Department of IRBM for future action
- To personal files at the Branches level
- Specified time period were outlined and request are being monitored
- Follow-ups are being done to ensure timeliness



### How far back information can be gathered? Retention?

- No bounded limits for information within IRBM
- Other networks will depend on the policy and data sufficiency
- Retentions will influence the accuracy and sufficiency of data
- Gentle reminders are sent to try and make certain that information will be provided within specified time
- Partial information are provided should the full request could not be fulfilled



## Technology Required



### Relevant technology/system

- Automatic Exchange – long lists of recipients
- Proposed delivery methods
- A common program i.e. Microsoft Excel Spreadsheets
- Limit the number of 'Fields' – only produce key relevant information i.e.
  - i. Recipients' information : Names/Sumames/Addresses
  - ii. Payers' information : Payer Name / Payer Addresses
  - iii. Payment Info : Payment Type / Payment Dates



### Arrangement of Data

- Not all encrypted data are relevant – selections of related fields are required to eliminate the unrelated fields. Selected fields have to be re-arrange and transferred to spreadsheets in order to present the information in an orderly manner
- The effectiveness of the decrypting process will rely on the efficiency of the key-files. If the 'key-files' are inefficient, the processed data will be inaccessible
- Occasionally the decrypted data are not properly aligned



### Proposed method for Automatic Exchange

- Information could be sent in a format that does not require any decrypting process. This eliminates the risk of unforced error such as the alignment of data
- Use passwords on information tabled in a common program and void the use of 'key-files' – passwords could be sent to us upon the reception of the acknowledgement receipt
- Additional information on unique features i.e. Passport Number, ID Number - eliminates the error of mistakenly identifying individuals with the same name



### May foreign auditors assist in gathering or verifying the information ?

- Article 6 – Tax Examination Abroad (TIEAs)
- Commonly known as simultaneous audits
- Malaysia's bilateral agreement does not constitute the rights for the requesting jurisdictions to perform any joint tax examinations



## Future of International Tax Cooperation



## Effectiveness of International Agreements



### Future of international tax cooperation and effective international agreements

#### Malaysia's expectations on the effectiveness of international agreements

- Effective international agreements would be able to enhance a widely accepted legal basis for bilateral agreements or other modes of agreements
- Improvement on EoI would be able to derive to an ideal standard for access to information such as banking information
- Less shelter to taxpayers through strict bank secrecy and laws
- The ability to access banking information

Cont'd...



#### Malaysia's expectations on the effectiveness of international agreements

- Legislative changes would eliminate Domestic Tax Interest requirements
- The willingness of counterparts to provide information
- Mutual benefits would derive from voluntary compliance
- Standardization would discourage treaty shopping
- Benefits in civil and also crime preventions
- Improved overall EoI systems and standards



## Problems and Emerging Concerns



### Problems and emerging concerns

- ❑ Increased pace of industrializations and foreign direct investment necessitated the need for an effective international agreements to provide investors with certainty and guarantees in the area of taxation
- ❑ Residence based tax on capital income can be evaded by depositing in low tax jurisdictions and failing to declare the proceeds to residence authorities
- ❑ Tax haven jurisdictions offer foreign investors low tax rates. Economic prosperity of these jurisdictions are at the expense of higher tax jurisdictions



### Quantifying the outcomes

- ❑ Reliable quantitative results if were to compare with forecasted outcome, should a form of commonly agreed Multilateral Agreements were consented upon
- ❑ Cost efficiency and time can be measured by the total evaded tax due to cross border transactions



## Possible Solutions



### Possible Solutions

- ❑ Creating a common approach among SGATAR members
- ❑ Focus on cost, efficiency and time
- ❑ Multilateral Automatic Information Exchange
- ❑ Properly laid precedents i.e. Domestic law and provisions pertaining to banking secrecyes
- ❑ Elimination of 'Information Upon Request' - information believed to be useful can be channelled out
- ❑ Capitalizing on technological advancement; information transfer would be



### Conclusion

- ❑ Exchange of information has been regarded as necessity in tax treaties
- ❑ Eoi to address international tax avoidance and evasion
- ❑ Official amendments to tax treaties
- ❑ Domestic law and legal frameworks on the subject of Eoi must align with the objective of treaties
- ❑ Improvisation on procedures and information processing methods for sufficient and viable information



#### Conclusion

- Cross border transactions has altered the course and need for information exchange
- Possible collaboration among members upon agreeable mode of international agreement
- An agreed upon Precedents and common practice procedures
- Technological and system advancement on information dispatch
- Continuous information sharing to curb the international tax avoidance and evasion



Maraming salamat sa yo'  
Thank you





## INTERNATIONAL TAX COOPERATION AGREEMENTS ON EXCHANGE OF INFORMATION

8<sup>TH</sup> SGATAR JOINT TRAINING PROGRAM  
MANILA, PHILIPPINES  
27-29 OCT 2010



### I. ADDRESSING INTERNATIONAL EVASION AND AVOIDANCE THROUGH EXCHANGE OF INFORMATION

- \* In the ever-changing global environment, it is a recognized fact that businesses operate globally. Although this is not a new phenomenon, the speed and ease brought about by rapid advances in technology and other converging factors had presented opportunities as well as challenges for tax administrators.
- \* Basically, although tax administrators are generally restricted in its operation within its jurisdiction, taxpayers are not. Thus, the need to secure cooperation from other tax administrations is crucial in addressing shared concerns such as international tax evasion and avoidance.
- \* A good starting point is through exchange of information instruments.



### A. BILATERAL AGREEMENTS

- \* International tax agreements can either be bilateral or multilateral. Bilateral agreements that provide for exchange of information can take place either under a Double Taxation Convention (DTC) or pursuant to a Tax Information Exchange Agreement (TIEA).
- \* DTCs or Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income are comprehensive tax conventions/agreements which contain an exchange of information provision. Presently, The Philippines has 37 bilateral DTCs, all of which save for one contains an article on exchange of information.



- \* Among the SGATAR members, the Philippines has concluded DTCs with Australia, China, Indonesia, Japan, Korea, Malaysia, New Zealand, Singapore, Thailand, and Vietnam.
- \* TIEAs on the other hand are agreements which specifically focus on exchange of information on tax matters. The Philippines has not yet concluded any TIEAs but is seriously considering its merits.



### B. MULTILATERAL AGREEMENTS

- \* Multilateral agreements, as we know, cover several Contracting States. One such example of a multilateral agreement is the Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters. The original agreement entered into force in 1995 and was binding to 14 countries. It, nevertheless, covers not just exchange of information but also other forms of assistance and co-operation, namely: performance of tax examinations abroad including assistance in recovery of tax claims to name a few. Recently, it underwent revisions to make room for significant changes, one of which is, to enable developing countries to become parties to the said agreement.



- \* The Philippines has not yet concluded any multilateral agreement in exchange of information. However, the Philippines do recognize several advantages a multilateral agreement offers. First, in terms of speed and ease, conclusion of a multilateral agreement is more convenient compared to a bilateral agreement. Likewise, another advantage would be in terms of resources saved in the conduct of negotiations; thus, making it more practical especially for a developing country.





### C. DOMESTIC LAW

- \* Assistance to foreign jurisdictions may also be provided solely in the domestic law through unilateral mechanisms. In the absence of an international agreement, a State may provide for the procedure and conditions when it can supply information to another State.
- \* In the case of the Philippines, Republic Act No. 10021 was recently passed by Congress. Its objective was to remove any impediment in the exchange of information. The basis, however, of the obligation to provide information is still the international agreement The Philippines entered into with its treaty partners.
- \* Of the thirty-six (36) bilateral agreements which the Philippines entered into, nineteen (19) DTCs provide that they are not restricted by Article I of the Convention. As for taxes covered, all of the articles of the DTC on exchange of information is with respect only to taxes covered by the Convention.



### II. OPERATIONAL ASPECTS INVOLVED IN EXCHANGE OF INFORMATION

#### A. BEST PRACTICES AND COMMON PROCEDURES

Information can be exchanged in any of the following:

- \* *Upon request* -- referring to a request by a Contracting State to the other Contracting State regarding a particular or specific information;
- \* *Automatic* -- information that is provided automatically and/or on a routine basis;
- \* *Spontaneous* -- when a Contracting State in the course of administering its own laws provide information which it believes to be of interest to the other Contracting State.



- \* Of the three methods, the Philippines is implementing the first type of exchange of information. Accordingly, requests for information should be made in writing and addressed to the Competent Authority of the Philippines, in this case—the Commissioner of Internal Revenue. As to the contents of the request, Revenue Regulations No. 10-2010 provides that the following should be clearly stated in the request:
  - a) The identity of the person under examination or investigation;
  - b) A statement of the information being sought including its nature and the form in which the said foreign tax authority prefers to receive the information from the Commissioner;
  - c) The tax purpose for which the information is being sought;
  - d) Grounds for believing that the information requested is held in the Philippines or is in the possession or control of a person within the jurisdiction of the Philippines;



- e) To the extent known, the name and address of any person believed to be in possession of the requested information;
- f) A statement that the request is in conformity with the law and administrative practices of the said foreign tax authority, such that if the requested information was within the jurisdiction of the said foreign tax authority then it would be able to obtain the information under its laws or in the normal course of administrative practice and that it is in conformity with an international convention or agreement on tax matters;
- g) A statement that the requesting foreign tax authority is also allowed under its domestic laws to exchange or furnish the information subject of the request; and
- h) A statement that the requesting foreign tax authority has exhausted all means available in its own territory to obtain the information except those that would give rise to disproportionate difficulties.



### B. TECHNOLOGY REQUIRED

- \* Given that exchange of information is processed upon request, the technology that is used for automatic exchange of information in the case of the Philippines is not applicable. The Philippines, however, recognize the need to utilize existing technology in gathering as well as storing tax information particularly the use of data warehouses.
- \* Improvements in the area of infrastructure that will support linkages with other government agencies and other relevant entities that hold information are considered vital. As for the retention period, information that may come from banks or financial institutions are governed by the policies of the relevant regulatory bodies.



### C. ASSISTANCE

- \* Foreign assistance or tax examinations abroad are being done in other jurisdictions for the purpose of gathering information. This arises when a taxpayer in a Contracting State is permitted to keep records in the other Contracting State.
- \* A Contracting State may permit the authorized representatives of the Contracting State, to the extent allowed by its domestic law. Therefore, the level of participation or assistance may differ depending on the laws and practices of the Contracting States.



- \* In the case of the Philippines, the law is silent in so far as active tax examinations involving taxpayers is concerned. The law however allows foreign tax authorities to examine income tax returns of specific taxpayers subject of a request.
- \* Finally, it is a matter of observation that TIEAs of other jurisdictions contain a provision on tax examinations involving active participation by the requesting State. This however requires the consent of the taxpayer.



### III. FUTURE OF INTERNATIONAL TAX COOPERATION

#### A. EFFECTIVENESS OF INTERNATIONAL AGREEMENTS

- \* One of the real objectives of an international tax co-operation agreement is to address and hopefully prevent international tax evasion or avoidance. The extent of international tax evasion or avoidance in a State is however largely dependent also in its own domestic laws and how it approaches the problem. Key to solving the problem of evasion is having a robust domestic law and enforcement capabilities. One way of measuring the effectiveness of these agreements is how they can improve and complement the domestic laws of both the Contracting States.



- \* In the case of the Philippines, the move to amend its domestic law was precipitated by the need to comply with its international obligations. Instead of individually negotiating its treaties, it deemed more expedient to address the domestic constraints given that there are already existing agreements which provides a framework for the exchange of information.
- \* Nevertheless, it is imperative to identify other areas in the domestic law that need to be enhanced, not just for the purpose of complying with the exchanging information provision but also mainly for combating tax evasion both in the international and domestic setting. Technical assistance from the requesting State or other groups will also help mitigate the incidence of tax evasion.



#### B. PROBLEMS AND EMERGING CONCERNS

- \* An international tax agreement, like tax evasion, is something that is not static. It is constantly evolving. The Philippines in concluding future DTCs will necessarily have to reflect the changes of the Model Convention specifically the additional paragraphs in Article 26. It will also take into consideration the usefulness of TIEAs and multilateral instruments in future negotiations.
- \* It has been observed that TIEAs and existing multilateral instruments are not just limited to exchange of information *per se* as earlier mentioned. Basically, these agreements expand the scope of Article 26 as negotiated by the Contracting parties; and may well extend to other areas of co-operation. TIEAs expand the scope of taxes covered while multilateral agreements may include provisions on tax collection. One foreseeable concern is that a Contracting State may find these other areas of co-operation difficult to implement at its current stage of development.



- \* Another pertinent issue relates to as to whether a Contracting State should immediately enter into an international agreement on exchange of information, e.g. TIEA, once it receives a proposal from another Contracting State, notwithstanding the fact that there is an existing DTC. Concerns on having multiple instruments with the same Contracting State may therefore arise. As such, whether to amend an existing DTC or enter into a separate TIEA are two possible considerations.



#### C. POSSIBLE SOLUTIONS

- \* Given the present global condition, one logical question that can be asked is whether there is a common solution to a problem like international tax evasion. International tax cooperation agreements are but a means to an end. However, the Philippines believe that it is indeed part of the solution.
- \* Regional initiatives in so far as a common exchange of information instrument among Asian countries particularly SGATAR members have yet to be discussed. Whether there is merit in such a proposal remains to be seen. One such advantage is the expediency that it provides. However, as to whether a consensus can be reached is another matter.





\* In closing, an international tax agreement for it to work needs the cooperation of both the requesting and requested State. Although there is an international tax standard, the prevailing conditions in each Contracting State is altogether different. The facility in entering into these agreements as well as the capability to implement the same is affected by these factors. For Countries who have just started introducing changes in their respective systems, the challenge lies not just in its implementation but how it can address its avowed objective—that is, the problem of tax evasion and avoidance in a global setting.



Thank you.





## INTERNATIONAL TAX COOPERATION AGREEMENTS ON EXCHANGE OF INFORMATION

Patrick Nai and Joyce Chee  
Inland Revenue Authority of Singapore

### The Internationally Agreed Standard

- Internationally agreed standard on transparency and exchange of information for tax purposes
- The Organisation for Economic Co-operation and Development ("OECD") Standard for the effective exchange of information through Avoidance of Double Taxation Agreements ("DTAs")

### Singapore

- Amending Protocols and DTAs which incorporate the enhanced Exchange of Information article
- new legislative provisions in the domestic law

### Amending Protocols and DTAs which incorporate the enhanced Exchange of Information article

- Singapore has signed Amending Protocols (17) or DTAs (4) which incorporate the enhanced Exchange of Information article with 21 countries.
- - Belgium, New Zealand, United Kingdom, Netherlands, Denmark, Australia, Austria, Norway, Qatar, Mexico, Bahrain, France, Brunei, Finland, Georgia, Malta, Slovenia, Japan, Saudi Arabia, South Korea and China)
- 8 of the Amending Protocols (6) or DTAs (2) have been ratified (i.e. DTAs with New Zealand, Netherlands, Austria, Norway, Brunei, Finland, Georgia and Japan).

### Enhanced Exchange of Information article

- Scope of the enhanced Exchange of Information article is wide enough to cover all types of taxes and all persons (including non-residents)
- Contracting State cannot decline to supply information solely because it has no domestic interest in such information

### Enhanced Exchange of Information article

- Contracting State cannot decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person
- Subject to legal privilege

Income Tax  
(Amendment) (Exchange of  
Information) Act, 2009  
▪ 105A to 105M of the Income  
Tax Act

Rules of Court

- Order 98 of the Rules of Court

Purpose of new domestic  
law provisions

- To facilitate the disclosure of information to a competent authority under a prescribed avoidance of double taxation arrangement ("prescribed arrangement") in accordance with the EOI provision in that arrangement.

Request from foreign tax  
authority

- The competent authority under a prescribed arrangement may make a request to the Comptroller for information concerning the tax position of any person in accordance with the EOI provision of that arrangement and unless the Comptroller otherwise permits, the request must set out the information prescribed in the Eighth Schedule.

Court Orders relating to  
Restricted Information

- Singapore has domestic statutory banking and trust confidentiality provisions under Section 47 of the Banking Act and Section 49 of the Trust Companies Act.
- Section 105J provides that where the Comptroller requires information in order to comply with a request by a foreign treaty partner and the Comptroller is of the opinion that the information is protected from unauthorized disclosure under Section 47 of the Banking Act or Section 49 of the Trust Companies Act, the Comptroller may apply to the High Court for a production order.

Court Orders relating to  
Restricted Information

- There are no limitations to the obtaining of the production order save that an order obtained under Section 105J shall not confer any right to the production of, or access to, information subject to legal privilege.

## Order 98 of the Rules of Court

- An application to the High Court for an order under section 105J of the Income Tax Act must be made by way of originating summons together with a supporting affidavit and the application may be made ex parte.

## 1<sup>st</sup> case involving court order

Singapore recently assisted a foreign tax authority of a treaty partner to obtain a Court Order for the production of certain bank documents as requested by the treaty partner.

For this particular request, the Comptroller of Income Tax was able to obtain the Court Order within a period of about 1 month from the time the request was received.

## Upon specific requests

- Singapore has a policy of providing assistance in respect of exchange of information only upon specific requests from her treaty partners.
- Singapore would not as a matter of practice provide automatic or spontaneous assistance in respect of exchange of information.

## Conclusion

- Enactment of the new legislative amendments and the ratification of 6 Amending Protocols and 2 DTAs incorporating the enhanced Exchange of Information article
- The process of the exchange of tax information between Singapore and her treaty partners would be greatly facilitated
- Foster greater international cooperation on the exchange of tax information between the Inland Revenue of Singapore and other tax authorities of treaty partners around the globe.

## The 8th SGATAR JOINT TRAINING PROGRAM

### International Tax Cooperation Agreements on Exchange of Information

Prepared by  
Chinese Taipei

1

## Outline

- 1 Legal basis of exchange of information
- 2 Operational aspects involved in exchange of information
- 3 Future of international tax cooperation

2

## Legal basis of EOI

- ◆ **Bilateral agreements**
  - ◆ The only legal instrument serving as the legal basis of the EOI in Chinese Taipei
- ◆ **Multilateral agreements**
- ◆ **Domestic laws**

3

## Legal basis of EOI- - bilateral agreements

- 18 DTAs (by year of entry into force)
  - Singapore (1982), Indonesia (1996), South Africa (1996), Australia (1996), New Zealand (1997), Vietnam (1998), Gambia (1998), Swaziland (1999), Malaysia (1999), Macedonia (1999), Netherlands (2001), UK (2002), Senegal (2004), Sweden (2004), Belgium (2005), Denmark (2005), Israel (2009), & Paraguay (2010)

4

## Persons and types of taxes covered by the EOI

EOI PROVISIONS IN DTAs & CONTRACTING PARTNERS		Persons covered	
		Residents	Both residents and non-residents
Taxes covered	Income tax	Australia, Gambia, Indonesia, Malaysia, Netherlands, Paraguay, Senegal, Singapore, South Africa, Vietnam	Israel, Macedonia, New Zealand, Swaziland, Sweden, UK
	Taxes of every kind		Belgium, Denmark

5

## Best practices and common procedures (1/8)

### 1. Inbound EOI

- Automatic EOI

"The information included only the name of an individual, the name of a company, and the address of the company, all in roman script; which led to problems with ease of identification."

6

## Best practices and common procedures (2/8)

### 1. Inbound EOI

- Automatic EOI

"Use a search engine to search for the name of the company in Chinese script."

"Search again in the tax administration's database for a plausible Business Administration No."

7

## Best practices and common procedures (3/8)

### 1. Inbound EOI

- Automatic EOI

"Case 1 : There was no sufficient evidence to prove that the company hadn't declared the income because of the plausible Business Administration Number. "

8

## Best practices and common procedures (4/8)

### 1. Inbound EOI

- Automatic EOI

"Case 2 : Found that the company hadn't declared the interest income."

9

## Best practices and common procedures (5/8)

### 1. Inbound EOI

- EOI on request

"Due to unfamiliarity with the provisions of the EOI and the language barrier, our auditors have only requested our DTA partners in a few cases to provide data or auditing assistance."

10

## Best practices and common procedures (6/8)

### 2. Outbound EOI

- EOI only on request
- Data which can be collected and provided in a short period of time includes declared information, audited information, balance sheet...

11

## Best practices and common procedures (7/8)

### 2. Outbound EOI

- Data which it will take longer to collect and provide includes information for which their needs to be further confirmation or investigation....

12

## Best practices and common procedures (8/8)

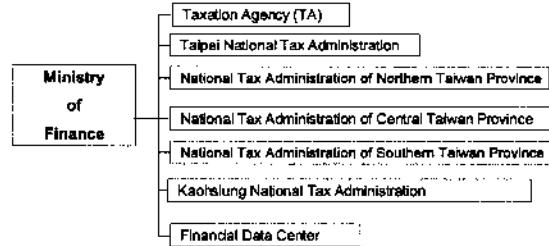
### 2. Outbound EOI

- A corporation shall keep its accounts records for 10 years and keep the related evidence for 5 years. Currently our tax administrations retain tax information in their databases for 10 years.

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## Procedures of EOI -

### - Introduction to the Structure of the Tax Organizations



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## Procedures of EOI

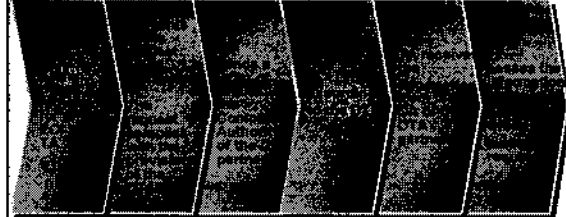
### - Outbound exchange of information



15

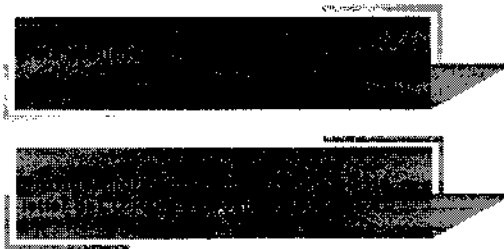
## Procedures of EOI

### - Inbound exchange of information



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## Technology Required



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## Assistance

Assistance in confirming a transaction, by means of checking tax filing reports, accounting books of the companies involved in the deals, so as to clarify the whole picture of certain deals.

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## Assistance

The payment  
of the foreign  
commissions

The loss of  
the foreign  
default  
payment

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## Assistance

If a concerned foreign tax authority can provide help in checking the details in cases, the number of cases of international tax evasion could be much more minimized.

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## Future of international tax cooperation

### ■ Effectiveness of international agreements

- Enhance the capacity of tax authorities in determining appropriate tax amounts
  - *Prevent cross-border double taxation*
  - *Combat tax avoidance and evasion*

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## Future of international tax cooperation

### ■ Effectiveness of international agreements

- Quantified by the amount of the tax supplement which is paid by the taxpayers based on investigation and utilization of the information exchanged
- Feedback from the DTA partners in regard to the utilization of the information exchanged would be helpful in measuring the effectiveness of the EOI

## Future of international tax cooperation

### ■ Problems and emerging concerns

- The utilization of the EOI is a new vehicle for our tax authorities
- Information in the letter of request is not sufficient
- A request from a jurisdiction with whom we have no DTA
- Identification difficulties due to language barriers

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## Future of international tax cooperation

### ■ Possible solutions

- Well-trained staff
  - To design a training program for the enhancement of investigation skill and introduction to EOI provisions
- Standard process
  - Setting up of guidelines for the processing of the EOI

## **Future of International tax cooperation**

### **■ Possible solutions**


- Including the corporation's Business Administration No. and the individual's personal ID No. or passport no. in the data
- Expanding the DTA network to enhance the legal basis of international cooperation

***Thank you for your attention!***



**INTERNATIONAL TAX COOPERATION AGREEMENTS  
ON EXCHANGE OF INFORMATION**


Prepared By: THAILAND

 **NSUAS&S&M&S**  
The Revenue Department  
And Joint Trainers

8 th SOATAR Joint Training 1

**Introduction**

- Increased in number of international transactions of business
- Tax avoidance and tax evasion
- Important role in examination of international transactions
- Come up with co-operation among nations in the term of exchange of information under Double Taxation Agreements (DTAs)


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8 th SOATAR Joint Training 2

**Tax Cooperation Agreement**

**Bilateral Agreements**

- Exchange of information only under DTA's provisions
- Thailand's DTA follow UN Model DTA
- Article 26 of the Thai Model DTA restricts EOI to the persons, taxes, and use of information for tax purpose

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**Tax Cooperation Agreement**

**Domestic Law**

- Only one provision in domestic law which deals with official secrecy

**Section 10** of the Revenue Code of Thailand states that "an officer who has by virtue of his office under this Title acquired information on the business of a taxpayer or of any other person concerned shall not divulge or otherwise communicate such information to any person, unless authorized to do so by law".


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**Tax Cooperation Agreement**

**EOI under DTA**

- To treat any information received as secret in the same manner as information obtained under the domestic laws
- To disclose the information only to authorized persons or authorities

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**Operational aspects involved in EOI**

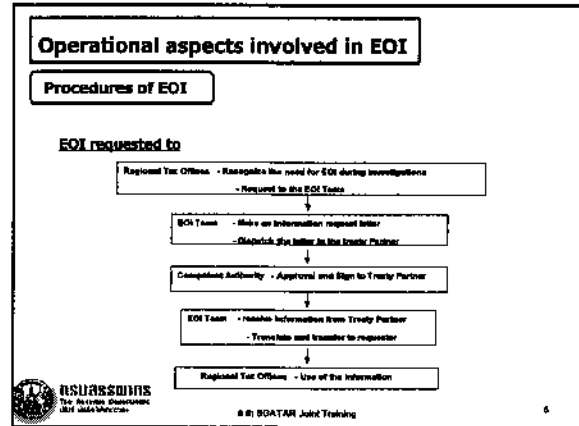
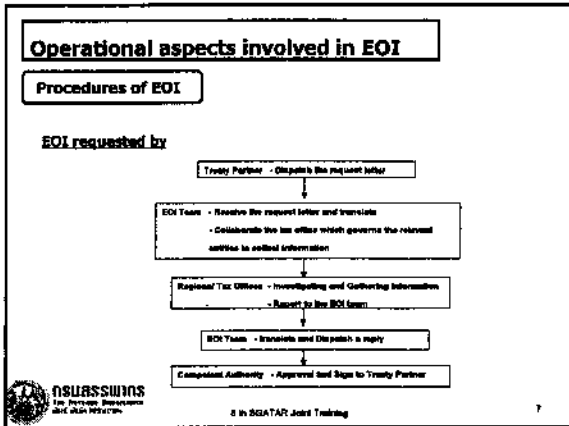
**Practice of EOI**

**Types of EOI**

- On request
- Spontaneously
- Automaticly

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- ### Operational aspects involved in EOI
- #### Monitoring and Reporting
- o To supply only upon request
  - o With more reliable information
  - o With an appropriate to utilize its scarce resource
  - o Using much more costly in any other way
- NSUISSWINS  
The Income Department  
J&A Unit/Section
- 8 in SGATAR Joint Training 9

- ### Future of International Tax Cooperation
- #### Effectiveness of International Agreement
- o Determine amount of tax on domestic and foreign income
  - o Prevent tax avoidance and tax evasion
  - o Important role in examination of international transactions
  - o Induce voluntary tax compliance and protect base securely
  - o Come up with co-operation among nations in the term of exchange of information under DTAs
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The Income Department  
J&A Unit/Section
- 8 in SGATAR Joint Training 10

- ### Future of International Tax
- #### Cooperation Problems and Emerging Concerns
- o Speed of response
  - o Business secrecy
  - o Requesting information from treaty partners
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J&A Unit/Section
- 8 in SGATAR Joint Training 11

- ### Future of International Tax Cooperation
- #### Requesting information from treaty partners
- o Lack of knowledge about what type of information to assist their work.
  - o Less relying on information from other tax administrations
  - o Shortages of tax officials
  - o Low degree of automation
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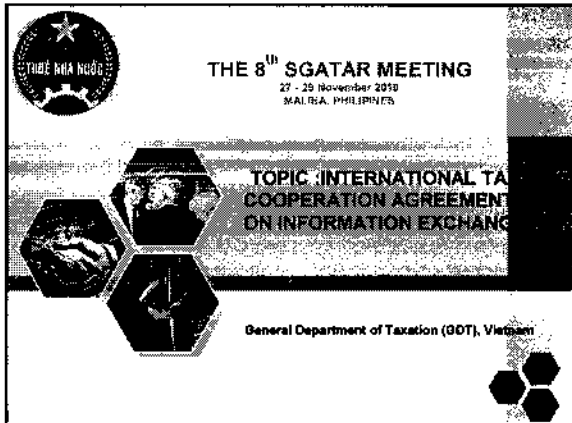
### Possible Solutions

- Differences between domestic laws and data collection capabilities
- To overcome these differences by promoting the guideline of EOI
- By working closely together and come up with a workable solution

### Conclusion

- To increase an important role for EOI
- To help treaty partners for prevention of tax avoidance and tax evasion
- Not too broad for the scope of Information exchange of Thai Model DTA
- To collaborate with each other for exchange and for exploring the domestic laws, limitations and position of treaty partners
- To make automation of information technology and to train how to use such information to officers as the primary steps for Thailand





## CONTENTS

- Solutions via information exchange addressing international tax evasion and avoidance
- Regulations on DTA information exchange in Vietnam
- Some issues on cooperation relating to information exchange
- Future of International Cooperation

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**I. Solutions via information exchange addressing international tax evasion and avoidance**

**1. General principles regarding countries' taxing rights**

- Residents: who are identified having residence status in a country, must pay tax on all income sources received, regardless of the places where the income is generated.
- Source of income: non-resident in a country, must pay tax on the incomes generated in that country.
- Resident status or source of income is specified differently by regulations of each country and in many cases, a country or an individual can be a resident of two or more countries.

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**I. Solutions via information exchange addressing international tax evasion and avoidance**

**2. The objectives of the DTAs**

- To clearly specify the taxing right of the country where the income is generated with respect to some types of income of the non-resident.
- To clearly specify the entity and the types of income to be exempted.
- To limit the tax rate imposed on some types of income of non-resident in countries where the income is generated (for example, if the tax rate is higher than that specified in the agreement, according to domestic law, the tax rate stated in the agreement will be applied).

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**I. Solutions via information exchange addressing international tax evasion and avoidance**

- To specify the methods for avoidance of double taxation
- To specify the requirement on transparency of income sources, aiming at prevention of tax evasion.
- To administratively support in verifying the actual information and to mutually strengthen information exchange between the treaty partners, in order to assist the creation of the basis for enforcement of domestic tax laws in the respective countries with regard to the taxes covered by the DTA.

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**II. Regulations on DTA information exchange in Vietnam**

**1 Regulations on information exchange**

**1.1. Regulation on providing exchange of information on request from DTA partners.**

**1.2. Regulations on requesting exchange of information from DTA partners:** When receiving the request from local tax offices or from other departments of the GDT regarding information from DTA partners, Department of International Taxation of GDT will carry out the following steps:

**1.3. Regulations on processing of information exchange provided automatically by partners**

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## II. Regulations on DTA information exchange in Vietnam

### 2. Overview of information exchanges in recent periods

2.1. Regarding the request for information exchange from DTA partners.

2.2. Regarding information exchange request by DTA partners

2.3. Regarding the processing of information automatically supplied by DTA partners

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## III. Some issues on cooperation relating to information exchange

### 1. Effective implementation method

- Establishing a basic legal foundation for the cooperation information exchange and mutual administrative support among countries suitable to their respective capability and to be appropriate with domestic laws of each partner.

- Countries to be active in supplying necessary information relating to the breach of tax laws and in principle of complying regulations for assurance of the confidentiality of information.

- Strengthen audit activities and measures in order to timely find out the false statement, noncompliance and tax evasions

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## III. Some issues on cooperation relating to information exchange

- Improving the cooperative relations among countries in respect of information exchange.

- Information exchanged among countries must be accurate, timely and confidential as regulated in the DTA

- Information exchange must be stored systematically on the tax authorities database, ensuring for timely processing and supply.

- Enhance the sharing of experience in fields of information exchange among countries

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## III. Some issues on cooperation relating to information exchange

### 2. Application of information technology

- Information is managed in an integrated system basing on the application of modern information technology, ensuring for timely supply and processing when needed.

- Information system must be updated timely, regularly and continuously in a integrated information data system and accessible by local Tax offices.

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## III. Some issues on cooperation relating to information exchange

### 3. Supporting measures

- To apply the modern information technology to archive the information.

- To apply the advanced, modern software programs for management and supply of information.

- Inspectors can support and assist mutually and coordinate with one another in investigating and verification of requests.

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## IV. Future of International Cooperation

### 1. Effectiveness of the agreements

- To prevent tax evasion.

- To ensure for the fairness and equality in the enforcement of tax laws and compliance of taxpayers.

- To create fair competitive business environment.

- To contribute to the completion and improvement on tax management effectiveness in each country.

- To strengthen the cooperation relationship of each country.

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#### IV. Future of International Cooperation

##### 2. New interested issues

One of the most interested issue of many countries in international taxation presently is transfer pricing (TP):

It is because of 03 reasons as follows:

- *Firstly*, the business discretion by the related parties.
- *Secondly*, the difference of transaction price carried out among related partners in the corporation can produce the same overall profitability.
- *Thirdly*, the decision of transaction price policy among related partners can change the total of tax obligations in multinational corporations, economic groups.

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#### IV. Future of International Cooperation

##### 3. Recommendations

- To continue improving and enhance cooperation among tax authorities via information exchange.
- To build up data and information base sufficiently and accurately, ensuring for timely supply.
- To regularly exchange and share experience in order to strengthen tax administration in each country.

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Thank you for your attention!

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The slide features a circular logo in the top left corner with the text "THÔNG TIN VÀ BÁO CÁO" and a star. Below it are three hexagonal icons: a globe, a person, and a dollar sign. The background is a light, textured pattern. The website address "www.gdt.gov.vn" is centered at the bottom, and there are three hexagonal icons in the bottom right corner.