



**MANUAL ON THE IMPLEMENTATION OF
EXCHANGE OF INFORMATION PROVISIONS FOR TAX PURPOSES**

Approved by the OECD Committee on Fiscal Affairs on 23 January 2006

UNCLASSIFIED

MODULE 4 ON INDUSTRY-WIDE EXCHANGES OF INFORMATION

The complete manual currently consists of the following Modules:

General Module - General and legal aspects of exchange of information

Module 1 - Exchange of information on request

Module 2 - Spontaneous exchange of information

Module 3 - Automatic (or routine) exchange of information

Module 4 - Industry-wide exchange of information

Module 5 - Simultaneous tax examinations

Module 6 - Tax examinations abroad

Module 7 - Country profiles regarding information exchange

Module 8 - Information exchange instruments and models

The purpose of the Manual is to provide tax officials dealing with exchange of information for tax purposes with an overview of the operation of exchange of information provisions and some technical and practical guidance to improve the efficiency of such exchanges.

The manual can be used for training and to design or update domestic manuals. The modular approach allows countries to choose only the parts that are relevant to their specific exchange programs.

OECD MANUAL ON THE IMPLEMENTATION OF EXCHANGE OF INFORMATION PROVISIONS FOR TAX PURPOSES

MODULE ON INDUSTRY-WIDE EXCHANGES OF INFORMATION

1. Introduction

1. As international transactions have increased, so too has the need for tax treaty partners to seek assistance from each other by sharing knowledge and expertise on particular industries and special issues of mutual interest. Acting alone is difficult for tax administrations facing global challenges. Industry-wide exchanges of information can provide an answer.

2. An industry-wide exchange of information is the exchange of tax information specifically concerning a whole economic sector and not taxpayers in particular. The purpose of such an exchange is to secure comprehensive data on worldwide industry practices and operating patterns, enabling tax inspectors to conduct more knowledgeable and effective examinations of industry taxpayers.

2. Authority

3. The authority for undertaking industry-wide exchanges of information is derived from bilateral tax conventions based on the OECD Model Convention or other applicable information exchange instruments. This Module provides the essential technical and practical guidance for all officials engaged in any industry-wide exchanges of information.

3. Establishing Industry-wide Exchange

4. An industry-wide exchange of information is initiated by way of a formal exchange of letters between the competent authorities of the participating treaty partners. Such exchanges may be bilateral or multilateral, provided all countries taking part have adequate information exchange mechanisms with one another.

5. The initial formal exchange of letters between competent authorities should:

- a) Detail the subject matter of the exchange;
- b) Set the parameters of the exchange;
- c) Designate the personnel of the respective tax administrations who are authorised to meet and exchange information;
- d) Confirm that documentation will be exchanged under cover of competent authority letters and that it will also be stamped as to its restricted use and disclosure; and
- e) Agree meeting dates and venues.

6. Generally the competent authorities will designate a representative in their respective tax administrations to co-ordinate the industry-wide exchange. However, the competent authorities will still sign off all formal communications between the respective treaty partners in relation to the industry-wide exchange.

4. Subject Matter

7. Industries where specialist groups have been set-up within tax administrations are well suited for industry-wide exchanges.

8. The following industries are known to have been covered in various industry-wide exchanges of information between OECD member countries:

- Banking;
- Commodities
- Electronic components;
- Fishing;
- Information technology;
- Insurance;
- Oil and gas;
- Pharmaceuticals;
- Telecommunications; and
- Utilities.

9. The concept of an industry-wide exchange of information may be extended to major strategic issues such as:

- Capital structures;
- Financial arrangements (especially structured finance transactions);
- Intellectual property;
- Mergers and acquisitions;
- Privatisations; and
- Valuation and depreciation/amortisation of assets.

5. Meetings of Officials and Tax Inspectors

10. In the course of these exchanges, treaty partner officials and tax inspectors meet periodically to:

- a) Discuss current industry developments of mutual interest as well as new and emerging issues;
- b) Jointly explore recurring issues which are of common concern;
- c) Pool resources to engage in specific industry studies;
- d) Discuss comparative methodologies in establishing arm's length prices and margins in industries; and
- e) Conduct seminars on major international issues.

11. Experience has shown that these meetings have been most productive when key materials have been exchanged between competent authorities well in advance, allowing officials and tax inspectors to be fully familiar with the subject matter prior to the first meeting.

12. If further meetings of respective officials and tax inspectors are considered either unnecessary or cost ineffective, major industry developments and issues or summarised industry intelligence may still be exchanged specifically between competent authorities thereby maintaining continuity of the industry-wide exchange into the future.

6. Examples of Industry-Wide Exchanges

13. The pharmaceutical industry is a major transnational industry where cross-border related party transactions are very common. Industry-wide exchanges concerning pharmaceuticals typically focus on transfer pricing matters involving the sale of products, the provision of services, transfers of intellectual property and financing arrangements.

14. The following key issues have been covered in industry-wide exchanges on the pharmaceutical industry:

- a) Segmentation of the industry (manufacturers/distributors, turnover/ profitability, product mix and growth areas);
- b) Market leaders and indicative profitability;
- c) Government regulation (policies/rules, reference pricing and subsidies, impact of intervention on transfer pricing);
- d) Analysis of functions, assets and risks (identification of value added in the supply chain, functions requiring specialist skills, trade and marketing intangibles);
- e) Transfer pricing methodologies followed;
- f) Comparable sets (geographic markets, accounting for variations in product mix/turnover and different function/asset/risk profiles);
- g) Transfer pricing ranges (comparisons with other industries and generic manufacturers/distributors/service providers);
- h) Treatment of research and development (tax incentives, cost sharing arrangements, contract R&D);
- i) Transfers of intellectual property;
- j) Emerging issues/trends/developments;
- k) Training products;
- l) Enforcement products (risk assessment processes, standard questionnaires, disclosure schedules, documentation reviews, limited or full audits, simultaneous audits, ongoing industry monitoring);

- m) Service products (recent guidelines/rulings/publications and advance pricing agreements); and
- n) Legislation (recent/proposed changes in law).

15. The fishing sector is another industry which readily lends itself to effective exchanges on an industry-wide basis. Fishing knows no borders – it is easy to unload and sell fish in all harbours around major fishing zones – thus raising particular compliance risks. The exchange may proceed best on a multilateral basis and the following key issues were covered in industry-wide exchanges of information on the fishing sector:

- a) Sources of industry/market information;
- b) Official registers and statistics;
- c) Information from fishing authorities;
- d) Records kept by tax authorities (disclosures/financial statements/ tax returns);
- e) Internal tax legislation in the countries involved;
- f) Common avoidance/evasion techniques; and
- g) Government controls.

7. Specific Taxpayer Information

16. An industry-wide exchange of information typically does not involve discussions of the specific financial affairs of particular taxpayers. However, subsequent requests may be made by a participating treaty partner for specific taxpayer information in accordance with the applicable information exchange instrument.¹ These specific requests supplement an industry-wide exchange and may lead on to a simultaneous tax examination of a taxpayer operating within the covered industry and active in both treaty partner jurisdictions.²

¹ The Module on “Exchange of Information on Request” provides guidance on how to prepare and respond to a request for information.

² The Module on “Conducting Simultaneous Tax Examinations” provides guidance on how to carry out effective simultaneous tax examinations.