

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

Peer review of the implementation of the international
standards for transparency and exchange of
information for tax purposes

**PHASE 2 QUESTIONNAIRE
FOR JURISDICTION UNDER REVIEW**

[NAME OF JURISDICTION]

[date]

PHASE 2 QUESTIONNAIRE

This questionnaire is the primary means by which the authorities in the jurisdiction being reviewed can provide detailed input to Phase 2 of the review process. This questionnaire is intended to elicit information on the effectiveness of exchange of information in practice. The focus of the questions is exchange of information on request in relation to direct taxes. However, respondents are also asked to provide details of any other forms of information exchange for tax purposes in which they are engaged.

The information sought relates to the essential elements, and the enumerated aspects for those elements, in the *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information For Tax Purposes* (ToR). After each question, the essential element or elements to which the question relates are indicated.

Responses to the questionnaire should make reference to relevant provisions in legislation or other legal instruments but should primarily focus on the implementation of these measures: the organisational capacity; processes and procedures followed; and statistics. Finally, authorities may also set out any additional analysis or commentary that they believe would assist the assessors in carrying out the evaluation, *e.g.* their analysis of the effectiveness of the measures in place.

Where the underpinning framework supporting exchange of information has changed since the Phase 1 review, all amended laws, regulations, guidelines and other relevant documents should be provided along with the response to the questionnaire. Information and documents should be in the language of the evaluation (English or French) and the original language (unless otherwise agreed with the assessment team), and both these documents and the responses to the questionnaire should be provided in an electronic format.

As outlined in the Global Forum's *Methodology for Peer Reviews*, the assessed jurisdiction should provide its responses to the questionnaire (and any additional questions) within 4 weeks in the case of a Phase 2 review, and 6 weeks in the case of a Combined Phase 1 and 2 review of receipt of the questionnaire. It is essential that the material be provided on time.

The respondent jurisdiction should provide information for each section of the questionnaire set out below. Respondents are not limited to the space provided for answers. Answers should be comprehensive.

As indicated in paragraph 6 of the Methodology, it is expected that the Phase 2 process will be modified and improved in the light of experience, keeping in mind the need to ensure fairness and equal treatment. This may also require the questionnaire to be amended to improve the process and the evaluation.

A. Organisation and Management of Competent Authority

1. Exchange of information on request pursuant to DTCs or TIEAs and any other agreements or instruments (including multilateral agreements) takes place between “competent authorities”. Who (by title) is the competent authority for your jurisdiction? What offices serve under your competent authority and how are they structured and staffed? Please provide an organisation chart and clearly specify the number of persons involved in exchange of information and their qualifications. (*ToR C.1*)

Response

a) Is your competent authority clearly identifiable to your exchange of information (EOI) partners (e.g. identified in websites or other publicly available material) and does it have regular established contact with its significant EOI partners e.g. agreed operating procedures, telephone contact or meetings?

Response

b) Please describe the resources (financial, technical and personnel) available to your competent authority to service the existing (or projected future) numbers of requests it receives (or will receive) for exchange of information? Please describe any limitations that apply and any plan that you have to increase resources.

Response

2. If different agencies are involved in collecting information to respond to a request, please describe all of the authorities and agencies involved as well as the inter-agency processes. (*ToR C.1*)

Response

3. Are different processes involved where a request pursuant to a DTC, TIEA or multilateral agreement on administrative assistance relates to a criminal investigation (e.g. different agencies involved, differences in ability to provide assistance at the administrative level)? If so, please describe these processes and how they impact your jurisdiction’s ability to provide effective EOI assistance (e.g. time and effort involved)? (*ToR C.1*)

Response

4. Are staff in your competent authority provided with specialist training on exchange of information (e.g. obligations under EOI mechanisms, internal processing of requests, confidentiality obligations)? If so, please provide details of the nature of the training provided and the number of persons who have received this training in the past 3 years. *(ToR C.1)*

Response

5. What controls and recording systems are in place to monitor the handling of requests by your competent authority? *(ToR C.1)*

Response

6. Does your competent authority use performance measures or indicators internally to monitor its EOI program (e.g. number of requests handled, response time, quality of work)? If so, please describe the types of measures or indicators used and how your competent authority monitors each performance measure or indicator. *(ToR C.1, C.5)*

Response

B. Processing and procedures for incoming requests

7. Does your competent authority have instruction manuals (whether or not based on the OECD Manual) or other written guidance or administrative procedures for processing incoming requests for information, including procedures applicable to the EOI staff receiving requests and to other offices within your jurisdiction's tax administration that are sources of common types of information requested? If so, please provide copies. *(To R C.1)*

Response

8. What procedures apply when a request for exchange of information is initially received by your competent authority, including to determine whether the request is valid? *(ToR C.1)*

Response

a) In cases where a request is unclear or incomplete, does your competent authority seek clarifying or additional information from the requesting jurisdiction before declining the request?

Response

- b) Please describe the system used to log and track requests once they are received.

Response

9. Outline the procedures and timelines (for each step) that apply where information needed to respond to a request is (**ToR A.1-3, B.1-2, C.4-5**):

- a) already in the hands of the tax authorities, *e.g.* tax return information;
- b) already in the hands of another governmental authority, such as a company registration office. If different procedures and timelines apply to different governmental authorities, please describe;
- c) in the possession or control of the taxpayer/person/entity that is the subject of the enquiry;
- d) in the possession or control of a third party such as a service provider, *e.g.* a trustee. If different procedures apply depending on the third party service provider, please elaborate;
- e) in the possession or control of a bank.

Response

10. What steps are taken and what powers are exercised, if any, when a person presumed to be in possession or control of the information refuses to comply with a request? If different steps or information gathering measures are used depending on the types of information requested (*e.g.* tax records, bank records, accounting records, corporate and legal entity records, real estate records, brokerage records, identity and ownership information, third party interviews) and the category of record keeper from which the information must be obtained, please describe. Please respond to this question with respect to each of the following circumstances (**ToR B.1**):

- a) where information is required to be kept but the record keeper disputes the obligation to keep the information;
- b) where information is required to be kept but the person required to be in possession or control of the information asserts that he or she is not in possession or control of it, *e.g.* because it is located outside of your jurisdiction;¹
- c) where the information is not required to be kept, but a third party who is not required to keep the information has or is able to obtain the information requested;
- d) where information is required to be kept but the record retention period has expired;
- e) where none of a) through d) apply, but the record keeper refuses to comply with the request.

¹ Note that it is not intended to imply that a person in possession or control of records can escape the obligation to provide the information contained in those records by moving them offshore.

Response

11. Over the last three years (to 31 December 2009)² have there been any cases in which your jurisdiction has not provided information requested by EOI partners in the circumstances described in question 10 a) to e) above? If so, please explain the circumstances. (**ToR B.1, B.2**)

Response

12. Does your jurisdiction have administrative rulings or judicial decisions that affect in practice the enforcement of your jurisdiction's access to information on behalf of a requesting jurisdiction? Please provide a copy of any rulings or decisions that you refer to in your answer. (**ToR B.1**)

Response

13. What procedures apply when your competent authority obtains the requested information from the person in possession or control of it? Are there checks to ensure information received is responsive to the question asked? (**ToR B.1, C.1**)

Response

14. What, if any, practical difficulties has your competent authority experienced in obtaining information in order to respond to requests from EOI partners? For example, such difficulties might include systematic delays in obtaining information requested for exchange purposes because information is not maintained; rights and safeguards (e.g. notification, appeal rights) restricting the scope of obtainable information; time and effort required to overcome an objection or challenge from third parties and to pursue related judicial or administrative processes or procedures, or inability to obtain information in a form that can be used. (**ToR A.1-3, B.1-2**)

Response

C. Confidentiality/ Notification requirements

15. Please provide details of the administrative procedures, rules or regulations applying in your jurisdiction to ensure that information exchanged pursuant to an EOI arrangement is treated as confidential and that only authorised officials have access to it.³ (**ToR C.3**)

² Where a jurisdiction keeps its records on an annual basis other than a calendar year, it may wish to use that annual period in responding to the questionnaire.

³ Note that statutory confidentiality protections are dealt with in the Phase 1 questionnaire.

Response

16. Have there been any cases in your jurisdiction where information received by the competent authority from an EOI partner has been made public other than in accordance with the terms under which it was provided? If so, please explain the circumstances. (**ToR C.3**)

Response

17. What if any, practical difficulties (e.g., systematic delays; unduly burdensome) has your competent authority experienced with the application of rights and safeguards in your jurisdiction?

Response

D. Indicators of EOI Activity⁴

18. Please describe the types of statistics your competent authority maintains on information exchange. Please include a description of what you understand to be a request, e.g. how do you count a request in respect of a single taxpayer where more than one piece of information is requested; how do you count a further request for information on the same matter where the original request has not yet been fully satisfied. (**ToR C.1**)

Response

19. Please identify the jurisdictions (up to 5) with which you have had the most significant EOI relationships over the past three years. Please describe the reasons why these are considered the most significant. (**ToR C.1**)

Response

20. Please list all EOI partners with which your jurisdiction has had an EOI relationship over the past three years (to 31 December 2009). For each of these partners, please indicate:

⁴ Any data provided herein is for the purposes of guiding the assessors and will not be reproduced in the peer review report. However, the reports may refer at a very general level to the trends in information provided without divulging the precise nature of a jurisdiction's EOI history with a given treaty partner.

a) during the last three years (to 31 December 2009) approximately how many requests for exchange of information your jurisdiction has received (0 to 5; 6 to 10; 11 to 20; 21 to 50; 51 to 100; 100 or more requests) and please describe your method of calculating the number of requests.

b) the frequency (always, most of the time, some of the time, rarely, or never) with which your jurisdiction has provided the substantive information requested. Please also indicate the frequency with which your jurisdiction has provided the information within 90 days of receipt of a request, within 180 days of receipt of a request, within a year of receipt of a request, or more than 1 year after receipt of a request.⁵ If you wish, please provide a list indicating the types of information exchanged and the typical response times for these request types, e.g. requests for information already held by the tax authorities may be responded to more quickly.

c) if possible,⁶ the approximate percentage of occasions on which the information requested could not be provided.

d) to the extent that the information requested was not provided, did your jurisdiction provide related information to assist the other jurisdiction's ongoing examination, enquiry, investigation or other tax administration purpose?

Comment: Data provided in response to this question will be kept strictly confidential by the Secretariat and assessment team.

Response

21. Do requests that are not fulfilled within 90 days, thus requiring a status update, typically relate to a particular type of information (e.g. bank information, identity information regarding trusts) or require particular types of investigative measures? (*ToR A.1 -3, B.1, C.5*)

Response

22. In cases where your competent authority has been unable to obtain and provide information within 90 days of receipt of a request for any reason, has your competent authority systematically provided an update on the status of the request? If not, please explain. (*ToR C.5*)

Response

⁵ The assessment team will work with the reviewed jurisdiction to understand the basis on which the response is provided. It will also endeavour to understand the nature of different requests. Some requests, for example, where transfer pricing issues are involved, may require considerable work on the part of the requested jurisdiction in order to provide a comprehensive response.

⁶ Reasons why it may not be possible to answer this question include disclosure laws and administrative practices that prevent a jurisdiction from answering this question, or a lack of detailed statistic-keeping in this regard on a historical basis.

23. Apart from the cases referred to in question 11 above, has your jurisdiction declined to provide information requested by EOI partners in any of the last three years (to 31 December 2009). If so please indicate the frequency with which this has occurred and with which EOI partners, and indicate, to the extent possible, the bases for declining to provide the requested information. (*ToR C.1.1 – 6, C.4*)

Response

24. In each of the past three years (to 31 December 2009) how frequently (most of the time, some of the time, rarely, never) have your EOI partners had to make further enquiries in relation to information already given by your jurisdiction because of a perceived incomplete, or an inadequate response? Do you have processes in place to minimize such occurrences? (*ToR C.1.1, C.5.3*)

Response

25. Apart from specific requests, please provide details of any other types of exchange of information in tax matters that your jurisdiction engages in, indicating the scale of the exchanges and the range of jurisdictions with which these exchanges take place. Please describe the processes and procedures which apply to these exchanges (where different from those already described).

Response

E. Other issues

26. Are there any other comments or observations that you wish to make regarding the matters covered by the questionnaire?

Response