

GLOBAL FORUM ON  
**TRANSPARENCY AND EXCHANGE OF  
INFORMATION FOR TAX PURPOSES**

# A Toolkit for Becoming a Party to the Convention on Mutual Administrative Assistance in Tax Matters

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This toolkit was prepared by the Secretariat of the Global Forum on Transparency and Exchange of Information for Tax Purposes with the support of the Secretariat of the Co-ordinating Body of the Convention on Mutual Administrative Assistance in Tax Matters and the Directorate for Legal Affairs of the Organisation for Economic Co-operation and Development.

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## Abbreviations and Acronyms

**AEOI** Automatic Exchange of Information

**BEPS** Base Erosion and Profit Shifting

**CA** Competent Authority

**CbC** Country-by-Country

**CoE** Council of Europe

**CRS** Common Reporting Standard

**EOI** Exchange of Information

**EOIR** Exchange of Information on Request

**Global Forum** Global Forum on Transparency and Exchange of Information for Tax Purposes

**MAAC** Convention on Mutual Administrative Assistance in Tax Matters as Amended by the 2010 Protocol

**MCAA** Multilateral Competent Authority Agreement

**OECD** Organisation for Economic Co-operation and Development

**SEOI** Spontaneous Exchange of Information

**TIEA** Tax Information Exchange Agreement

## Preface



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Chair of the Global Forum



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In 1988, the Organisation for Economic Co-operation and Development (OECD) and the Council of Europe jointly launched an ambitious project to develop a multilateral convention to facilitate administrative co-operation among their Members to counter more effectively international tax evasion and other forms of non-compliance. This resulted in the development of the Convention on Mutual Administrative Assistance in Tax Matters (MAAC), opened for signature on 25 January 1988, a self-standing multilateral treaty that provided the legal framework for international co-operation in tax matters.

The MAAC was amended through a Protocol in 2010. This amendment made it possible for the MAAC to reflect the modern international standard of exchange of information for tax purposes and for non-OECD or Council of Europe Members to join it. With this amendment, the MAAC has become the leading international treaty for multilateral co-operation in tax matters. As of June 2020, 137 countries and jurisdictions participate in the MAAC.

The MAAC facilitates international co-operation for a better operation of national tax laws, while respecting the fundamental rights of taxpayers. It provides for a wide variety of forms of administrative co-operation between parties in the assessment and collection of taxes. This co-operation ranges from different forms of exchange of information (EOI), to the recovery of foreign tax claims, and the service of documents.

Data leaks in recent years have brought attention to the critical role international co-operation in tax matters can play in combating tax evasion and avoidance. Unfortunately, many developing countries have not fully benefitted from increased tax transparency to enable them better enforce their tax laws. One of the underlying reasons for this is their less than optimal treaty networks. These countries would benefit from joining the MAAC, which has a global coverage and which has facilitated the conclusion of a large number of EOI relationships in a short amount of time and contributed to the increased number of requests submitted from developing countries, as well as a number of developing countries starting implementing the standards of automatic exchange of information (Common Reporting Standard, Country-by-Country Reporting).

This toolkit has been developed by the Secretariat of the Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) in the context of the COVID-19 crisis, as a form of providing technical assistance to countries during challenging times for capacity building activities. Tax co-operation will certainly be instrumental for the post-COVID-19 recovery and fiscal consolidation.

This toolkit provides detailed guidance for countries preparing to join the MAAC. It outlines the benefits of joining the MAAC, provides an overview of its main provisions, its relationship with other treaties and legal instruments that facilitate administrative co-operation in tax matters, and a step-by-step guide to becoming a Party to it, from the preparation stage including providing answers to the confidentiality questionnaire, to the signature and deposit of instruments of ratification, acceptance or approval. It also contains other technical and logistic aspects. The toolkit highlights the key role of the Co-ordinating Body and the technical assistance that the Global Forum can provide to its members when joining the MAAC. Countries may make use of this toolkit during different stages of the process.

We hope that this toolkit will be useful in understanding and preparing for joining the MAAC. We would welcome more developing countries participating in the MAAC and taking advantage of it in the fight against cross-border tax evasion and avoidance for better domestic resource mobilisation.

# About this Toolkit

This toolkit is intended to assist countries aspiring to join the Convention on Mutual Administrative Assistance in Tax Matters as Amended by the 2010 Protocol (the MAAC). It provides contextual background on the MAAC, the key benefits available to Parties and practical examples on the substantive and procedural requirements for joining the MAAC. The purpose is to provide guidance to countries that are not yet Parties but which wish to join the MAAC on the process to becoming a Party.

All the Members of the Organisation for Economic Co-operation and Development (OECD) and the Council of Europe (CoE) as well as a growing number of non-Members participate in the MAAC. This toolkit has been developed to guide non-Members of these organisations to join the Convention.

The toolkit is divided into five parts that are organised as follows:

- Section 1 briefly highlights the origin and purpose of the MAAC as well as the importance of the 2010 Protocol in opening it up for signature and ratification for countries that are not members of the OECD or the CoE. It also explores the key benefits that a country can derive from joining the MAAC even where it already has a network of bilateral treaties and legal instruments to facilitate the administrative assistance in tax matters.
- Section 2 outlines the key provisions of the MAAC. It draws special attention to the different forms of assistance that it can facilitate and provides examples on how jurisdictions have been using it, both for exchange of information (EOI) and beyond. This part also elaborates on the composition, role, functions and operation of the Co-ordinating Body as well as those of the OECD and the CoE, as the Depositaries, in the implementation of the Convention.
- Section 3 details the procedure for becoming a Party to the MAAC with reference to the templates used in practice, providing examples on how to meet the requirements when preparing the request as well as the steps and substantive requirements for joining it.
- Section 4 briefly highlights the critical role that the MAAC plays in the implementation of the Common Reporting Standard (CRS) for the automatic exchange of financial account information and the Base Erosion and Profit Shifting (BEPS) Actions relating to tax transparency, particularly Country-by-Country Reporting (CbC Reporting).
- Section 5 highlights the logistics and financial aspects of becoming a Party to the MAAC.
- The Annexes contain the relevant templates and annotated documents related to the process of joining the MAAC as well as useful resources.

# 1. Introduction



## BACKGROUND INFORMATION

The Convention on Mutual Administrative Assistance in Tax Matters as Amended by the 2010 Protocol (the MAAC) is a multilateral treaty aimed at assisting countries to better enforce their tax laws by providing an international legal framework for exchanging information and co-operating in tax matters with a view to countering international tax evasion and avoidance. Initially, it was jointly developed by the Organisation for Economic Co-operation and Development (OECD) and the Council of Europe (CoE) to facilitate administrative co-operation among the Members of both organisations. The original MAAC was open for signature to Members of the OECD and CoE on 25 January 1988.

In recognition that the fight against tax evasion and avoidance required global co-operation, in 2009 the G20 called upon the OECD and the CoE to make it easier for all countries to secure the benefits of the MAAC by opening it up to countries that are not Members of either the OECD or the CoE. The OECD and the CoE swiftly responded to the G20's call by working on a Protocol amending the MAAC to achieve two objectives:

- Align it with the international exchange of information (EOI) for tax purposes standard.
- Allow all countries, with domestic laws that are sufficient to uphold the confidentiality of tax information, to request to be invited to join it.<sup>1</sup>

With the entry into force of the 2010 Protocol on 1 June 2011 of the 2010 Protocol, countries that are not Members of the OECD or CoE can request to be invited to join the amended MAAC.

The English<sup>2</sup> and French<sup>3</sup> texts of the MAAC are the original, approved versions. German<sup>4</sup>, Spanish<sup>5</sup>

1. See the Explanatory Report available in OECD and Council of Europe (2011), The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by 2010 Protocol, OECD Publishing, p. 31. See also Para 4, G20 Tax Annex to the St. Petersburg G20 Leaders' Declaration, September, 2013, available at [www.oecd.org/g20/summits/saint-petersburg/Tax-Annex-St-Petersburg-G20-Leaders-Declaration.pdf](http://www.oecd.org/g20/summits/saint-petersburg/Tax-Annex-St-Petersburg-G20-Leaders-Declaration.pdf)
2. [www.oecd.org/tax/exchange-of-tax-information/ENG-Amended-Convention.pdf](http://www.oecd.org/tax/exchange-of-tax-information/ENG-Amended-Convention.pdf)
3. [www.oecd.org/fr/ctp/echange-de-renseignements-fiscaux/Convention\\_modifi%C3%A9e.pdf](http://www.oecd.org/fr/ctp/echange-de-renseignements-fiscaux/Convention_modifi%C3%A9e.pdf)
4. [www.oecd.org/tax/exchange-of-tax-information/maac-amended-convention-DEU.pdf](http://www.oecd.org/tax/exchange-of-tax-information/maac-amended-convention-DEU.pdf)
5. [www.oecd.org/ctp/exchange-of-tax-information/ESP-Amended-Convention.pdf](http://www.oecd.org/ctp/exchange-of-tax-information/ESP-Amended-Convention.pdf)

## Introduction

and Portuguese<sup>6</sup> unofficial translations are also available.

The MAAC is a self-standing international treaty whose implementation and continued development is overseen by a Co-ordinating Body that is composed of the Competent Authorities (CA) designated by the Parties to the MAAC in their Annex B<sup>7</sup> notification.

### PARTICIPATING JURISDICTIONS

Following the opening of the MAAC for signature to countries which are not Members of the OECD or the CoE, the G20 has consistently encouraged countries to sign and ratify it.<sup>8</sup>

Once a country signs the MAAC, it becomes a **Signatory**. Once a Signatory completes all the domestic procedures and deposits the instrument ratifying, accepting or approving it with the Depositaries, it is a **Party** to the MAAC.

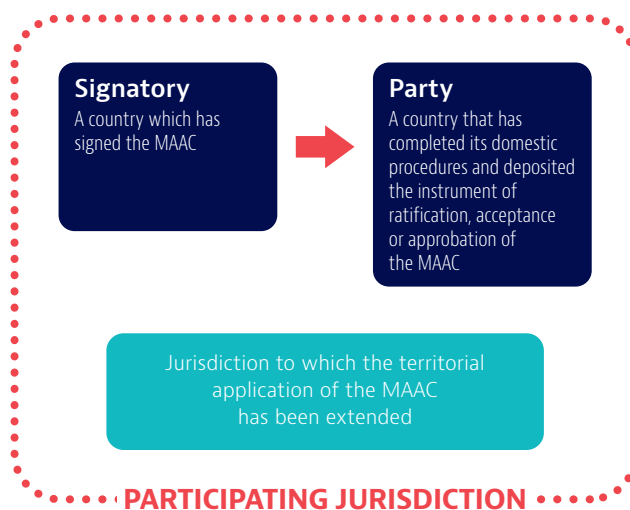
All parties to the MAAC (whether OECD/CoE Members or not) have the same rights and can benefit from multilateral co-operation in the same manner.

In addition, a country may specify at the time of the signing or the deposit of the ratification, acceptance or approval of the instrument, or at any time thereafter, the territorial application of the MAAC and extend it to some/all of its territories (see [Section 3](#)).

The expression “**participating jurisdictions**” includes all of the Signatories and Parties to the MAAC as well as the jurisdictions covered by territorial extension. As of June 2020, there are 137 participating jurisdictions in the MAAC.<sup>9</sup>

Participating jurisdictions include a wide range of countries including all G20 countries, all OECD Member States, all CoE Member States, all BRIICS (Brazil, China, Indonesia, India, Russia and South Africa), the major financial centres and an increasing number of developing countries. The MAAC is by far the most

FIGURE 1.1. **Participating jurisdiction**



global instrument for multilateral co-operation in EOI and other forms of administrative assistance in tax matters. There is still a substantial number of developing countries that have not yet signed and ratified the MAAC. Joining would give these countries access to a wide variety of benefits.

### KEY BENEFITS OF JOINING THE MAAC

#### A multilateral instrument with a global reach

Negotiating and concluding bilateral agreements either under the form of double tax conventions or tax information exchange agreements can be a resource-intensive and time-consuming exercise. This can hamper the efforts of developing countries with limited resources and skilled personnel to expand their channels for international co-operation in tax matters, in particular EOI. The MAAC offers a single legal basis for multi-country co-operation in tax matters. By becoming a Party to the MAAC, a country significantly and rapidly expands its administrative co-operation framework.

As of June 2020, there are 137 participating jurisdictions of which 124 have it in force already. This is equivalent to more than 9 000 bilateral agreements, and this network keeps growing.

For instance, by joining the MAAC, African countries have considerably increased their EOI relationships in a short amount of time (see figure 1.3).

6. [www.oecd.org/ctp/exchange-of-tax-information/POR-Amended-Convention.pdf](http://www.oecd.org/ctp/exchange-of-tax-information/POR-Amended-Convention.pdf)

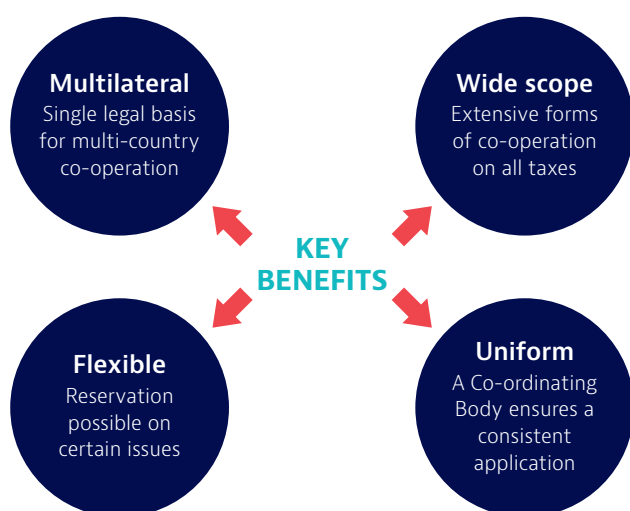
7. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168066660d>

8. E.g. Para. 26, G20 Leaders' Declaration, Building Consensus for Fair and Sustainable Development, Buenos Aires, Argentina, 1 December 2018 available at [www.consilium.europa.eu/media/37247/buenos\\_aires\\_leaders\\_declaration.pdf](http://www.consilium.europa.eu/media/37247/buenos_aires_leaders_declaration.pdf)

9. A chart of the participating jurisdictions is available at: [www.oecd.org/tax/exchange-of-tax-information/Status\\_of\\_convention.pdf](http://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf)



FIGURE 1.2. Key benefits of joining the MAAC



### Wide scope

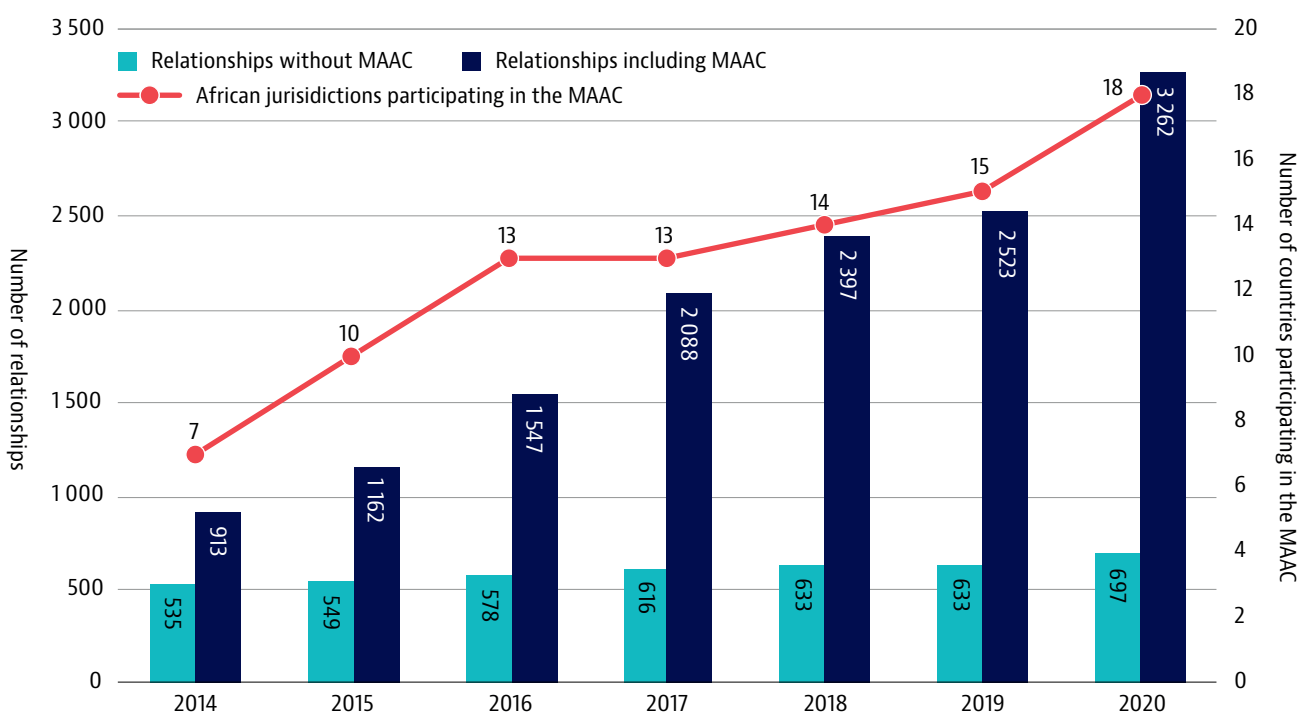
The MAAC provides for more extensive forms of co-operation in tax matters when compared to bilateral

tax conventions and regional agreements. It covers a wider range of taxes, with the exception of customs duties, and it facilitates a wide variety of forms of administrative assistance. These include all forms of EOI, namely exchange of information on request (EOIR), automatic exchange of information (AEOI), spontaneous exchange of information (SEOI) as well as simultaneous tax examinations, and tax examinations abroad, the assistance in recovery of tax claims and assistance in the service of documents.

### Flexibility

As not all countries will be interested in engaging in all forms of co-operation permitted under its provisions, the MAAC allows Parties to choose what forms of administrative assistance they want to participate in, beyond EOIR and SEOI, by either not activating the other forms of co-operation, including AEOI, or by lodging reservations on specific issues, at various stages and making provision for the withdrawal of the reservations at later stages (see Section 3, [tables 3.3](#) and [3.4](#)).

FIGURE 1.3. Number of EOI relationships created by 35 African countries between 2014 and June 2020



Note: The graph reflects the situation for the 33 African countries which provided data as well as Egypt and Djibouti.

Source: Responses provided to questionnaire by African countries and Chart of jurisdictions participating in the MAAC.\*

\* [https://www.oecd.org/tax/exchange-of-tax-information/Status\\_of\\_convention.pdf](https://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf).

## Introduction

### Uniform application and interpretation

The MAAC provides for a Co-ordinating Body composed of representatives of the CAs (designated by the Parties through the Annex B<sup>10</sup> notification). They work together to ensure that the MAAC operates effectively by ensuring a consistent and uniform interpretation of its provisions.

### IMPLEMENTING AND BENEFITING FROM INTERNATIONAL STANDARDS THROUGH THE MAAC

In addition to the key benefits outlined above, the MAAC can also help participating jurisdictions to implement international standards and to further combat tax crimes.

### Implement the Exchange of Information on Request standard

The provisions of the MAAC provide for EOIR in line with the international standard.<sup>11</sup> For instance, all foreseeable relevant information regarding all persons (residents,

non-residents, nationals, foreigners) shall be exchanged upon request, unless an exception foreseen by the MAAC applies. Banking secrecy and the absence of domestic tax interest shall not prevent EOIR.

Becoming Party to the MAAC allows countries to greatly extend the number of EOIR relationships in line with the standard. This is relevant for countries with a limited EOI network as well as for countries with a wide EOI network where some EOI agreements are not in line with the EOIR standard.

### Implement the Common Reporting Standard

The Common Reporting Standard (CRS)<sup>12</sup> provides for the exchange of non-resident financial account information with the tax authorities in the account holders' country of residence. Participating jurisdictions that have the necessary legal framework for AEOI send and receive pre-agreed financial information each year, without having to send a specific request. It calls on jurisdictions to obtain information from their financial institutions and automatically exchange that information with other jurisdictions on an annual basis. It sets out the financial

10. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168066660d>

11. See: [www.oecd.org/tax/transparency/what-we-do/exchange-of-information-on-request/exchange-of-information-on-request-peer-review-process.htm](http://www.oecd.org/tax/transparency/what-we-do/exchange-of-information-on-request/exchange-of-information-on-request-peer-review-process.htm)

12. See: [www.oecd.org/tax/automatic-exchange/common-reporting-standard/](http://www.oecd.org/tax/automatic-exchange/common-reporting-standard/)

FIGURE 1.4. Implementing and benefitting from the international standards through the MAAC



account information to be exchanged, the financial institutions required to report, the different types of accounts and taxpayers covered, as well as common due diligence procedures to be followed by financial institutions.

### **Implement Base Erosion and Profit Shifting Actions relating to tax transparency**

Transparency is one of the pillars of the OECD/G20 Base Erosion and Profit Shifting (BEPS) Project aimed at closing down opportunities for artificial profit shifting by corporates so as to protect the tax base of countries. In addition to addressing the substantive tax rules, the BEPS Project sought to ensure that tax authorities have adequate and appropriate access to information necessary for the effective administration of their domestic tax laws. For this reason, two of the four BEPS Minimum Standards, to be implemented by members of the Inclusive Framework on BEPS, target transparency. These are Action 5 aimed at countering harmful tax practices more effectively, including by spontaneously exchanging information on tax rulings<sup>13</sup>, and Action 13 on improving transfer pricing documentation and implementing CbC Reporting.<sup>14</sup>

13. See OECD (2015a), Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264241190-en>

14. See OECD (2015b), Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 – 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264241480-en>

### **Combat tax and other serious crimes**

Whereas the MAAC provides for assistance in combating tax crimes, it also facilitates the fight against other serious crimes (e.g. money-laundering, corruption) by allowing information received by a Party to be used for non-tax purposes provided certain conditions are met (i.e. such use is allowed by the laws of both the requested and requesting Party and prior authorisation of the Requested Party is obtained).

### **Benefiting from capacity building initiatives and programmes to tackle tax avoidance and evasion**

To fully benefit from EOI, it is key that developing countries have a sufficient wide EOI network covering all relevant jurisdictions. As such, being a Party to the MAAC increases the impact of programmes such as Tax Inspectors Without Borders, which involves the deployment of country-experts to developing countries to provide a hands-on, learning by doing approach, for instance to improve transfer pricing audits, or such as the “Last mile” and effective use of information programmes of the Global Forum aimed at training tax officials to effectively use EOI in their tax audits and investigations.

## 2. An overview of the main provisions

The MAAC supports an extensive range of administrative assistance mechanisms relating to a wide scope of taxes. The section below provides a high-level overview of the key provisions. A more detailed analysis of the provisions is contained in the revised explanatory report and the commentary on the provisions of the MAAC.<sup>15</sup>

Assistance may be requested and shall be provided by Parties and jurisdictions to which they have extended the application of the MAAC.

### SCOPE OF THE MAAC: PERSONS AND TAXES COVERED

Article 2 of the MAAC defines the scope of the persons and taxes covered.

**Persons covered:** administrative assistance shall be provided by a Party irrespective of whether the person concerned (i.e. the person to which the administrative assistance relates) is a resident or national of a Party or of any other State.

**Taxes covered:** the MAAC applies to a wide range of taxes (with the exception of customs duties). Taxes on income of profits, taxes on capital gains which are imposed separately from the tax on income or profits and taxes on net wealth must necessarily be covered, with no possibility of making a reservation. For the other taxes that may be covered, the principle of reciprocity applies (i.e. if a Party wishes to include it, it must be willing to attend to requests on this matter).

The taxes that a Party wishes to have covered under the MAAC, should be set out in Annex A<sup>16</sup> to the MAAC, which is filled by all the Parties. Countries can expand or amend, at any moment in time, the list of taxes covered, for instance in light of their capacity and experience increasing (see [Section 3](#)).

### FORMS OF ADMINISTRATIVE ASSISTANCE

#### Exchange of information

Parties shall exchange any information that is foreseeably relevant to the administration or enforcement of their domestic laws regarding the taxes covered by the MAAC (Article 4).

15. [www.oecd.org/ctp/exchange-of-tax-information/Explanatory\\_Report\\_ENG\\_%2015\\_04\\_2010.pdf](http://www.oecd.org/ctp/exchange-of-tax-information/Explanatory_Report_ENG_%2015_04_2010.pdf).

16. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168066660b>

Table 2.1. **Taxes covered**

Taxes imposed on behalf of a Party (by the central government or by political subdivisions or local authorities)		Other levies and contributions
<ul style="list-style-type: none"> <li>• Taxes on income of profits</li> <li>• Taxes on capital gains which are imposed separately from the tax on income or profits</li> <li>• Taxes on net wealth</li> </ul>	<ul style="list-style-type: none"> <li>• Estate, inheritance or gift taxes</li> <li>• Taxes on immovable property</li> <li>• General consumption taxes, e.g. value added or sales taxes</li> <li>• Specific taxes on goods and services e.g. excise taxes</li> <li>• Taxes on the use or ownership of motor vehicles</li> <li>• Taxes on the use or ownership of movable property other than motor vehicles</li> <li>• Any other taxes except customs duties</li> </ul>	<ul style="list-style-type: none"> <li>• Compulsory social security contributions levied by the general government or by social security institutions established under public law</li> </ul>
<p><b>No reservation can be made for taxes imposed by the central government.</b></p> <hr/> <p>A reservation can be made for those imposed by political subdivisions or local authorities.</p>	<p>A reservation can be made</p>	

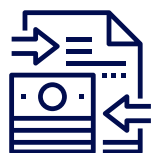
The lack of domestic interest in the information to be exchanged should not be a barrier to all forms of exchange of information (EOI) under the MAAC. As such, a Party is required to use its information gathering measures to obtain the information requested, notwithstanding the fact that it does not need the

information for its own purposes. Moreover, a Party shall not decline a request for assistance 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 (Article 21).

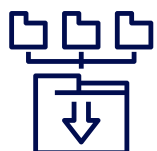
FIGURE 2.1. **Key benefits of joining the MAAC**



**EXCHANGE OF INFORMATION**



**RECOVERY OF TAX CLAIMS**



**SERVICE OF DOCUMENTS**

The forms of EOI permissible under the MAAC include the following:

**Mandatory forms of exchange of information:**

- **Exchange of information on request**  
Article 5 of the MAAC allows a Party to request from any other Party information which concerns particular persons or transactions and is foreseeably relevant for tax purposes. Where the information maintained by the tax authority of a Party is not sufficient to enable it to meet the request, such Party is required to use its access powers to provide the requested information.
- **Spontaneous exchange of information**  
A Party shall spontaneously (i.e. without any prior request) share information with another Party in

## An overview of the main provisions

some circumstances defined in Article 7. This is the case, for instance, where a Party has grounds for suspecting that there may be a loss of tax in another Party or that a saving of tax may result from artificial transfers of profits within groups of enterprise. The exchange is mandatory in the circumstances specified in Article 7.

The mandatory spontaneous exchange on tax rulings under the transparency framework of BEPS Action 5 can be done under the general duty to exchange foreseeably relevant information pursuant to Article 4.

### Optional forms of exchange of information:

#### ● Automatic exchange of information

Under the MAAC, two or more Parties can mutually agree to automatically exchange predefined foreseeably relevant information (Article 6). The operationalisation of the automatic exchange of information provision of the MAAC usually takes the form of a CA agreement, either bilateral or multilateral, which defines the nature of the information to be exchanged, the cases where such information shall be exchanged, the frequency and the modalities of the exchanges, etc. For instance, the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (CRS MCAA)<sup>17</sup> and the Multilateral Competent Authority Agreement on the Exchange of CbC Reports (CbC MCAA)<sup>18</sup> operationalise the automatic exchange of financial account information under the CRS and of CbC Reports, respectively.

#### ● Simultaneous tax examinations

A simultaneous tax examination is an arrangement between two or more Parties to examine, at the same time, the tax affairs of a person or persons in which they have a common or related interest. Each Party conducts such examination from its own territory but with the main objective of exchanging any relevant information obtained with the other Party. At the request of a Party, two or more Parties may therefore consult together for the purposes of determining cases and procedures for a simultaneous

tax examination (Article 8). There is no obligation to accept a request for tax examination from another Party.

#### ● Tax examinations abroad

Countries may opt for a tax examination abroad, which involves the representatives of the competent authority (CA) of one Party being allowed by the CA of the requested Party to be present at the appropriate part of a tax examination in the requested Party (Article 9). However, the CA of the requested Party makes all the decisions with respect to such examination including the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions to which such examinations shall adhere to. There is no obligation to accept the presence of a foreign tax auditor. A Party can therefore exclude tax examinations abroad by making a reservation.

### Assistance in recovery of tax claims, including measures of conservancy

The MAAC allows a Party to request other Parties to assist it in recovering tax claims. The rules governing assistance in recovery of taxes are defined in Articles 11 to 16.

The principle is that a Party that has been requested to assist in recovering tax claims has to take all the steps necessary to recover such tax claims as if they were its own. Unless otherwise agreed, the assistance in the recovery of a tax claim of the applicant Party shall be provided where: (i) the tax claim is not contested for a resident of the applicant Party or cannot be contested anymore for a non-resident of the applicant Party; and (ii) can be enforced pursuant to a legal instrument in the applicant Party. In no case shall the tax claim of the applicant Party have any priority specially accorded to tax claims of the requested Party (Article 15). The MAAC contains specific provisions to deal with issues relating to the claims relating to a deceased person (Article 11), the documents to accompany the request (Article 13), the limitation period (Article 14) and the deferral of payment (Article 16).

An applicant Party can also request another Party to take measures of conservancy, even where the tax claim is contested or is not yet the subject of an instrument permitting enforcement (Article 12). This provision is aimed at securing the future recovery of a tax claim.

17. The text of the CRS MCAA is available at [www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/multilateral-competent-authority-agreement.pdf](http://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/multilateral-competent-authority-agreement.pdf)

18. The text of the CbC MCAA is available at [www.oecd.org/tax/automatic-exchange/about-automatic-exchange/cbc-mcaa.pdf](http://www.oecd.org/tax/automatic-exchange/about-automatic-exchange/cbc-mcaa.pdf)

A Party can decide that it will not provide assistance in the recovery of tax claims, including measures of conservancy, by making a reservation to this provision. The reservation may apply wholly or partially and lifts the obligation to provide assistance but does not prevent the Party from accepting requests on a case-by-case basis, to the extent permitted by domestic law.

### Service of documents

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The MAAC allows a Party to request another Party to effect service of documents concerning taxes covered, including judicial decisions, upon a person within its jurisdiction. The rules applicable to the service of documents are defined in Article 17. A Party can decide that it will not provide this type of assistance, by making a reservation to this provision.

### INFORMATION TO BE PROVIDED IN THE REQUEST FOR ASSISTANCE

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When submitting a request for assistance, the requesting Party must provide the requested Party with all relevant information to support its request and facilitate the assistance of the requested Party. This information also aids to demonstrate that the foreseeable relevance requirements are present in the specific case.

The information to be provided in line with international standards is provided in Article 18:

- the authority or the agency which initiated the request;
- the name, address, or any other particulars that can assist in identifying the person (or the ascertainable group or category of persons) in respect of whom the request is made;
- the form in which the applicant wishes to receive the information;
- whether the request conforms to the law and administrative practice of the applicant;
- a justification where the applicant country has not pursued all reasonable measures available under its domestic laws or administrative practice when it affirms that recourse to such measures would have given rise to disproportionate difficulty.

In addition, the requesting Party should indicate:

- for assistance in the recovery of tax claims or measures of conservancy: the nature of the tax claim, the components of the tax claim and the assets from which the tax claim may be recovered;
- for service of documents: the nature and subject of the document to be served in requests.

### OBLIGATION TO RESPOND TO REQUESTS FOR ASSISTANCE

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A Party that receives a request for administrative assistance is under obligation to respond as soon as possible (Article 20). The response must indicate the action taken and the results thereof. Where a requested Party cannot provide the administrative assistance requested, it must inform the applicant Party that it will not provide the assistance sought. It must at the same time outline the reasons why it will not honour the request.

### LIMITS TO THE OBLIGATION TO PROVIDE ASSISTANCE

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Article 21 of the MAAC places some limits on the obligation to provide administrative assistance. The limits are aimed at securing the rights and safeguards available under the laws or administrative practice of the Party providing the assistance. More specifically, the Party providing the assistance is under no obligation:

- to carry out measures at variance with the laws or administrative practice of either Party, or which would be contrary to public policy (*ordre public*);
- to supply information which cannot be obtained under the laws or administrative practice of either Party .or which may disclose any trade, business, industrial, commercial or professional secret, or trade process;
- to provide administrative assistance where it considers that the taxation by the applicant Party is contrary to generally accepted taxation principles or to the provisions of a bilateral tax treaty that may be in force between the applicant and requested Parties;
- to provide administrative assistance that results in discriminatory treatment of a national of the requested Party as compared with a national of the applicant Party who are in the same circumstances;
- to provide administrative assistance if the applicant Party has not pursued all reasonable measures

## An overview of the main provisions

available under its own laws or administrative practice;

- to provide assistance in the recovery of tax claims where the administrative burden on the requested Party is disproportionate to the benefits to be derived by the applicant Party.

### CONFIDENTIALITY

Information and documents obtained under the MAAC shall be treated as secret and protected by the recipient Party in the same manner as information obtained under its own domestic laws (Article 22). Where personal data is provided, the recipient Party is under obligation to handle it in accordance with the safeguards required by the supplying Party, in addition to the requirements of its own domestic laws.

In addition, information and documents obtained under the MAAC can only be used for tax purposes<sup>19</sup>. However, once information has been obtained for tax purposes, it is possible, under certain conditions, to use it for other purposes such as combating money laundering and corruption. The wider use is only possible when: (i) the laws of the supplying Party permit such use; and (ii) the CA of the supplying Party has authorised that the information it initially provided for tax purposes be used for another specific purpose. This happens for instance when the tax authority wishes to report a suspicion of a corruption to the law enforcement authorities of its country.

The information obtained by an applicant Party may also be transmitted to another Party to the Convention, subject to prior authorisation by the CA of the supplying Party. This can be the case when the CA considers that the information it received would be useful to the tax authorities of another Party to the MAAC, when verifying the existence of a relevant related party.

### RELATIONSHIP WITH OTHER INSTRUMENTS

In most instances, Parties to the MAAC will already be parties to other bilateral or regional agreements that may facilitate international co-operation in tax matters. The possibilities of administrative assistance provided by the MAAC do not limit, nor are limited

by, those contained in existing or future international agreements or other arrangements between the Parties, or other instruments that relate to co-operation in tax matters (Article 27). Therefore, a Party is free to use the appropriate instrument providing for administrative assistance (see Box 2.1).

### IMPLEMENTATION OF THE MAAC

#### Role of the Competent Authorities

The MAAC, following the standard rules on EOI, requires that Parties communicate through their respective CAs. These CAs may communicate directly with each other or through subordinate authorities (Article 24).

#### The Co-ordinating Body

To promote a consistent and uniform application of the MAAC, a Co-ordinating Body composed of the representatives of the CAs of the Parties (i.e. of the countries and the jurisdictions to which the territorial application of the MAAC was extended) is established (Article 24). Signatories are entitled to be represented at the meetings of the Co-ordinating Body as observers.

The Co-ordinating Body is tasked with monitoring the implementation and development of the MAAC, specifically:

- acting as forum for the study of new methods and procedures to increase international co-operation in tax matters;
- where appropriate, recommending revisions or amendments to the MAAC;
- furnishing opinions on the interpretation of the provisions of the MAAC on request by a Party and Co-ordinating its uniform interpretation and implementation;
- serving as the body through which decisions are taken by Parties to invite Non-OECD/CoE countries to join the MAAC;
- co-ordinating the implementation of MCAAs.

The Co-ordinating Body operates under the aegis of the OECD, one of the Depositaries, where the Co-ordinating Body Secretariat is located. Therefore, the Secretary

19. Treaty-exchanged information can only be disclosed to persons or authorities (including courts and administrative or supervisory bodies) concerned with the assessment, collection or recovery of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, taxes of that Party, or the oversight of the above.



General of the OECD is tasked with informing the Parties and the Signatories of opinions furnished by the Co-ordinating Body and any mutual agreements reached by the Parties regarding the implementation and interpretation of the MAAC.<sup>20</sup>

**The Depositaries**

The OECD and the CoE are the Depositaries for the MAAC (Article 32). All acts, notifications or communications regarding the MAAC should be channelled to one of the Depositaries. They are the primary contact point for any country that wishes to join the MAAC. In turn, any of the Depositaries who has received such request is required to transmit it to the Parties and inform the Committee of Ministers of the CoE and the OECD Council of such requests.

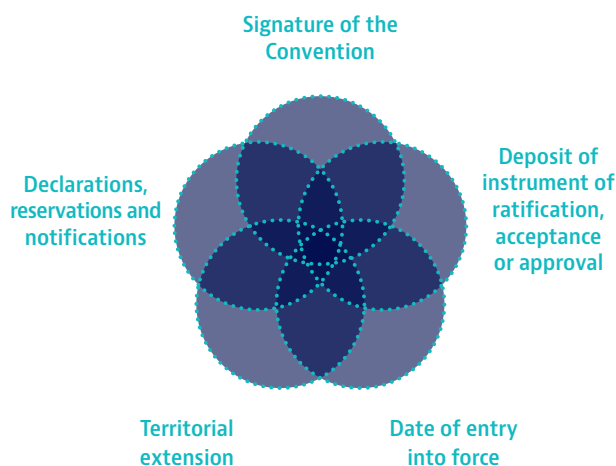
Specifically, the Depositaries are tasked with notifying any Party to the MAAC of any act, notification or communication relating to the MAAC (see figure 2.2).

Information on the specific notifications made is also available to the public.<sup>21</sup>

20. For more details see the Rules of Procedure of the Co-ordinating Body available at [www.oecd.org/ctp/exchange-of-tax-information/co-ordinating-body-rules-of-procedure.pdf](http://www.oecd.org/ctp/exchange-of-tax-information/co-ordinating-body-rules-of-procedure.pdf).

21. Signatures and entries into force: [www.oecd.org/tax/exchange-of-tax-information/Status\\_of\\_convention.pdf](http://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf);  
Reservations and declarations: [www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/127/declarations](http://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/127/declarations)

**FIGURE 2.2. Notifications made by the Depositaries to the Parties**



**Box 2.1. Using the MAAC vis-à-vis other instruments providing for administrative assistance**

Although Parties are free to choose whether to request for administrative assistance under the MAAC or under other agreements or instruments (e.g. double tax treaty, tax information exchange agreement) there are situations where it may be best to use one over the other as demonstrated by the examples below.

**Example 1**

Country A is a Signatory to the MAAC. However, it has not completed all the procedures necessary to bring it into force and effect. Ongoing investigations into the tax affairs of Company B have indicated that Country C (also a Party to the MAAC) may have information that is relevant for enforcing the domestic tax laws of Country A. Nonetheless, Country A cannot request for administrative assistance from Country C at this stage because the MAAC is not in force and in effect for Country A. In this case, Country A can only rely on the tax treaty it has with Country C to obtain the required information. Hence, it is important for countries to ensure that all the procedures for bringing the MAAC into force and into effect are promptly carried out, so they can take advantage of it.

**Example 2**

Countries A and C are both Parties to the MAAC. They are also tax treaty partners. Ongoing investigations into the tax affairs of Company B have indicated that Country C may have information that is relevant for enforcing the domestic tax laws of Country A. However, the information sought is outside the scope of their double tax treaty. In this case, Country A will request for administrative assistance under the MAAC, which has a wider scope of taxes covered than their double tax treaty.

**Example 3**

Countries A and B are both Parties to the MAAC. They are also tax treaty partners. However, the double tax treaty is old and the Article providing for exchange of information is narrower than the current standard and refers only to exchange of information necessary to the application of the provisions of the double tax treaty (and thus does not apply to other tax co-operation cases). This provision also applies only to information about tax residents. In this case, the MAAC is a more suitable option for the exchange of information between Country A and Country B because it allows these countries to circumvent the difficulties presented by applying the double tax treaty.

# 3. Step-by-step guide to becoming a Party to the MAAC

This section guides countries on how to become a Party to the MAAC. Interested countries need to approach one of the Depositaries with its request and follow the required steps as part of the adhesion process (see figure 3.1).

## ROLE OF THE GLOBAL FORUM SECRETARIAT

FIGURE 3.1. Step-by-Step process to become a Party to the MAAC



The Global Forum Secretariat provides technical assistance<sup>22</sup> to its members to help them implement the international standards effectively. In liaison with the Secretariat of the Co-ordinating Body, the Global Forum Secretariat accompanies its members through each step of the process to become a Party to the MAAC (see figure 3.2).

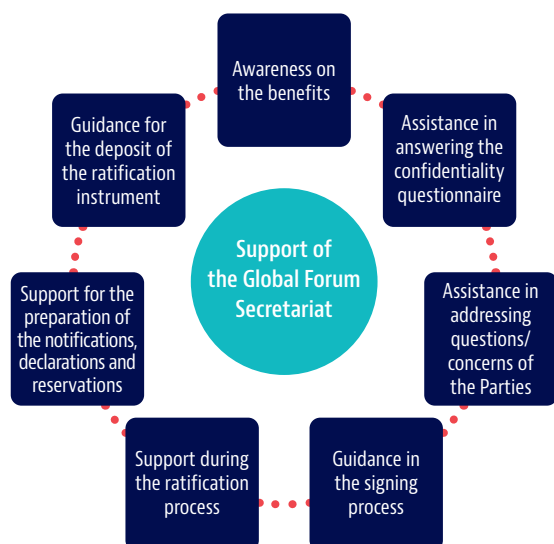
## REQUEST AND INVITATION TO BECOME A PARTY

Non-OECD/CoE member countries should follow a three-step review process before being able to sign the MAAC.<sup>23</sup>

22. See: [www.oecd.org/tax/transparency/what-we-do/](http://www.oecd.org/tax/transparency/what-we-do/)

23. See the Procedural Fact Sheet for Non-OECD/Council of Europe Member available at: [www.oecd.org/ctp/exchange-of-tax-information/Procedural%20Fact%20sheet%20Non%20OECD%20or%20Council%20of%20Europe%20Member.pdf](http://www.oecd.org/ctp/exchange-of-tax-information/Procedural%20Fact%20sheet%20Non%20OECD%20or%20Council%20of%20Europe%20Member.pdf)

FIGURE 3.2. **Step-by-step support available with the Global Forum Secretariat**



### Step 1: Request to become a Party

The first step to become a Party is to request to be invited to sign and ratify the MAAC. This request is made through a letter sent via the diplomatic channels.

The letter must follow the model template available in the [Annex A](#) to this toolkit (Request to become a Party to the MAAC) and:

- state whether the requesting jurisdiction is or is not a member of the Global Forum;
- include the completed questionnaire on confidentiality and relevant legal and regulatory provisions mentioned in the questionnaire (in English or French);
- be addressed to one of the Depositaries (i.e. the OECD Secretary-General or the CoE Secretary-General);
- be signed by the Ministry of Foreign Affairs (or a relevant representative who has full powers to sign an international agreement) or by any authorised person (e.g. the Minister of Finance or the Head of the Tax administration) provided that the Ministry of Foreign Affairs is on copy of the request.

### **Questionnaire on Tax Confidentiality for Countries that Request to Become Party to the MAAC**

A key stage of joining the MAAC is the review of the confidentiality framework in place in the country requesting to be invited to join the MAAC. All the Parties to the MAAC must be satisfied that the applicant country meets the requirements. The applicant country will have to demonstrate that tax confidentiality and data safeguards rules are satisfactory, both from a legal and an operational perspective. Therefore, it is essential that the questionnaire be completed in the most detailed manner possible to avoid follow-up questions and requests for clarification that may significantly delay the process.

The Global Forum Secretariat helps its members understand the expectations of the Parties in terms of confidentiality and review their draft answers and the supporting documentation. This may assist in having a satisfactory quality in the questionnaire that will ensure a smooth process towards being invited to sign the MAAC.

The Questionnaire on Tax Confidentiality for Countries that Request to Become Party to the Amended Convention on Mutual Administrative Assistance is publicly available<sup>24</sup> and attached in [Annex B](#) of this toolkit. To assist countries in its completion, an annotated Questionnaire on Tax Confidentiality for Countries that Request to Become Party to the Amended Convention on Mutual Administrative Assistance is available as [Annex C](#) to this toolkit.

### Step 2: Review of confidentiality and Co-ordinating Body's response to the request

The decision to invite an applicant country to become a Party to the MAAC is taken by consensus by the Parties of the MAAC through the Co-ordinating Body.<sup>25</sup> In taking this decision, the Parties, inter alia, take into account the confidentiality rules and practices of the country concerned and whether the country is a member of the Global Forum, as this would indicate that the country

24. The Confidentiality Questionnaire is also available at [www.oecd.org/ctp/exchange-of-tax-information/Questionnaire%20on%20Tax%20Confidentiality%20for%20Countries%20that%20Request%20to%20Become%20Party%20to%20the%20Amended%20Convention%20on%20Mutual%20Administrative%20Assistance\\_2014.pdf](http://www.oecd.org/ctp/exchange-of-tax-information/Questionnaire%20on%20Tax%20Confidentiality%20for%20Countries%20that%20Request%20to%20Become%20Party%20to%20the%20Amended%20Convention%20on%20Mutual%20Administrative%20Assistance_2014.pdf)

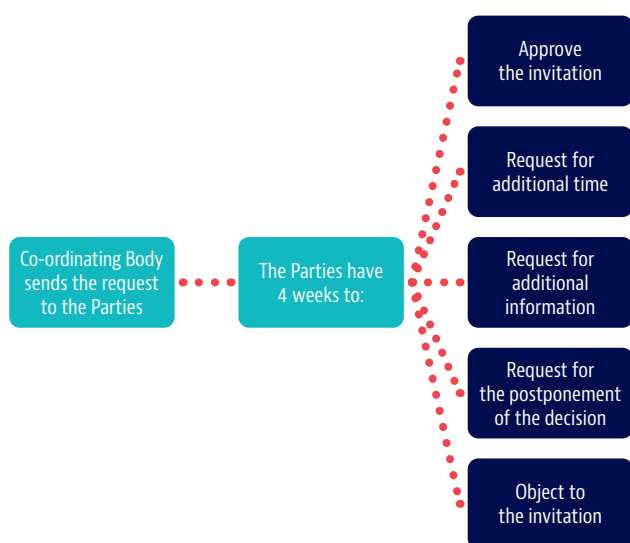
25. For more details see the Rules of Procedure of the Co-ordinating Body of the Convention on Mutual Administrative Assistance in Tax Matters (as of June 2015) available at [www.oecd.org/ctp/exchange-of-tax-information/co-ordinating-body-rules-of-procedure.pdf](http://www.oecd.org/ctp/exchange-of-tax-information/co-ordinating-body-rules-of-procedure.pdf)

## Step-by-step guide to becoming a Party to the MAAC

is committed to implement the tax transparency standards, including the confidentiality requirements.

The Co-ordinating Body Secretariat endeavours to ensure that the Parties provide input within the prescribed period. The applicant country has no role in this phase, unless it needs to provide additional clarifications or documentation (see figure 3.3).

FIGURE 3.3. **Review procedure of the country's application before the Co-ordinating Body**



### Approval of the invitation

The approval of the invitation is a consensus-based decision. If the Parties accept to issue an invitation, the applicant country will receive a confirmation of such invitation in writing by one of the Depositories.

### Request for additional time

The Parties might need additional time to finish reviewing the information received and they may request additional time to provide their comments.

### Request for additional information

It might be the case that the Parties are not fully satisfied with the responses provided or need some clarification with respect to the legal framework presented. If a Party asks additional questions and further information is necessary from the requesting country, the Co-ordinating Body Secretariat will ask the applicant country to provide the information. The Co-ordinating Body

Secretariat will circulate the additional information to the Co-ordinating Body.

The Parties have two weeks from the date the additional information is sent to indicate their approval of the invitation, to request additional time, to request additional information, to request that the decision to invite the applicant country to be a Party is postponed, or to indicate that they see an objection to the invitation.

### Request that the decision to invite is postponed

In case the Parties are not satisfied with the responses provided or with the legal framework, they might decide to postpone the decision (e.g. to the point in time when certain legislative changes will have been introduced in the requesting country).

### Objection to the invitation

If one of the Parties indicates that it sees an objection to the invitation, an explanation should be provided.

If there is consensus by the Parties to invite the applicant country to sign and ratify the MAAC, an invitation is issued. If there is no consensus by the Parties, or the decision has been postponed, the requesting country is informed by the Chair of the Co-ordinating Body.

### Step 3: Invitation to become a party

Once the Parties of the MAAC are satisfied with the responses provided to the questionnaire and to any follow-up questions, one of the Depositories sends a letter to the applicant country inviting it to sign and ratify the MAAC.

### SIGNATURE AND DEPOSIT OF INSTRUMENTS

A country that has received an invitation to join the MAAC may become a Party by signing the MAAC and depositing its instrument of ratification, acceptance or approval with one of the Depositories. The procedural steps for the signature and deposit of the instruments are outlined below.

### Step 4: Signature

The country should make arrangements with one of the Depositories to sign the MAAC, through the Co-ordinating Body Secretariat.

### In advance of the signature

The country should:

- Confirm the **name of the signatory** and possible **signing date** as early as possible.
- If the signatory is not the Head of State, Head of Government or Minister of Foreign Affairs:
  - Share with the Secretariat for review the **draft Full Powers** (in English or French) using the template provided in Annex D to this toolkit (Template for Full Powers) at least two weeks in advance of the intended signing date;<sup>26</sup>
  - Send an electronic copy of the **signed Full Powers** (at least two weeks in advance of the intended signing date) no later than 24 hours before the signing date.
- Share with the Co-ordinating Body Secretariat for review draft **notifications, declarations and reservations** (in English or French) if available at least two weeks in advance. Please note that the deposit of these documents usually takes place at the time

of the deposit of the instrument. In case a country wishes to deposit them in advance, the Secretariat will need to review the drafts to ensure that they comply with the provisions of the MAAC (see step 5).

- Confirm the names and functions of the **delegation accompanying the signatory**, as well as the car plates.

### Before the signature

The country should:

- Provide the **original signed Full Powers**, as well as an official translation in English or French if the original document is in another language.
- Provide the **original notifications, declarations and reservations** if relevant, as well as official translations in English or French if the original documents are in another language.

### Following the signature

The country will receive:

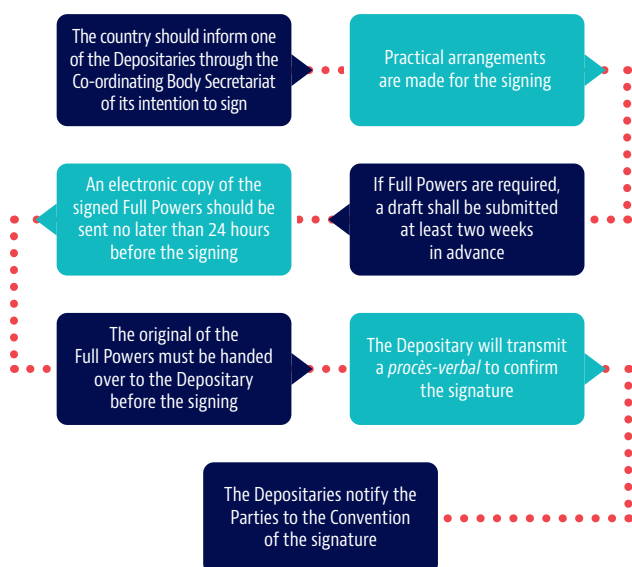
- An **original procès-verbal** from the Depository, recording the signature (and any deposit of document(s) as relevant); and
- A **certified copy of the MAAC**.

### Step 5: Review of the notifications, declarations and reservations

The MAAC foresees that a Signatory/Party may or shall make certain notifications, declarations and reservations regarding certain aspects and levels of co-operation.

- The notifications of the Annex A<sup>27</sup> (list of taxes covered by the Convention) and Annex B<sup>28</sup> (designation of the CA) are mandatory.
- The notification of the Annex C<sup>29</sup> (definition of the

FIGURE 3.4. Overview of signing procedure



26. In case the template is not being used, the full powers need to clearly state the name and functions of the signatory, the full title of the amended Convention and be signed by the Head of State, Head of Government or Minister of Foreign Affairs.

27. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168066660b>

28. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168066660d>

29. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168066666a>

## Step-by-step guide to becoming a Party to the MAAC

term “nationals”) as well as the declarations under Article 4(3) (information to resident/national of a Party before the transmission of information), Article 9(3) (tax examinations abroad) and Article 29 (territorial application of the Convention) are optional.

- The Convention allows for a pre-determined list of reservations (Article 30), which allow a country to exclude or modify the legal effect of certain provisions. Reservations may be deposited at the time of signature or when depositing the instrument of ratification, acceptance or approval or at any later date.

### **Mandatory notifications**

Table 3.1 presents the two mandatory notifications that must be provided to one of the Depositaries no later than at the time of deposit of the instrument of ratification, acceptance or approval.

Annex A<sup>30</sup> and Annex B<sup>31</sup> to the MAAC are publicly available online. A Party must notify the Depositaries of any changes to those Annexes. Such change shall take effect on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Depositary in question.

Table 3.1. **Mandatory notifications**

Mandatory notifications	Relevant provisions of the MAAC	Explanation
Annex A <sup>30</sup> – list of taxes to which the MAAC applies.	Articles 2(3) and (4) and 30(1)(a).	Each Party must list the taxes to which the Convention applies following the categories set out in Article 2 of the Convention.  This Annex details the taxes which are in force at the date of the notification and to which the Party expects to receive assistance.  The taxes for which a reservation has been made cannot be mentioned in Annex A <sup>30</sup> .
Annex B <sup>31</sup> – designation of competent authority (ies)	Article 3(1)(d) and (3)	Each Party must designate at least one competent authority, usually “the Minister of Finance or his/her authorised representative” or the head of the tax administration. The scope of the CAs should also reflect the taxes listed in Annex A <sup>30</sup> . For instance, the relevant CA for the social security contributions may be indicated if appropriate.

30. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168066660b>

31. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168066660d>

### Declarations

Table 3.2 presents optional notifications/declarations to communicate the position on specific provision(s) of the MAAC.

All of the notifications and declarations are publicly available online.<sup>32</sup> They can be amended or

withdrawn at any time with an entry into effect on the first day of the month following the expiration of a period of three months after the date of receipt of such notification/declaration by the Depository.

Table 3.2. **Declarations**

Declarations	Relevant provisions of the MAAC	Explanation
Annex C <sup>33</sup> – Definition of the word “national” for the purpose of the MAAC (only required if different from the definition provided in the MAAC)	Article 3(1) and (3)	Article 3 of the MAAC defines the term “nationals” in relation to a Party as follows:  <i>i. all individuals possessing the nationality of that Party, and</i> <i>ii. all legal persons, partnerships, associations and other entities deriving their status as such from the laws in force in that Party.</i>  As this definition may not be in line with its domestic definition of the term “national” used, a Party may notify one of the Depositories with the Annex C <sup>33</sup> – Definition of the word national for the purpose of the MAAC.
Notification procedures	Article 4(3)	A Party may deposit a declaration that its internal legislation requires its authorities to inform its residents or nationals before transmitting any information, either on request or spontaneously, concerning them.
Tax examination abroad	Article 9(3)	A Party may deposit a declaration that it does not accept requests for tax examinations by other Parties within its jurisdiction.
Territorial application	Article 29	A Party may deposit a declaration specifying the territory(ies) covered by the MAAC.

32. <https://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/127/declarations>

33. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168066666a>

## Step-by-step guide to becoming a Party to the MAAC

### Reservations

The MAAC allows for a pre-determined list of reservations allowing the Parties to modulate their engagement and not to provide assistance. Reservations apply reciprocally – a Party may not require other Parties to provide assistance

in application to a provision to which it has formulated a reservation. Reservations can be amended, added or withdrawn by a Party at any given moment in time. Table 3.3 presents the reservations that can be made under the MAAC.

Table 3.3. **Reservations**

Reservations	Relevant provisions of the MAAC	Explanation
Taxes covered	Article 30(1)(a).	<p>A Party may formulate a reservation that it will not provide any form of assistance concerning some of the taxes covered by the MAAC.</p> <p>It is not possible to reserve the right to provide assistance to taxes on income or profits, taxes on capital gains which are imposed separately from the tax on income or profits or taxed on net wealth (Article 2(1)(a)).</p> <p>It is only possible to reserve the right to provide assistance on categories of taxes listed in Article 2(1)(b), i.e. taxes imposed at levels other than central government on income, profits, capital gains or net wealth, and in respect of any other kinds of tax, whatever the level of government by which they are imposed (or only to some of them). However, it is not possible to make a reservation for any taxes for which it seeks to receive assistance, as reservations apply in a reciprocal manner (i.e. taxes mentioned in Annex A<sup>34</sup>).</p> <p>In accordance with Article 22(3), the reservation made on the taxes covered also affects the scope of the use of the exchanged information by the other Parties.</p>
Recovery of tax claims and tax claims in existence before the entry into force of the MAAC	Article 30(1)(b) or (c)	<p>(b) A Party may formulate a reservation that it will not provide assistance in the recovery of any tax claim, including measures of conservancy, or in the recovery of an administrative fine, for all taxes or with respect to specific taxes in one or more of the categories of taxes listed in Article 2(1).</p> <p>(c) As the MAAC applies, in principle, to all enforceable tax claims, including those in existence before its entry into force, a Party may formulate a reservation that it will not provide assistance in respect of tax claims in existence before the said entry into force or, where it has previously made a reservation for the two reasons outlined above, at the date of withdrawal of such a reservation in relation to taxes in the category in question.</p>
Service of documents	Article 30(1)(d) or (e)	<p>(d) A Party may file a reservation that it will not provide assistance in the service of documents, either for all taxes, or only for taxes of one or more categories.</p> <p>(e) While accepting that it will provide assistance in the service of documents, a Party may formulate a reservation that it will not accept that its postal service should be used for a direct service of documents on a person within the territory.</p>
Criminal tax matters	Articles 28(7) and 30(1)(f)	<p>For criminal tax matters, the MAAC has in principle effect from the date of entry into force in respect of a Party in relation to earlier taxable periods or charges to tax.</p> <p>However, a Party may formulate a reservation to limit the retroactivity in criminal tax matters to taxable periods beginning on or after (or where there is no taxable period, for administrative assistance related to charges to tax arising on or after) 1 January of the third year preceding the year of entry into force of the MAAC in respect of that Party.</p>

34. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168066660b>



### Administrative and timeframe considerations

Table 3.4 presents when the notifications, modifications and reservations can be made, modified and withdrawn and when they will take effect.

To ensure proper time and consultation, it is recommended that:

- the initial deposit of the mandatory notifications, as well as possible declarations or reservations is done

at the same time as the deposit of the instrument of ratification, acceptance or approval.

- the draft texts are shared well in advance with the Co-ordinating Body Secretariat to confirm whether they are in compliance with the provisions of the MAAC. This will also give sufficient time to re-formulate these documents if changes are necessary.

Table 3.4. **Amendments to notifications, declaration and reservations**

	Initial deposit	Modifications	Withdrawals (in whole or in part)
<b>Mandatory notifications</b>	Mandatory notification shall be transmitted to one of the Depositaries either upon signature or deposit of the instrument of ratification, acceptance or approval.  They take effect at the same time as the MAAC.	At any time.  They take effect on the first day of the month after the expiration of a period of three months from the date they were received by one of the Depositaries.  Regarding the Annex A <sup>35</sup> notification (taxes covered), the MAAC applies as from their adoption, to any identical or substantially similar taxes which are imposed after its entry into force in addition to or in place of the existing taxes listed in Annex A <sup>35</sup> . The Party shall notify one of the Depositaries of the adoption of the tax in question.	Not applicable.
<b>Declarations</b>	At any time.  ● When transmitted upon signature or deposit of the instrument of ratification/ acceptance/approval, they take effect at the same time as the MAAC.  ● When transmitted after the entry into force of the MAAC, they take effect on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by one of the Depositaries.	At any time.  They take effect on the date of receipt of the notification by one of the Depositaries.	At any time.  They take effect on the first day of the month after the expiration of a period of three months from the date it was received by one of the Depositaries.
<b>Reservations</b>			At any time (partially or wholly).  They take effect on the date of receipt of the notification by one of the Depositaries.

35. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168066660b>

## Step-by-step guide to becoming a Party to the MAAC

### Step 6: Ratification, acceptance or approval

The MAAC is subject to ratification, acceptance or approval. Each country should determine its own modality in consultation with its Ministry of Foreign Affairs. In order for the Convention to enter into force, the Signatory must complete its domestic procedures and deposit its instrument of ratification, acceptance or approval with one of the Depositaries.

The Signatory shall ensure that its domestic legal framework in place at the time of deposit of its instrument of ratification complies with the terms of the MAAC.

#### Deposit of the instrument of ratification, acceptance or approval

After completing the required domestic procedures, a Signatory must deposit the instrument of ratification, acceptance or approval of the MAAC with one of the Depositaries. A template for the deposit of the instrument of ratification, acceptance or approval is available in [Annex E](#) of this toolkit.

The deposit of the instrument shall be done via diplomatic channels. It is preferably deposited by hand at the Headquarters of one of the Depositaries.

Following the deposit, the Depositary transmits a *procès-verbal* recording the deposit of the instrument.

### Notification of deposit

The Depositaries then notify the Parties to the MAAC that the Party has deposited the instrument of ratification, acceptance or approval. The notification also includes a reference to any notifications, declarations or reservations made by the Party and specify the date on which the MAAC will enter into force in respect of that Party.

### Step 7: Date of entry into force and date of effect

The date of entry into force of the MAAC for a Party is the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval (pursuant to article 28 paragraphs 3 and 5). On that date, the MAAC will become applicable as a whole for the concerned Party.

Following its entry into force, the MAAC provides for a delayed entry into effect of certain of its provisions. This means that certain provisions have effect (i.e. start applying) at a later date than the date of entry into force, as set out in Article 28 paragraphs 6 and 7 and as summarised in table 3.5.

This table of examples shows that **31 August** is an important deadline as the date of effect is 1 January of the next year or following year depending on whether the deposit is made up to or after 31 August.

FIGURE 3.5. Overview of the procedure for the deposit of the ratification/acceptance/approval instrument

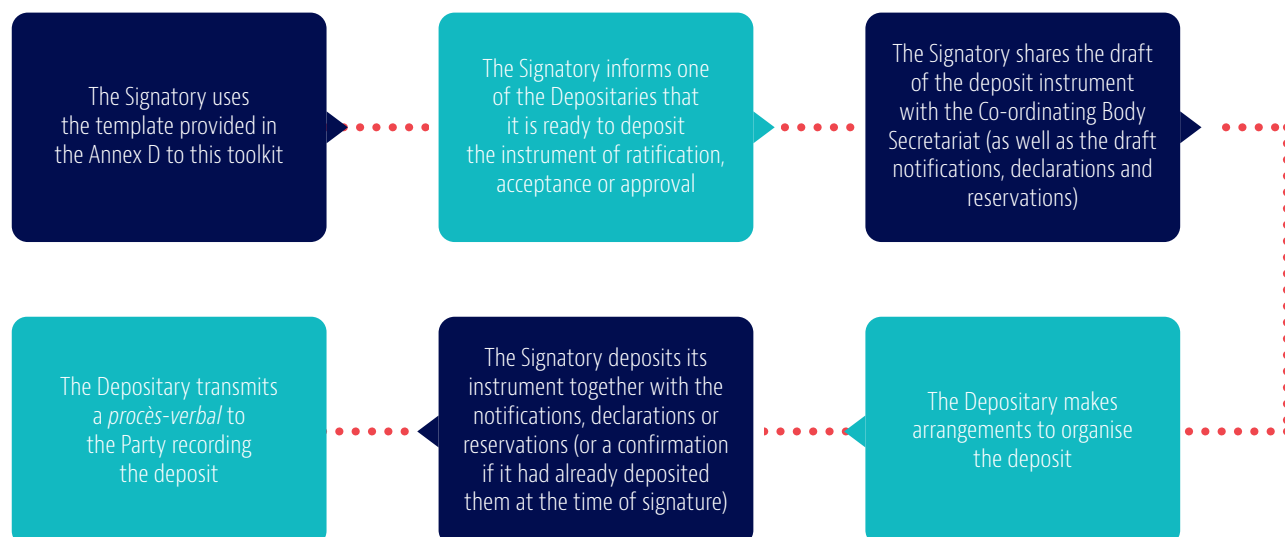


Table 3.5. **Date of entry into force and date of effect**

	Date of entry into force	Date of effect	
		Where there is a taxable period	Where there is no taxable period (e.g. inheritance taxes, excise duties, etc.)
Civil tax matters	The first day of the month following the expiration of a period of three months after the deposit of the instrument of ratification, acceptance or approval.	The MAAC has effect for administrative assistance related to taxable periods beginning on or after 1 January of the year following the one it entered into force for a Party.	The MAAC has effect for administrative assistance relating to charges to tax arising on or after 1 January of the year following the one it entered into force for a Party. This relates to non-periodic taxes (e.g. inheritance taxes, excise duties).
		MAAC applies for future taxable period or charges to tax. However, two or more Parties may mutually agree that it shall have effect for administrative assistance related to earlier taxable periods or charges to tax.	
Criminal tax matters		The MAAC has effect from the date of entry into force in respect of a Party in relation to earlier taxable periods.	The MAAC has effect from the date of entry into force in respect of a Party in relation to earlier charges to tax.
		It applies retrospectively to earlier taxable periods or charges to tax. However, a Party may formulate a reservation to limit the retroactivity in criminal tax matters to taxable periods beginning on or after, or to charges to tax arising on or after, 1 January of the third year preceding the year of entry into force of the MAAC.	

Table 3.6. **Example of the application of the date of entry into force and the date of effect**

Date of deposit of the instruments of ratification, acceptance or approval	21/08/2020	12/09/2020
Date of entry into force	01/12/2020	01/01/2021
Date of effect for civil tax matters	Tax periods opened/charge to tax arising as of 01/01/2021	Tax periods opened /charge to tax arising as of 01/01/2022
Date of effect for criminal tax matters	All future and previous periods or charges to tax	All future and previous periods or charges to tax
If a reservation is made, the retroactivity for criminal tax matters is limited to taxable periods beginning on or after, or to charges to tax arising on or after:	01/01/2017	01/01/2018

# 4. Multilateral Competent Authorities Agreements



The MAAC refers expressly to the possibility for the Parties or CAs to conclude bilateral or multilateral agreements relating to the practical application of some of its provisions.

The provision relating to AEOI is one example. Article 6 of the MAAC provides that two or more Parties can automatically exchange information on the basis of procedures agreed by mutual agreement.

In the context of the CRS, a CRS MCAA has been developed and is open for signature by interested Parties through their CAs. The CRS MCAA defines the scope, timing, procedures and safeguards according to which the automatic exchange should take place. The same approach was used in relation to BEPS Action 13 CbC Reports with the CbC MCAA.

The MCAAs set forth rules and procedures as may be necessary for CAs of jurisdictions implementing and operationalising these standards.

In order for the CRS or the CbC MCAA to enter into force, signatories must have the Convention in force/effect and have CRS and/or CbC reporting requirements. To join a MCAA, interested CAs need to sign a Declaration on joining the MCAA (either signed at the OECD or transmitted to the OECD by mail) – as an alternative, CAs can designate a person for signing the Declaration (a written confirmation of designation has to be transmitted to the OECD early in advance of the signing). The domestic legal requirements for joining the MCAAs are determined individually by interested CAs in consultation with their Minister for Foreign Affairs.

In order to “activate” bilateral relationships under these MCAAs and enable the exchanges, the jurisdiction needs to provide a full set of notifications<sup>36</sup> to the Co-ordinating Body Secretariat, which has prepared templates in this respect. If the jurisdiction would like to sign the CRS and/or CbC MCAA concurrently with the MAAC, the notification to designate the Competent Authority (Annex B<sup>37</sup> of the MAAC) would need to be lodged at the time of signature of the MAAC. The other notifications can be submitted upon ratification.

The MCAA notifications should be sent by ordinary mail or by e-mail as a signed PDF-scan to the Co-ordinating Body Secretariat.

As of May 2020, there are over 4 000 bilateral exchange relationships activated with respect to more than 100 jurisdictions committed to the CRS and over 2 400 bilateral exchange relationships activated with respect to jurisdictions committed to exchanging CbC reports.

36. See [www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/multilateral-competent-authority-agreement.pdf](http://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/multilateral-competent-authority-agreement.pdf) and [www.oecd.org/tax/automatic-exchange/about-automatic-exchange/cbc-mcaa.pdf](http://www.oecd.org/tax/automatic-exchange/about-automatic-exchange/cbc-mcaa.pdf)

37. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168066660d>

## 5. Logistic and financial aspects

### Annual contribution and exemptions

The Signatories and Parties of the MAAC shall make annual and equal contributions to cover the costs of the activities of the Co-ordinating Body Secretariat. There is an exemption from the annual contribution if the Signatory/Party meets cumulatively the following requirements:

- It qualifies for the base fee of the Global Forum; and
- It has an annual GDP per capita that does not exceed the world average GDP per capita as published by the World Bank.<sup>38</sup>

Signatories/Parties shall also take into account that:

- Contributions are due annually and not later than 60 days after the invoices are received;
- Countries that become Signatories to the MAAC during the course of the year shall make a full annual contribution irrespective of the signature date;
- The costs in relation to a MCAA will be borne by the signatories of the respective agreement in accordance with its terms. This is the case of the CRS MCAA and the CbC MCAA for instance.

38. Available at: <https://data.worldbank.org/indicator/NY.GDP.PCAPCD>

# Annexes



## Annex A. Request to become a Party to the Amended Convention on Mutual Administrative Assistance in Tax Matters

### Note:

- The Global Forum and Co-ordinating Body Secretariats will provide an electronic version of this template with the updated names and details of the OECD officials to copy in on the request.
- The Global Forum and Co-ordinating Body Secretariats can provide assistance and guidance on the process.
- The draft should be sent to the Co-ordinating Body Secretariat for review before it is finalised and officially submitted.

Secretary-General  
OECD  
2, rue André Pascal  
75775 Paris Cedex 16  
France

Dear Secretary-General,

I am writing to you in your capacity as Depositary of the Convention on Mutual Administrative Assistance in Tax Matters (the Convention) to express [COUNTRY]'s strong interest in becoming a Party to the Convention as amended by the 2010 Protocol.

I note that the 2010 Protocol provides that the decision to invite a country to become a Party to the Convention will be taken by consensus by the Parties through the Co-ordinating Body of the Convention which includes the competent authorities of the Parties.

I understand that, in taking this decision, the Parties will take into account, inter alia, the confidentiality rules and practices of the country concerned and whether the country is a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes.

In this regard, I would like to note that [COUNTRY] joined the Global Forum in [YEAR]. As reflected in the completed questionnaire attached to this letter we apply a strict standard of confidentiality to information exchanged.

I also note that [COUNTRY] must have the legal framework in place before ratification to comply with, and give effect to, the terms of the Convention.

You will find attached the answers to the questionnaire on tax confidentiality prepared by the Co-ordinating Body concerning [COUNTRY]'s rules and practices concerning tax confidentiality.

I would be grateful if you would transmit this information to the Parties to the Convention and convey our interest in being invited to sign the amended Convention. I am ready to provide any additional information that the Co-ordinating Body may need in assessing our request.

Sincerely,

Signature

Cc: Director, Centre for Tax Policy and Administration  
OECD  
2, rue André Pascal  
75775 Paris Cedex 16  
France

Director, Directorate for Legal Affairs  
OECD  
2, rue André Pascal  
75775 Paris Cedex 16  
France

Ministry of External Relations  
Ambassador of [COUNTRY]  
Paris, France

## Annex B. Questionnaire on Tax Confidentiality for Countries that Request to Become Party to the Amended Convention on Mutual Administrative Assistance



Note:

- The Global Forum and Co-ordinating Body Secretariats will provide an electronic version of this questionnaire.
- A copy in English or French of the relevant laws or provisions mentioned in the answers shall be attached.

**1. Describe your domestic privacy and disclosure laws pertaining to disclosures of tax returns and taxpayer information in general.**

**2. Please explain how your domestic legislation, rules, regulations, administrative procedures and practices ensure the confidentiality of information exchanged for tax purposes under DTCs and TIEAs or multilateral instruments on mutual administrative assistance, with specific attention to the following aspects:**

(a) safeguards in place to maintain the confidentiality of exchanged information (obtained as a result of the various forms of mutual administrative assistance, e.g. on request or automatic) and circumstances under which information received is treated as confidential:

(b) exceptions permitting disclosure of exchanged information (e.g. judicial proceedings or information on matters other than those stated in the request, or whether freedom of information laws could result in someone other than a concerned taxpayer obtaining documents);

(c) confidentiality of communications between the competent authorities of the relevant jurisdictions (other than the requested information itself), and circumstances under which such communications can be released; and

(d) penalties for breach of confidentiality provisions (specifically addressing civil and criminal penalties), and whether, in practice, employees have been penalised for improper disclosures.

**3. Have there been any cases in your jurisdiction where confidential information received by the competent authority from an Exchange of Information partner has been disclosed other than in accordance with the terms of the instrument under which it was provided? If so, please explain the circumstances.**



## Annex C. Annotated Questionnaire on Tax Confidentiality for Countries that Request to Become Party to the Amended Convention on Mutual Administrative Assistance

A country requesting to be invited to become Party to the MAAC shall provide its answers to a questionnaire on the manner in which the confidentiality of tax information is ensured as a matter of law and practice in the applicant country, along with its application letter. These answers will be reviewed by the Parties to the Convention, through the Co-ordinating Body. The answers shall be provided in English or French and should in all instances be accompanied by a translation of the relevant domestic legal provisions on which the answers are based.

The purpose is to ensure that the legal and organisational framework of the applicant country are in line with the confidentiality requirements of the MAAC.

Detailed and comprehensive explanations should be provided for each of the questions below, including legal references where appropriate. To facilitate the completion of this questionnaire, further guidance is provided under each question.

### Article 22 – Secrecy

1. *Any information obtained by a Party under this Convention shall be treated as secret and protected in the same manner as information obtained under the domestic law of that Party and, to the extent needed to ensure the necessary level of protection of personal data, in accordance with the safeguards which may be specified by the supplying Party as required under its domestic law.*
2. *Such information shall in any case be disclosed only to persons or authorities (including courts and administrative or supervisory bodies) concerned with the assessment, collection or recovery of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, taxes of that Party, or the oversight of the above. Only the persons or authorities mentioned above may use the information and then only for such purposes. They may notwithstanding the provisions of paragraph 1, disclose it in public court proceedings or in judicial decisions relating to such taxes.*
3. *If a Party has made a reservation provided for in sub-paragraph a. of paragraph 1 of Article 30, any other Party obtaining information from that Party shall not use it for the purpose of a tax in a category subject to the reservation. Similarly, the Party making such a reservation shall not use information obtained under this Convention for the purpose of a tax in a category subject to the reservation.*
4. *Notwithstanding the provisions of paragraphs 1, 2 and 3, information received by a Party may be used for other purposes when such information may be used for such other purposes under the laws of the supplying Party and the competent authority of that Party authorises such use. Information provided by a Party to another Party may be transmitted by the latter to a third Party, subject to prior authorisation by the competent authority of the first-mentioned Party.*

A copy in English or French of the relevant laws or provisions mentioned in the answers shall be attached.

### 1. Describe your domestic privacy and disclosure laws pertaining to disclosures of tax returns and taxpayer information in general.

Although this question relates to domestic privacy and disclosure laws pertaining to disclosures of tax returns and taxpayer information in general, it is recommended to provide a wider description of the legal system of the applicant country. In particular, the hierarchy of laws, as well as the legal interactions between international treaties and domestic legislation are highly relevant in this respect. This is because a clear primacy of international treaties, including the MAAC, over domestic law is an important safeguard to ensure that the confidentiality requirements of the MAAC can be applied in the applicant country, even if there may be contradicting domestic provisions.

Therefore, the applicant country may wish to first describe its constitutional framework and then its domestic framework. In doing so, it is recommended to highlight how the interaction between the two frameworks will ensure the confidentiality and use of information exchanged under an international EOI agreement (including the MAAC) in line with the provisions of such agreements.

#### International and interaction with the domestic legal framework

Treaty provisions relating to exchange of information for tax purposes (EOI) contain confidentiality provisions which are similar to the one included in the MAAC:

- Article 26 of the OECD model of Double Tax Convention (DTC) provides that:  
*“Any information received under paragraph 1 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, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. 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. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.”*
- Article 8 of the model of Tax Information Exchange Agreement (TIEA) provides that:  
*“Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party”.*

Therefore, it is expected, both under the MAAC and bilateral treaties, that these requirements in terms of confidentiality and use of the treaty-exchanged information only by authorised persons and for tax purposes are supported and not contradicted by domestic legislation.

The applicant country should provide the following information in its answers:

- A list of the applicant country's EOI agreements (DTCs, TIEAs, other EOI instruments either bilateral or multilateral) with indication if those agreements contain confidentiality requirements that are in line with Article 22 of the MAAC.
- A clear explanation of the hierarchy of laws and treaties in the applicant country. The legal basis (constitution, laws) and/or any established case law supporting the explanation should be provided. If there is no legally codified or established hierarchy of laws, but instead for instance a principal of sovereignty of Parliament and/or a principle that newer laws precede over older legislation, this should be stated clearly as part of the answer to this question.

### **Domestic legal framework**

The applicant country must describe both the legal provisions (laws, code of ethics, regulations, etc.) providing for the obligation to keep information handled by the tax administration confidential (including both information on domestic taxpayers, as well as information collected domestically concerning foreign taxpayers) and those providing for the possible disclosure of such information to persons or bodies other than the tax authority (for instance, communication of the taxpayer information to the financial intelligence unit, the customs authority, the judicial authorities, etc.).

#### ***Legal provisions providing for the obligation to keep information handled by the tax administration confidential***

It is recommended to provide a description of the legal provisions that impose a duty of confidentiality on:

- any government officials;
- tax officials;
- temporary staff employed by the tax administration;
- contractors engaged by the tax administration.

These obligations could be provided for instance by the civil service law, the tax law, the labour law, the penal law, etc.

It is also important to highlight any differences in the handling of information pertaining to domestic taxpayers as opposed to information collected domestically on foreign taxpayers (for instance, in order to fulfil an EOI request).

#### ***Legal provisions providing for the disclosure of taxpayer information***

The disclosure of taxpayer information to persons or bodies outside the tax authority may be allowed by the tax law under certain conditions. Therefore, it is important to describe precisely any exceptions to the duty of confidentiality of tax officials or any permissions for the disclosure of taxpayer information beyond the tax authority.

Moreover, non-tax legal provisions could provide for the disclosure of confidential taxpayer information. Such provisions could be found for example in the criminal (procedure) law, the anti-money laundering legislation (access powers of the financial intelligence unit), the anti-corruption law (access powers of the anti-corruption unit or

similar), the social security law (access powers of the welfare commissioner or similar authority), or the freedom of information law. It is therefore recommended that the applicant country identifies such provisions, describe the conditions of their application and clarify whether they apply or not to (i) domestically collected taxpayer information and/or (ii) treaty-exchanged taxpayer information.

Where there is a conflict between the provisions imposing a duty of confidentiality and one or more provisions imposing the disclosure of confidential information, it is recommended to provide an explanation on how this conflict of laws is solved (i.e. which law will prevail and under which conditions)

### **Example – International framework of country A**

All the exchange of information articles in country A's double tax agreements have confidentiality provisions modelled on Article 26 of the OECD Model Tax Convention. Pursuant to these provisions, information provided by foreign tax authorities can only be disclosed to persons and authorities involved in the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to taxation or the oversight of the above and can only be used for such purposes.

International treaties ratified by country A and entered into force are an integral part of the domestic law of country A. In accordance with Article 2 of the Code of Civil Procedure, international treaties take precedence over any contrary provisions in domestic law. In the final analysis, the treaty provisions always prevail.

### **Example – International framework of country B**

All international agreements concluded by country B allowing exchange of information (EOI) for tax purposes have a provision to ensure the confidentiality of the information exchanged. This provision is consistent with Article 26 of the OECD Model Tax Convention. It provides that information exchanged under tax treaties must be kept secret and communicated only to persons or authorities in charge of tax assessment, control, collection, litigation or prosecution and may only be used for tax purposes. The list of tax treaties is attached.

In addition, the Ministry of Legal Affairs of country B has clearly stated that, once an international agreement has been ratified and promulgated by the legislator, it supersedes the domestic laws. This statement of the Ministry of Legal Affairs is issued officially as a legal principle. Consequently, the provisions on confidentiality contained in the tax treaties concluded by country B prevails over any national law that contains provisions to the contrary.

### **Example – Domestic legislation of country A**

Pursuant to Article 36 of the Tax Procedure Code, the tax administration has the obligation to protect taxpayer data/information disclosed by the taxpayer.

Article 25 of the Tax Procedure Code provides a general obligation of confidentiality and professional secrecy for the present or former Tax Department working persons. Subject to treaty provisions, taxpayer data can only be disclosed to:

- The Tax Department employees, the Director General of the Ministry of Finance, and the Finance Minister in the context of carrying out their official functions. The Minister of Finance and the Director General of the Ministry of Finance are EOI competent authorities.

- The public prosecution office, the Court of Accounts, or the courts in case a person is prosecuted because he/she has committed tax violations, pursuant to judgments issued by these parties. These authorities have access to taxpayer information for the prosecution of tax violations (the public prosecution office) or to perform their function in the course of judicial proceedings (the courts). The Court of Accounts is an administrative court, which controls government employees and administrations regarding their compliance with existing laws and regulations relating to the administration and use of public funds. It may have access to accounts and documents needed for its audit function (e.g. in case of investigations into wrong-doings of a tax official).
- The Competent Authority of foreign countries in accordance with the provisions of the relevant tax information exchange instrument.
- The auditing and collection departments within the Ministry of Finance or the General Inspectorate of Finance at the Central Inspection Board within the context of carrying out their official functions. The auditing department within the Ministry of Finance may have access to taxpayer information to perform tax audits. The collection department within the Ministry of Finance may have access to taxpayer information for the collection of taxes. The General Inspectorate of Finance at the Central Inspection Board is a control body. It may have access to taxpayer information when it supervises or audits the tax administration.
- The taxpayer.
- Any person subject to a prior written approval from the taxpayer.

Article 10 of the EOI Law provides that any information exchanged with the Competent Authority of a treaty partner shall be treated as secret in accordance with Article 25 of the Tax Procedure Code. Furthermore, Article 3 of the Tax Procedure Code states that the provisions in the Tax Procedure Code take precedence over any other inconsistent domestic laws.

Finally, any person who breaches confidentiality will be subject to criminal sanctions mentioned in Article 579 of the Penal Code in addition to civil and professional liability in conformity with the laws in force. This is confirmed by Article 22 of the implementing decree of the Tax Procedures Code.

#### **Example – Domestic legislation of country B**

All public employees are bound by the duty of professional secrecy. They shall not disclose any of the confidential information they have access to due to their jobs. This duty apply even after their departure (Civil Service Law, Article 103). In case of failure, they are subject to administrative and penal sanctions.

In addition, Article 28 of the Income Tax Law clearly states that all employees should observe professional confidentiality in respect of any information they have access for the implementation of the Tax Law. Tax information can only be disclosed for tax purposes or if the concerned person provides its express approval (Income Tax Law, Article 29). In case of failure, tax employees are subject to administrative and penal sanctions.

Finally, contractors are also subject to confidentiality requirements (Labour Law, Article 27). Non-disclosure clauses are always included in the contracts to ensure confidentiality and remind the applicable sanctions. Contractors must also submit the names and details of works of their employees who will enter the building of the ministry.

**2. Please explain how your domestic legislation, rules, regulations, administrative procedures and practices ensure the confidentiality of information exchanged for tax purposes under DTCs and TIEAs or multilateral instruments on mutual administrative assistance, with specific attention to the following aspects:**

**(a) safeguards in place to maintain the confidentiality of exchanged information (obtained as a result of the various forms of mutual administrative assistance, e.g. on request or automatic) and circumstances under which information received is treated as confidential;**

The applicant country should consider both legal and administrative/organisational aspects to answer this question, which relates to treaty-exchanged information.

### Legal aspects

In principle, most of the legal aspects should have been described in the answer to question 1. The applicant country could therefore refer to the explanations already provided.

Other relevant legal aspects could be mentioned by the applicant country. For instance:

- Whether the tax official must sign a pledge of secrecy before starting their function and/or swear an oath of secrecy.
- Whether contractors must sign a non-disclosure agreement. If yes, a copy of the standard non-disclosure clauses should be provided.

### Administrative/organisational aspects

The administrative and organisational arrangements in place in the applicant country to ensure the confidentiality of treaty exchanged information should be described. The following questions should therefore be answered.

- Who is the competent authority for EOI for tax purposes? Is the Competent Authority function delegated to another authority or person? If yes, please indicate which authority or which person(s).
- Is there an EOI unit in charge of processing EOI requests? Please provide a short description of this unit (number and status (tax officials or contractors) of the staff, location of the premises and entrance requirements, etc.) and the practical and organisational measures implemented to ensure that treaty-exchanged information are handled appropriately and in line with the confidentiality requirements.
- Is a clean desk and screen policy implemented?
- Does the EOI unit have an EOI manual providing for processes to ensure the confidentiality of information received from treaty partners? If so, is this EOI manual available for the EOI unit only or also for other tax officials who can have access to treaty-exchanged information (tax auditors for instance)? Are EOI requests received by mail and/or e-mail? Is the e-mail a governmental and secured one? How is foreign information prevented from being mixed with domestic information? Do you stamp or watermark the EOI documents, both received and sent, (ensuring that the contents of the EOI documents, including any background documentation and attachments are clearly identified as treaty-exchanged information)? If so, please provide the text of the stamp or watermark used. If your EOI unit cannot gather the

information requested by the foreign partner, does the EOI unit transmit the EOI request itself to the relevant service in charge of gathering the information? If yes, how do you inform this service about the confidentiality rules applicable to these EOI requests?

- Where and how is treaty-exchanged information safely maintained (e.g. electronically and/or physically)? Please describe the conditions of the electronic storage as well as of the physical storage.
- If the EOI unit needs to translate the EOI requests or the answers received from an EOI partner, is this translation done by the EOI unit or by another service? If the translation requires the help of an external organism, please indicate how the confidentiality requirements are taken into account.
- What is your level of EOI experience? Have EOI requests from foreign jurisdictions already been received? How have these requests been handled? Have EOI requests ever been sent? Have spontaneous information ever been sent to or received from an EOI partner?
- Is training on confidentiality in place for tax officials, in particular for EOI unit and other officials who handle treaty-exchanged information? If so, please specify the different types of training, the public concerned and other officials who handle treaty-exchanged information? If so, please specify the different types of training, the public concerned and their frequency. Is the legal and practical documentation on the EOI confidentiality rules shared with all the tax officials? If yes, please describe the means of communication of this documentation (intranet of the tax administration, internal notes sent to the relevant services, etc.)

Any ongoing projects to implement or improve any of the above should be indicated.

#### **Example – Country A**

As mentioned above, country A's treaties and laws provide that taxpayer information must be treated as secret.

Every person working in taxation needs to sign a pledge of secrecy when starting or when changing to a new position. Every tax controller (including assessment, audit, and collection) needs to additionally swear an oath of secrecy when starting his/her functions.

Treaty information received in paper form to date are stored in a locked room only accessible by the staff working in the Competent Authority Unit, in locked cabinets, kept in a closed envelope stamped confidential and written that it is treaty information that should be kept secret. Finally, a clean desk and screen policy is applied in the Tax Administration.

#### **Example – Country B**

On the legal side, as mentioned above, international agreements and domestic laws guarantee tax secrecy and ensure the confidentiality of information concerning taxpayers, including information exchanged with EOI partners.

On the practical side, the Directorate of Tax Agreements of the Tax Administration of country B is responsible for EOI under tax treaties. In order to ensure confidentiality, EOI requests and responses to EOI requests are received by the Director of Tax Agreement. EOI requests are handled by the staff of the Directorate and kept safe in a special archive in the office of the Directorate.

So far, country B has a limited experience as requested and requesting jurisdiction. However, country B expects an increase of its EOI activities with the implementation of AEOI. In the context of its induction programme with the Global Forum Secretariat, a number of actions are planned, such as the drafting of a procedural manual for the processing of incoming and outgoing requests while ensuring confidentiality, the improvement of the EOI organisation and process, the strengthening of the administrative capacities of tax officials, including on the confidentiality requirements laid down in the Treaties, etc.

**(b) exceptions permitting disclosure of exchanged information (e.g. judicial proceedings or information on matters other than those stated in the request, or whether freedom of information laws could result in someone other than a concerned taxpayer obtaining documents);**

In principle, the exceptions permitting disclosure would have to be explained in the answer to question 1. The applicant country could therefore refer to the explanations already provided.

### Example – Country A

As mentioned in point 1, exchanged information shall be kept confidential in accordance with the treaty provisions and Article 25 of the Tax Procedure Code.

The provisions of exchange of information instruments relating to confidentiality always take precedence over any inconsistent domestic provisions and Article 25 of the Tax Procedure Code always takes precedence over any inconsistent other domestic laws.

Therefore, in accordance with the treaty provisions, information provided by foreign tax authorities can only be used for the purpose for which they are requested and can be disclosed only to persons and authorities involved in the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes with respect to which information may be exchanged according to the first sentence of paragraph 1, or the oversight of the above.

Finally, there is no freedom of information law in country A.

### Example – Country B

As indicated above, Article 29 of the Income Tax Law lists the cases where tax information can be disclosed or shared with another authority. Tax information can only be disclosed for tax purposes or if the concerned person provides its express approval.

However, tax information can be shared with non-tax or judicial authorities:



- Article 29(6) provides that tax information can be disclosed with the National Centre for Statistics. Nevertheless, only general tax information can be shared with it for statistics purposes related to taxation. In no circumstances individual taxpayer information is provided.

Under Article 20 of the AML Act, the financial intelligence unit of country B has the power to ask information from any governmental authority, including the tax administration. However, this power cannot be extended to treaty-exchanged information as indicated above.

**(c) confidentiality of communications between the competent authorities of the relevant jurisdictions (other than the requested information itself), and circumstances under which such communications can be released; and**

It is expected here that the applicant country will ensure the confidentiality of all the information provided by foreign jurisdictions, whether the foreign jurisdiction is a Requesting or Requested jurisdiction. In particular, the competent authority letter, the documents attached to the EOI request, the communication between the competent authorities shall be maintained confidential.

Therefore, the applicant country should indicate whether all communication between the competent authorities for tax purposes are kept confidential and whether there are circumstances where such communications can be disclosed.

The applicant country should also indicate if its legal framework provides for:

- a prior notification procedure (i.e. an obligation to inform the person concerned by the EOI request and/or the information holder of the existence of the EOI request prior to the exchange of information);
- a post-notification procedure (i.e. an obligation to inform the person concerned by the EOI request and/or the information holder that information has been provided to a foreign partner);and/or
- an appeal procedure (i.e. the possibility for the person concerned or the information holder to contest before the administrative authorities and/or judicial authorities the decision of the competent authority to exchange information with a foreign partner).

If one or more of these procedures apply, the applicant country should provide a description of the procedure followed and the information that is disclosed to the person concerned/information holder at every steps of these procedures.

**Example – Country A**

As mentioned in point 1, exchanged information shall be kept confidential in accordance with the treaty provisions and Article 25 of the Tax Procedure Code.

**Example – Country B**

As mentioned in point 1 and 2 above, any treaty-exchanged information between competent authorities shall

be kept secret in accordance with the provisions of the EOI agreements and domestic legislation, insofar as the latter does not conflict with the provisions of such EOI agreements. Therefore, the EOI letter as well as all the correspondences with the competent authority of the EOI partners are maintained confidential.

There is no notification procedure in country B.

**(d) penalties for breach of confidentiality provisions (specifically addressing civil and criminal penalties), and whether, in practice, employees have been penalised for improper disclosures.**

The applicant country is expected to provide all the applicable sanctions in case of breach of confidentiality by officials, temporary staff and contractors. Concretely, although the obligations relating to confidentiality are mentioned in the previous answers, the sanctions themselves should be described here. The sanctions can be administrative, contractual, civil and/or criminal.

In answering this question, the applicant country should ensure a clear answer. For instance, it should clearly indicate whether the sanctions apply to the unlawful disclosure of domestically collected tax information and/or treaty-exchanged information, whether they apply to any person or to specific persons (officials, tax officials, temporary staff and/or contractor).

The applicant country is also recommended to describe whether employees have been penalised for improper disclosures of confidential information. This information can be provided in this question or in the next question. The guidance provided in the next question regarding the improper disclosure of domestic taxpayer information should be followed.

**Example – Country A**

In accordance with Article 22 of the Decree implementing the Tax Procedures Code, any violation of the professional secrecy, by any working persons at the Ministry of Finance shall be subject to penal sanctions stipulated by Article 579 of the Penal Code and article 61 of the Code of Public Servants, as well as to administrative (Articles 54 and 55 of the Code of Public Servants) and civil (Article 62 of the Code of Public Servants) liability.

Pursuant to Article 579 of the Penal Code, any person who breaches confidentiality will be subject to imprisonment for a maximum of one year in combination with a fine of maximum EUR 10 000.

Articles 54 and 55 of the Code of Public Servants contain disciplinary measures that could coincide with the imposed sanction based on the Penal Code, varying from a reprimand, deduction in salary, downgrading in rank, termination of service or discharge without pension or retirement allowances.

**Example - Country B**

Country B's legislation provides for administrative and criminal sanctions in case of unlawful disclosure.

Any employee who breaches the confidentiality duty is subject to administrative sanctions ranging from warning to dismissal (Civil Service Law, Article 115).

In addition, Article 201 of the Penal Law provides that any public official who discloses any confidential information (including treaty exchanged information) is punished by imprisonment for a period ranging from a month and three years, and a fine ranging from EUR 2 000 to EUR 10 000. This provision applies including in case of termination of service or loss of capacity. It applies also to all contractors and their employees working for a public authority as they are considered as public officials (Penal Law, Art. 10).

No employee of the tax department has been charged with a breach of confidentiality since there is no case accrued so far.

**3. Have there been any cases in your jurisdiction where confidential information received by the competent authority from an Exchange of Information partner has been disclosed other than in accordance with the terms of the instrument under which it was provided? If so, please explain the circumstances.**

In case treaty-exchanged information has been disclosed other than in accordance with the terms of the instrument under which it was provided, the applicant country is expected to indicate for all the cases the circumstances as well as how the situation was handled, the sanction applied (if any) and any measure taken to avoid that a similar disclosure happened again.

In case no treaty-exchanged information has been disclosed, the applicant country should indicate whether unlawful disclosure happened relating to domestic tax information. The applicant country should indicate the number of cases identified in the previous years, the circumstances as well as how the situation was handled, the sanction applied (if any) and any measure taken to avoid that a similar disclosure happened again. The applicant country should summarise its relevant procedures with respect to the detection and investigation of incidents of improper disclosure of information. For instance, the applicant country could explain if it has:

- an internal and/or external audit process that encompasses compliance with confidentiality requirements;
- an obligation for civil servants to report any suspicion of breach or actual breach;
- a disciplinary procedure;
- a process to mitigate risks, etc.

The applicant country should also consider situations such as the access of taxpayer data by unauthorised persons or access to taxpayer data by an official for its own interest (tax information about his neighbours or family for instance). The applicant country should explain how it has identified and sanctioned such situations where there was unauthorised access to confidential tax information or use of this information for personal benefit. It should also indicate what where the consequences (sanctions, corrective measures to avoid reiteration of the same breach, etc.).

In case no unlawful disclosure or access has been identified by the applicant country in the previous years, then the applicant country should describe the procedures it has in place to identify and handle any breach of confidentiality as indicated above. It is important to understand that breaches to confidentiality do occur in tax administrations (of course, the extent of data breaches is variable and not major in most cases). By answering no to all

the above-mentioned questions without explanation of the mechanisms to monitor and to handle breaches where they occur and to mitigate future risks, the members of the Co-ordinating Body may be concerned that the applicant country does not have adequate mechanisms in place.

### **Example – Country A**

Country A has not experienced any breach of confidentiality relating to confidential information received from an exchange of information partner so far. However, there is a pending case not related to tax information where a civil servant has used his access to some confidential information for its personal benefit.

All civil servants are required to report current or suspected misuse, mishandling or disclosure of confidential information. In that, case, the manager will take action and assesses the severity of the situation and escalate to the Head of the Tax Department who will inform the Director General and in the most severe case the Minister of Finance who will contact the public prosecutor if necessary. After the manager has investigated all facts a decision is made on disciplinary measures or if the case goes to court and whether it should be a civil or a criminal court case.

## Annex D. Template for Full Powers

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### Note:

- This document must be signed by the Head of State, Head of Government or Minister for Foreign Affairs.
- The Global Forum and Co-ordinating Body Secretariats will provide an electronic version of this template.
- The Global Forum and Co-ordinating Body Secretariats can provide assistance and guidance in this process.
- The draft should be sent to the Co-ordinating Body Secretariat for review before it is finalised and officially submitted.

### FULL POWERS

I, [NAME AND TITLE OF THE HEAD OF STATE, HEAD OF GOVERNMENT OR MINISTER FOR FOREIGN AFFAIRS],

**HEREBY AUTHORISE** [NAME AND TITLE OF SIGNATORY] to sign the *Convention on Mutual Administrative Assistance in Tax Matters*, done at Strasbourg on 25 January 1988, as amended by the Protocol amending the *Convention on Mutual Administrative Assistance in Tax Matters*, done at Paris on 27 May 2010, on behalf of the Government of [NAME OF STATE].

Done at [PLACE] on [DATE].

[SIGNATURE]

## Annex E. Template for the deposit of the instrument of ratification, acceptance or approval

Note:

- This document must be signed by the Head of State, Head of Government or Minister for Foreign Affairs.
- The Global Forum and Co-ordinating Body Secretariats will provide an electronic version of this template.
- The Global Forum and Co-ordinating Body Secretariats can provide assistance and guidance in this process.
- The draft should be sent to the Co-ordinating Body Secretariat for review before it is finalised and officially submitted.

**[RATIFICATION/ACCEPTANCE/APPROVAL]**

**WHEREAS** the *Convention on Mutual Administrative Assistance in Tax Matters*, done at Strasbourg on 25 January 1988, as amended by the *Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters*, done at Paris on 27 May 2010 was signed on behalf of the Government of [NAME OF THE STATE] on [DATE],

**NOW THEREFORE I**, [NAME AND TITLE OF THE SIGNATORY OF THE INSTRUMENT] declares that the Government of [NAME OF STATE] [ratifies][accepts][approves] the Convention and undertakes faithfully to perform and carry out its provisions.

**IN WITNESS WHEREOF**, I have signed this instrument of [ratification][acceptance][approval] at [PLACE] on [DATE].

[SIGNATURE]

## Annex F. Useful resources

### Legal text and commentaries on the MAAC

- OECD and Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, available at <http://dx.doi.org/10.1787/9789264115606-en>
- The text of the Amended Convention in English, French, German (unofficial translation), Spanish (unofficial translation) and Portuguese (unofficial translation) available at <https://www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm>
- The Revised Explanatory Report to the Convention on Mutual Administrative Assistance in Tax Matters as Amended by 2010 Protocol available at [https://www.oecd.org/ctp/exchange-of-tax-information/Explanatory\\_Report\\_ENG\\_%2015\\_04\\_2010.pdf](https://www.oecd.org/ctp/exchange-of-tax-information/Explanatory_Report_ENG_%2015_04_2010.pdf)

### General information on the MAAC

- Flyer on the Convention on Mutual Administrative Assistance in Tax Matters (also available in French and Spanish) available at [https://www.oecd.org/tax/exchange-of-tax-information/ENG\\_Convention\\_Flyer.pdf](https://www.oecd.org/tax/exchange-of-tax-information/ENG_Convention_Flyer.pdf)
- Chart of participating jurisdictions (signatures and entry into force) available at [https://www.oecd.org/tax/exchange-of-tax-information/Status\\_of\\_convention.pdf](https://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf)
- List of declarations, reservations and other communications available at <https://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/127/declarations>

### Information on the process to becoming a Party to the MAAC

- Rules of Procedure of the Co-ordinating Body of the Convention on Mutual Administrative Assistance in Tax Matters as of June 2015 as at available at <https://www.oecd.org/ctp/exchange-of-tax-information/co-ordinating-body-rules-of-procedure.pdf>
- Process to Become a Party to the Amended Convention available at [http://www.oecd.org/tax/exchange-of-tax-information/Process\\_to\\_Become\\_a\\_Party\\_to\\_the\\_Amended\\_Convention.pdf](http://www.oecd.org/tax/exchange-of-tax-information/Process_to_Become_a_Party_to_the_Amended_Convention.pdf)
- Procedural Fact Sheet for Non-OECD/Council of Europe Member available at <https://www.oecd.org/ctp/exchange-of-tax-information/Procedural%20Fact%20sheet%20Non%20OECD%20or%20Council%20of%20Europe%20Member.pdf>
- Questionnaire on Tax Confidentiality for Countries that Request to Become Party to the Amended Convention on Mutual Administrative Assistance (Confidentiality Questionnaire) available at [https://www.oecd.org/ctp/exchange-of-tax-information/Questionnaire%20on%20Tax%20Confidentiality%20for%20Countries%20that%20Request%20to%20Become%20Party%20to%20the%20Amended%20Convention%20on%20Mutual%20Administrative%20Assistance\\_2014.pdf](https://www.oecd.org/ctp/exchange-of-tax-information/Questionnaire%20on%20Tax%20Confidentiality%20for%20Countries%20that%20Request%20to%20Become%20Party%20to%20the%20Amended%20Convention%20on%20Mutual%20Administrative%20Assistance_2014.pdf)

## Annexes

### Relevant information on International standards on tax transparency and exchange of information

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- Global Forum on Transparency and Exchange of Information for Tax Purposes: <http://www.oecd.org/tax/transparency/who-we-are/about/>
- Exchange of Information on Request: <https://www.oecd.org/tax/transparency/what-we-do/>
- Automatic Exchange of Information: <http://www.oecd.org/tax/automatic-exchange/>
- Common Reporting Standard: <https://www.oecd.org/tax/automatic-exchange/common-reporting-standard/>
- Technical assistance available from the Global Forum on Transparency and Exchange of Information for Tax Purposes: <https://www.oecd.org/tax/transparency/what-we-do/>
- BEPS Action 5 Harmful tax practices: <http://www.oecd.org/tax/beps/beps-actions/action5/>
- BEPS Action 13 Country-by-Country Reporting: <https://www.oecd.org/tax/beps/beps-actions/action13/>

### Multilateral Competent Authority Agreements for automatic exchange of information

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- Multilateral Competent Authority Agreement on the Exchange of CbC Reports (the "CbC MCAA"), for the automatic exchange of Country-by-Country Reports available at <http://www.oecd.org/tax/beps/beps-actions/action13/>
- Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (the "CRS MCAA"), for the automatic exchange of financial account information pursuant to the Common Reporting Standard available at <https://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/>







For more information:

 [www.oecd.org/tax/transparency](http://www.oecd.org/tax/transparency)

 [gftaxcooperation@oecd.org](mailto:gftaxcooperation@oecd.org)

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