PS LA 2016/6 - Exchange of information with foreign revenue authorities about indirect taxes

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PS LA 2016/6
Exchange of information with foreign revenue authorities about indirect taxes

This Law Administration Practice Statement provides guidance on the exchange of information with foreign revenue authorities about indirect taxes under international tax agreements.

This Practice Statement is an internal ATO document and is an instruction to ATO staff.

1. What should you do if you receive a request for information from a foreign revenue authority?

The way requests for information from foreign revenue authorities are handled depends on whether the information requested is publicly available or specific to an individual or entity.

- Publicly available information – publicly available information, such as that in taxation statistics, on ato.gov.au, Report of Entity Tax Information or from business' public websites can be shared without restriction.
- Taxpayer-specific information – information specific to a taxpayer, either an individual or an entity such as a company, can only be exchanged if it is authorised by a legal instrument as set out in section 2 of this Practice Statement.

Section 4 of this Practice Statement sets out who you should contact if you receive an exchange of information (EOI) request.

2. How do we exchange information about indirect taxes with foreign revenue authorities?

We exchange information about indirect taxes with foreign revenue authorities under the following legal instruments.[1]

Mutual Convention on the Mutual Administrative Assistance in Tax Matters

The Convention is a multilateral agreement designed to promote international cooperation for a better operation of national tax laws, while respecting the fundamental rights of taxpayers.

The Convention provides for all possible forms of administrative cooperation between the parties in the assessment and collection of taxes, in particular with a view to combating tax avoidance and evasion.

While the convention is broad in application and includes goods and services tax (GST), the information that can be exchanged between Australia and other signatories will depend on a number of factors, including any reservations negotiated by signatories and when the convention was entered into by each of the signatories.

Bilateral tax treaties

Australia has tax treaties with more than 40 countries.[2] Tax treaties are also referred to as 'tax conventions' or 'double-tax agreements'. They prevent double taxation and fiscal evasion, and foster cooperation between Australia and other international tax authorities by enforcing their respective tax laws.

Most tax treaties cover income tax matters and **do not** include GST. Bilateral tax treaties entered into prior to 2005 will be based on the 1977 version of the OECD Model Tax Convention and do not extend to indirect taxes.

Australia has bilateral tax treaties with several countries that contain EOI clauses covering other taxes, such as GST or value-added tax.

The exact EOI article for bilateral tax treaties will vary from country to country.

The full list of our tax treaties is maintained by Treasury; a link to this list is provided in this Practice Statement under 'More information'.

Tax information exchange agreements

Tax information exchange agreements (TIEAs) aim to establish effective information exchange and improve transparency of taxpayers' financial arrangements/transactions for tax purposes. TIEAs also provide important momentum to achieve the aims of the OECD's harmful tax practices initiative.

Many, but not all, of the TIEAs cover indirect taxes.

The exact EOI article for TIEAs will vary from country to country – see 'More information' for a list of TIEAs.

[1] The application of domestic privacy provisions must also be considered – see section 5 of this Practice Statement.

[2] Australia's bilateral tax treaties are given the force of law by the *International Tax Agreements Act 1953*.

3. What exchange of information instrument should be used?

The decision on the appropriate instrument to request information is made by the Competent Authority after considering all current bilateral tax treaties, any memorandum of understanding or other information-sharing agreements that are in place with a particular country and the type of information being requested.

4. Who do you contact if you receive an exchange of information request from a foreign revenue authority or you are considering seeking information from a foreign revenue authority?

You should contact the Exchange of Information team (AustralianCompetentAuthority@ato.gov.au) for all matters relating to the exchange of information.

The team can provide you with general advice, including what avenues may be available within a particular jurisdiction, and coordinate the exchange process.

The Exchange of Information Unit, International Engagement & Transparency Practice in Public Groups & Internationals (EOI Unit) is the conduit point for all exchanges of information with foreign revenue authorities.

Tax treaties and agreements will generally allow countries to designate one or more Competent Authorities to deal directly with each other in tax-related matters. The Competent Authority is nominated by the government of each country.

A Competent Authority, generally speaking, is any person that has the legally delegated or invested authority, capacity or power to perform a designated function.

In Australia, the ATO has been designated as an Australian Competent Authority and has the legal responsibility under Australia's international tax treaties and agreements to support EOI with other overseas tax administrators.

The Assistant Commissioner and Director of the EOI Unit are authorised Competent Authorities for receiving and sending requests to overseas tax authorities.

5. How do the domestic privacy and taxpayer confidentiality laws apply in exchange of information requests?

Division 355 of Schedule 1 to the *Taxation Administration Act 1953* (TAA) contains the provisions about confidentiality of taxpayer information and sets out the rules that we need to abide by when dealing with protected information.

There is a general rule prohibiting taxation officers from disclosing information that would identify a taxpayer. This information includes that obtained under an indirect tax law and information obtained under a treaty.

The penalty for breaching this division is up to 2 years imprisonment. It is not an offence for a taxation officer to disclose taxpayer information for the purpose of meeting the Commissioner's obligations to exchange information under an international agreement.

If taxpayer information identifies any individual (either an individual taxpayer or some other individual such as an individual connected to the taxpayer), it will be 'personal information' that is protected by the *Privacy Act 1988* (Privacy Act). Disclosure of personal information is limited by Information Privacy Principle 11 (IPP 11) in section 14 of the Privacy Act.

If a disclosure is required or authorised by law, then it is lawful under IPP 11.1(d) of the Privacy Act. A disclosure of information under a treaty, consistent with section 23 of the *International Tax Agreements Act 1953*, will be authorised by law for the purposes of IPP 11.1(d).

6. When should you seek information from foreign revenue authorities?

You should exhaust all domestic avenues to obtain the information before escalating the request for action by a foreign revenue authority.

This may include:

- contacting the taxpayer or their representative
- having an informal meeting with the taxpayer or their representative
- issuing a formal notice for documents, information or to give evidence under section 353-10 of Schedule 1 to the TAA
- issuing a formal notice for information: section 353-10 of Schedule 1 to the TAA
- issuing a formal notice to attend and give evidence: section 353-10 of Schedule 1 to the TAA, and
- gaining access without notice: section 353-15 of Schedule 1 to the TAA.

7. How should you handle information you receive from a foreign revenue authority?

Any information you receive should be treated as strictly confidential.

All information-sharing instruments specify to whom the information can be disclosed (thus ensuring a minimum standard of confidentiality). Specifically:

- the information received may be disclosed only to persons or authorities (including courts and administrative bodies; for example, the Inspector General of Taxation and Taxation Ombudsman) concerned with the assessment, collection and enforcement of the taxes covered by the agreement (including the prosecution or the determination of appeals), and
- the information may be used only for the purposes for which it was obtained (that is, tax purposes only).

Information may not be disclosed to any other person or third jurisdiction without the express written consent of the Competent Authority of the country providing the information.

8. What are the consequences of not following the exchange of information process?

There are significant consequences if you do not follow the EOI process, including:

- breach of the confidentiality of taxpayer information provisions punishable by imprisonment for up to 2 years
- imposition of civil penalties on the ATO for breaches of the Privacy Act, and
- breach of a duty not to disclose confidential information is also a breach of the APS Code of Conduct. The sanctions that may be imposed for a breach of the Code of Conduct are detailed in section 15 of the *Public Service Act 1999*.

9. More information

For more information, see:

- Convention on Mutual Administrative Assistance in Tax Matters
- Convention Signatories
- Australian Tax Treaties – for the full list of our tax treaties
- List of Tax Information Exchange Agreements

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Amendment history

Date of amendment	Part	Comment
9 March 2023	Throughout	Update of style and format.
	Section 4	Updated email address.
17 March 2020	Section 4	Updated email address.

References

Legislative references	TAA Sch 1 353-10 TAA Sch 1 353-15 TAA Sch 1 Div 355 TAA Sch 1 355-5 International Tax Agreements Act 1953 23 Privacy Act 14 Public Service Act 1999 15
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