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**United Nations Commentary**  
(Comparison of Convener's 2007 Draft to 2001 Commentary)

*Article 26*  
EXCHANGE OF INFORMATION

A. GENERAL CONSIDERATIONS

1. Article 26 embodies rules under which information may be exchanged to the widest possible extent, both to facilitate the prop ~~A~~MCID

~~contained in the Commentary on the latter Article are relevant. These remarks read as follows:~~

~~“There are good grounds for including in a convention for the avoidance of double taxation provisions concerning cooperation between the tax administrations of the two Contracting States. In the first place it appears to be desirable to give administrative assistance for the purpose of ascertaining facts in relation to which the rules of the Convention are to be applied. Moreover, in view of the increasing internationalization of economic relations,~~

1.3. Although Article 26 imposes reciprocal obligations on the Contracting States ~~have a growing interest in the reciprocal supply of information on the basis of which domestic taxation laws have to be administered, even if there is no question of the application of any particular Article of the Convention.” [para. 1]~~

~~“Therefore the present Article embodies the rules under which information may be exchanged to the widest possible extent, with a view to laying the proper basis for the implementation of the domestic laws of the Contracting States concerning taxes covered by the Convention and for the application of specific provisions of the Convention. The text of the Article makes it, it does not allow a developed country to re~~

substantive but rather were intended to remove doubts as to the proper interpretation of the Article. For example, the term “necessary” in paragraph 1 was changed to “may be relevant” to clarify the intended meaning of the prior language. In contrast, the change in that paragraph providing for an exchange of information with respect to taxes not mentioned in Article 2 was intended to be a substantive change.

2.1. In some cases, the issue of whether a change made to Article 26 is intended as substantive or interpretative depends on the prior practices of the Contracting States. For example, in some cases, the addition of paragraph 5, which removes, *inter alia*, domestic bank secrecy laws as a basis for refusing to exchange information, may simply clarify the meaning of the limitations on the exchange of information contained in paragraph 3. In other cases, it may modify that paragraph substantively. The effect of the change depends in part on the particular prior practices of the Contracting States. The position taken in the OECD Commentary is that paragraph 5 is primarily interpretative with respect to treaties between its member states. This issue may be of particular importance in interpreting treaties that were entered into prior to the adoption of the 2007 changes to Article 26.

2.2. One difference in the wording of Article 26 and the comparable provision of the OECD Model Convention is that Article 26 includes in paragraph 1 the following sentence: “In particular, information shall be exchanged that would be helpful to a Contracting State in preventing fraud or evasion of such taxes or in combatting tax avoidance.” The phrase “or combatting tax avoidance” was inserted in 2007. That change was thought to be useful by members of the committee, especially members from developing countries, to make clear in the text of Article 26 a point that already was clear in the Commentary and was implicit in the language of the last sentence of prior paragraph 1, now moved to paragraph 7. The statement of the purposes of information exchanges in the text of Article 26 is intended to provide guidance to the Contracting States on the basis of the Model Convention for Mutual Administrative Assistance in the Recovery of Tax Claims adopted by the Committee on Fiscal Affairs on 29 June 1979; alternatively, the provisions on assistance in the field of tax collection ma

information in the specific form requested if, for instance, the requested form is not known or permitted under its law or administrative practice. A refusal to provide the information in the form requested does not affect the obligation to provide the information.

3.2. Contracting States may wish to use electronic or other communication and information technologies, including appropriate security systems, to improve the timeliness and quality of exchanges of information. Indeed, the Contracting States may be obligated to provide requested information in electronic form if such action is necessary for an effective exchange of information. Contracting States which are required, according to their law, to observe data protection laws, may wish to include provisions in their bilateral conventions concerning the protection of personal data exchanged. Data protection concerns the rights and fundamental freedoms of an individual, and in particular, the right to privacy, with regard to automatic processing of personal data. In no event is a Contracting Party relieved of its obligation to exchange information simply because its domestic laws do not allow it to provide the information in the form requested.

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6.2. The obligation to provide requested information applies whether or not the person, with respect to whom the information is requested, is a resident of either Contracting State or is engaged in economic activity in either Contracting State. For example, a Contracting State may request information about the ~~prices charged by a company in State B, or a group of companies in State B with which the company in State A has no business contacts in order to enable it to check the prices charged by the company in State A by direct comparison (e.g., prices charged by a company or a group of companies in a dominant position). It should be borne in mind that the exchange of information in this case might be a difficult and delicate matter owing in particular to the provisions of subparagraph (c) of paragraph 2 relating to business and other secrets.” [para. 8]~~

~~“The rule laid down in paragraph 1 allows information to be exchanged in three different ways:~~

~~(a) on request, with a special case in mind, it being understood that the regular sources of information available under the internal taxation procedure should be relied upon in the first place before request for information is made to the other State; (b) automatically, for example when information about one or various categories of income having their source~~





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regarding tax avoidance where the treaty partners deemed it appropriate. The reference in the same sentence to the consultations aimed at developing appropriate conditions, methods and techniques was designed to enable the treaty partners to work out the modalities for exchanges of information between them. 28. In the course of the discussion, members from developing countries observed that the proliferation of transnational corporations and the ever-growing sophistication and complexity of the forms taken by international business transactions were resulting in increasing tax avoidance and evasion. The view was expressed that such a situation might have reached



made public by courts, or, once the information has been made public in this way, to the information being used for other purposes, they should state this objection expressly in their convention.

11. In general, the information received under this Article. A Contracting State that under its domestic law is required to notify the taxpayer that an exchange of information is proposed should inform its treaty partners in writing that it has this requirement and what the consequences are for its obligations in relation to mutual assistance.” [para. 14]

“Furthermore, the requested State does not need to go so far as to carry out administrative measures that are not permitted under the laws or practice of the requesting State or to supply items of information that are not obtainable under the laws or in the normal course of administration of the requesting State. It follows that by a Contracting State cannot take advantage of the information system of the other Contracting State if it is wider than its own system.” [para. 15]

“Information is deemed to be obtainable in the normal course of administration if it is in the possession of the tax authorities or can be obtained by them in the normal procedure of tax determination, which may include special investigations or special examination of the business accounts kept by the taxpayer or other persons, provided that the tax authorities would make similar investigations or exam

exchange very little information or perhaps none at all. In such a case, allowing such disclosure.

11.3. Contracting States wishing to broaden the purposes for which they may use information exchanged under this Article may do so by adding the following text to the end of paragraph 2:

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.

12. The OECD Model Convention, as amended in 2005, includes a provision that would allow the sharing of information obtained under Article 26 with persons charged with the oversight of the persons allowed to obtain such information. This provision is not included in paragraph 2, due to opposition from some members of the Committee of Experts from developing countries, who feared that the oversight bodies, which typically are political entities, would not be subject under domestic law to the same strict rules of confidentiality as tax officials.

12.1. Excluding oversight bodies from the persons entitled to receive confidential information obtained through information exchange presents problems in some countries because their oversight bodies typically expect to have access to such information in order to fulfill their oversight duties. Contracting States wishing to address this issue without providing a blanket authorization for oversight bodies to receive confidential information might add the following language to th



cannot obtain that information under its normal administrative procedures, within the meaning of paragraph 3(b).

14.3. The purpose of paragraph 3(a) is to avoid traps for the unwary, not to create such traps. A Contracting State that believes that it is not required to obtain certain types of information on behalf of the other Contracting State because of its own laws or administrative practice (including the laws and administrative practice of its subnational governments) must disclose that position in writing prior to entering into a convention containing Article 26. It must also disclose the likely effects of that position on its ability to provide an effective exchange of information. For instance, if a Contracting State believes that one of its laws prevents it from providing the other Contracting State with information as to the beneficial owners of its resident companies or other juridical persons, it is obligated to give written notice of that position during the negotiation of the convention, with an explanation of the impact of that law on its obligations in relation to mutual assistance. Depending on the facts and circumstances of the particular case, a failure to disclose may eliminate the right of a Contracting State to invoke paragraph 3(a) to avoid its obligations under paragraph 1.

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15.1. A Contracting State that under its domestic law is required to notify the person who provided the information and/or the taxpayer that an exchange of information is proposed should inform its treaty partners in writing that it has this requirement and what the consequences are for its obligations in relation to mutual assistance. Such information should be provided to the other Contracting State before a

obtained that information in the normal course of its administration. The purpose of this rule is to prevent the requesting State from imposing unreasonable burdens on the requested State.

18.1. Information is deemed to be obtainable in the normal course of administration if the information is in the possession of the tax authorities or can be obtained by them in the normal procedure of tax determination, which may include special investigations or special examination of the business accounts kept by the taxpayer or other persons. For instance, if the requested State, as part of its audit policies, obtains information about the appropriateness of the transfer prices used by its taxpayers in dealings with associated companies, it is deemed to be able to obtain similar information about its taxpayers and associated companies on behalf of a requesting State.

18.2. Unless otherwise agreed to by the Contracting States, it can be assumed that the information requested by a Contracting State could be obtained by that State in a similar situation unless that State has informed the other Contracting State to the contrary.

18.3. It is often anticipated, when a convention is entered into between a developed country and a developing country, that the developed country will have a greater administrative capacity than the developing country. Such a difference in administrative capacity does not provide a basis under subparagraph 3(b) for either Contracting State to avoid an obligation to supply information under paragraph 1. That is, paragraph 3 does not require that each of the Contracting States receive reciprocal benefits under Article 26. In freely adopting a convention, the Contracting States presumably have concluded that the convention, viewed as a whole, provides each of them with reciprocal benefits. There is no presumption, however, that each of the articles, or each subparagraph of each article, provides a reciprocal benefit. On the contrary, it is commonplace for a Contracting State to give up some benefit in one article in order to obtain a benefit in another article. Reading a specific reciprocity requirement into paragraph 3 of Article 26 would be inconsistent with the normal understanding of how convention negotiations are conducted.

18.4. Although subparagraphs 3(a) and 3(b) do not explicitly provide for reciprocity in benefits, the OECD Commentary to Article 26 has taken the position that a reciprocity requirement can be inferred from the language of subparagraph 3(b), which, *inter alia*, limits the obligation of a Contracting State to supply information obtainable in the normal course of administration of that other Contracting State. In effect, the OECD Commentary is reading the term “obtainable” to mean that the other Contracting State has the actual administrative capacity to obtain that information. The alternative reading is that “obtainable” means that the tax administration has the authority to obtain the information, whether or not it has the capacity to exercise that authority. As noted above, this latter reading is more consistent with the purpose of Article 26. It should also be noted that the OECD Commentary has interpreted the alleged reciprocity requirement narrowly to prevent it from reducing Article 26 to a nullity.

18.5. In light of the position taken in the OECD Commentary, some countries may wish to clarify the matter of a reciprocity requirement by amending subparagraph 3(b) to read as follows:

(b) To supply information that cannot be obtained in the normal course of the administration of that Contracting State or is not obtainable under the laws of that Contracting State or of the other Contracting State;

19. In general, a requested State may decline, under paragraph 3(b), to disclose information that constitutes a confidential communication between an attorney, solicitor, or other admitted legal representative in his role as such and his client to the extent that the communication is protected from disclosure under domestic law.

19.1. The scope of protected confidential communications should be narrowly defined. Such protection does not attach to documents or records delivered to an attorney, solicitor, or other admitted legal representative in an attempt to protect such documents or records from disclosure required by law. Also, information on the identity of a person such as a director or beneficial owner of a company is not protected from disclosure. Although the scope of protection afforded under domestic law to confidential communications may differ among states, the protection provided under subparagraph 3(b) does not extend so broadly so as to hamper the effective exchange of information.

19.2. Notwithstanding the provisions of domestic law in the requested State, that State may decline to supply requested communications between attorneys, solicitors or other admitted legal representatives and their clients only if, and to the extent that, such representatives act in their capacity as attorneys, solicitors or other admitted legal representatives and not in a different capacity, such as nominee shareholders, trustees, settlors, company directors, or accountants, or under a power of attorney to represent a company in its business affairs. More specifically, the communication must have been produced in good faith for the purpose of seeking or providing legal advice or for use in existing or contemplated legal proceedings.

19.3. In no event may a requested State decline to disclose communications between attorneys, solicitors or other admitted legal representatives and their clients if those persons have themselves participated with their clients in a plan to commit tax evasion or fraud.

19.4. A claim that information is protected as a confidential communication between an attorney, solicitor or other admitted legal representative and its client should be adjudicated exclusively in the Contracting State under the laws of which the claim arises. Thus, it is not intended that the courts of the requested State should adjudicate claims based on the laws of the requesting State.

20. Subparagraph 3(c) permits a requested State to decline to provide information if the disclosure of ~~certain secret information. Secrets mentioned in this subparagraph should not be taken in too wide a sense~~ that information would reveal any trade, business, industrial, commercial or professional secret or trade process. Before invoking this provision, a Contracting State should carefully weigh if the interests of the taxpayer really justify its application. ~~Otherwise it is clear that too wide an~~ Secrets mentioned in this subparagraph should not be taken in too wide a sense. A wide interpretation would in many cases of the provision in many cases would be inconsistent with the purpose of Article 26 because it would render ineffective the exchange of information provided for in the Convention. The observations made in paragraph 17 above apply here as well. The requested State in protecting the interests of its taxpayers is given a certain discretion to refuse the ~~that Article.~~

20.1. A trade or business secret or trade process is generally understood to mean information which has considerable economic importance and which can be exploited practically and the unauthorised use of which may lead to serious damage (e.g., may lead to severe financial hardship). The purpose of the secrecy exception is to prevent an exchange of





paragraph was intended to assist in the interpretation of Article 26 and does not result in a substance change in the obligations implicit in the prior version of Article 26.

including that the communication is protected from disclosure under domestic law, that the refusal is unrelated to the status of the legal representative as an agent, fiduciary, or nominee, that any documents at issue were not delivered to the legal representative to avoid disclosure, and that nondisclosure would not frustrate an effective exchange of information.

24.7. Contracting States wishing to refer expressly to the protection afforded to confidential communications between a client and an attorney, solicitor or other admitted legal representative may do so by adding the following text at the end of paragraph 5:

Nothing in the above sentence shall prevent a Contracting State from declining to obtain or provide information which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are protected from disclosure under paragraph 3(b) and when the claim for protection under that paragraph is unrelated to the status of the legal representative as an agent, fiduciary, or nominee.

25. The following examples illustrate the application of paragraph 5:

(a) Company X owns a majority of the stock in a subsidiary company Y, and both companies are incorporated under the laws of State A. State B is conducting a tax examination of business operations of company Y in State B. In the course of this examination the question of both direct and indirect ownership in company Y becomes relevant, and State B makes a request to State A for ownership information of any person in company Y's chain of ownership. In its reply, State A should provide to State B ownership information for both company X and company Y.

(b) An individual subject to tax in State A maintains a bank account with Bank B in State B. State A is examining the income tax return of the individual and makes a request to State B for all bank account income and asset information held by Bank B in order to determine whether there were deposits of untaxed earned income. State B should provide the requested bank information to State A.

(c) Bank A in State A is suspected of entering into secret letters of agreement with some of its depositors that direct the bank to pay interest earned by those depositors to an unrelated offshore bank. State B requests that State A provide it with copies of those secret letters of agreement. Bank A asserts that the letters of agreement are legal documents protected from disclosure under the lawyer-client privilege. State A should provide the requested documents.

*Paragraph 6 (Dual criminality)*

26. The United Nations Model Convention does not require the existence of criminal activity in either of the Contracting States for the obligation to exchange information to arise. Paragraph 6 is included in the text of Article 26 primarily to deal with those limited number of treaties where criminal activity in the requested State is required under the terms of the treaty or under the domestic law of a Contracting State. It is also included, as a cautionary measure, to ensure that a requested State cannot use the absence of criminal activity in one or the other State to avoid its obligation to exchange information under Article 26. Some countries may conclude that the inclusion of paragraph 6 is unnecessary and should be omitted.

Paragraph 7

27. The first sentence of paragraph 7 was taken, with minor changes, from the last sentence of paragraph 1 of the Model Convention before its amendment in 2007. The remaining two sentences were added in 2007. Paragraph 7 specifically grants to the competent authorities the authority to establish procedures for an effective exchange of information. The OECD Model



regarded as listing matters all of which are to be drawn on in every case. Instead, the inventory is a listing of suggestions to be examined by competent authorities in deciding on the matters they wish to cover.

5. The Group also emphasized that the term “exchange of information” included an exchange of documents and that, subject to the provisions of paragraph 2 of the article if specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State should provide information under that article in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts or writings), to the extent that it could obtain such depositions and documents under the laws and administrative practices applying in respect to its own taxes.<sup>+</sup>

### C. INVENTORY OF EXCHANGE MECHANISMS

#### *Routine transmittal of information<sup>2</sup>*

~~628.~~ A method of exchange of information is that of the routine or automatic flow of information from one treaty country to another. The term "transmitting country" refers to the country transmitting information, and the term "receiving country" refers to the country receiving information. The following are various aspects that the competent authorities should focus on in developing a structure for such routine exchange. In considering routine exchanges of information, it should be recognized that some countries not desiring to receive such information in a routine fashion (or unable to receive it routinely because the transmitting countries do not routinely collect such information) may desire to obtain information of this type under a specific request. Hence, in these situations, items mentioned in the present section should be considered as available for coverage under the next section, “Transmittal on specific request”.

#### *Items covered*

~~729.~~ Regular sources of income. The items covered under a routine transmittal or exchange of information may extend to regular sources of income flowing between countries, such as dividends, interest, compensation (including wages, salaries, fees and commissions), royalties, rents and other possible items whose regular flow between the two countries is significant. It should be recognized that at present a few countries are not in a position to supply routine information of this type because their tax collection procedures do not provide the needed data.

Transactions involving taxpayer activity. A routine exchange of information may cover certain significant transactions involving taxpayer activity.

(a) Transactions relevant to the treaty itself:

~~Claims~~

1. Claims for refund of transmitting country tax made by residents of receiving country;

~~Claims~~

2. Claims

~~\_\_\_\_\_~~ (b)- Transactions relevant to special aspects of the legislation of the transmitting country:  
—Items of income derived by residents of the receiving country that receive exemption or partial relief under special provisions of the national law of the transmitting country;

~~\_\_\_\_\_~~ (c) Transactions relating to activities in the transmitting country of residents of the receiving country:

~~\_\_\_\_\_~~ ~~Opening~~

3. ~~\_\_\_\_\_~~ ~~Opening~~ and closing by receiving country residents of a branch, office etc. in the transmitting country;

~~\_\_\_\_\_~~ ~~Creation~~

4. ~~\_\_\_\_\_~~ ~~Creation~~ or termination by receiving country residents of a corporation in the transmitting country;

~~\_\_\_\_\_~~ ~~Creation~~

5. ~~\_\_\_\_\_~~ ~~Creation~~ or termination by receiving country residents of a trust in the transmitting country;

~~\_\_\_\_\_~~ ~~Opening~~

6. ~~\_\_\_\_\_~~ ~~Opening~~ and closing by receiving country residents of bank accounts in the transmitting country;

~~\_\_\_\_\_~~ ~~Property~~

7. ~~\_\_\_\_\_~~ ~~Property~~ in the transmitting country acquired by residents of the receiving country by inheritance, bequest or gift;

~~\_\_\_\_\_~~ ~~Ancillary~~

8. ~~\_\_\_\_\_~~ ~~Ancillary~~ probate proceedings in the transmitting country concerning receiving country residents;

~~\_\_\_\_\_~~ (d)- General information:

~~\_\_\_\_\_~~ ~~Tax~~

9. ~~\_\_\_\_\_~~ ~~Tax~~ laws, administrative procedures, etc. of the transmitting country;

~~\_\_\_\_\_~~ ~~Changes~~

10. ~~\_\_\_\_\_~~ ~~Changes~~

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830.- The competent authorities should consider various factors that may have a bearing on the operational character of the routine exchange, including its effectiveness. For example:

- \_\_\_\_\_ (a)- Countries that are more interested in receiving information on a specific request basis than on a routine basis, in their consideration of the specific request area, should keep in mind items mentioned in this inventory under the heading of routine information.
- \_\_\_\_\_ (b) \_\_\_\_\_ A minimum floor amount may be fixed to limit minor data.
- \_\_\_\_\_ (c)- The routine source of income items may be rotated from year to year, for example, dividends only in one year, interest in another etc.
- \_\_\_\_\_ (d)- The information to be exchanged routinely need not be ~~strictly~~ reciprocal in all items. Country A may be interested in receiving information on some items but not others; the preferences of country B may extend to different items; it is not necessary for either country to receive items in which it is not interested, nor should either country refuse to transmit information on certain items simply because it is not interested in receiving information on those items.
- \_\_\_\_\_ (e)- \_\_\_\_\_



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- ~~\_\_\_\_\_~~ (a) Information on price, cost, commission or other such patterns in the transmitting country necessary to enable the tax administration of the receiving country either to determine tax liability in a particular situation or to develop standards for investigation of its taxpayers in situations involving possible under- or over-invoicing of exported or imported goods, the payment of commissions on international transactions and the like;
  - ~~\_\_\_\_\_~~ (b) Information on the typical methods by which particular transactions or activities are customarily conducted in the transmitting country;
  - ~~\_\_\_\_\_~~ (c) Information on whether a particular type of activity is being carried on in the transmitting country that may have effects on taxpayers or tax liabilities in the receiving country.

~~1537.~~ ~~\_\_\_\_\_~~ *Economic relationships between the countries.* The specific request may extend to requests for information regarding certain economic relationships between the countries which may be useful to a country as a check on the effectiveness of its tax administration activities, for example:

- ~~\_\_\_\_\_~~ (a) The volume of exports from the transmitting country to the receiving country;
- ~~\_\_\_\_\_~~ (b) The volume of imports into the transmitting country from the receiving country;
- ~~\_\_\_\_\_~~ (c) Names of banks dealing in the transmitting country with branches, subsidiaries, etc. of residents of the receiving country.

It should be noted that since items in this category, such as the volume of exports between the countries, are presumably not regarded as secret to the tax authorities in the transmitting country, they may be disclosed generally in the receiving country, as provided in ~~a~~Article 26.

*Rules applicable to the specific request*

~~1638.~~ ~~\_\_\_\_\_~~ The competent authorities should develop rules applicable to the transmission of specific requests by the receiving country and to the response by the transmitting country. These rules should be designed to facilitate a systematic operational procedure regarding such exchange that is both efficient and orderly. While the rules may be general in character in the sense that they set standards or guidelines governing the specific request procedures, the rules should also permit discussion between the competent authorities of special situations that either country believes require special handling.

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presumably the receiving country should ma

2042.-     The competent authorities will have to specify, either in detail or by reference to existing comparable rules in the receiving country, who the qualifying recipients of information in that country are. Under Article 26 the information can be disclosed, for example:

- (a)-     To administrators of the taxes covered in the convention;
- (b)-     To enforcement officials and prosecutors for such taxes;
- (c)-     To administrative tribunals for such taxes;
- (d)-     To judicial tribunals for such taxes;
- (e)-     In public court proceedings or in judicial decisions where it may become available to the public if considered appropriate;
- (f)-     To the competent authority of another country (see the section below entitled “Consultation among several competent authorities”).

*The form in which information is provided*

2143.-     The permissible extent of the disclosure may affect the form in which the information is to be provided if it is to be useful to the receiving country. Thus, if the information may be used in judicial tribunals, and if, to be so used, it must be of a particular character or form, then the competent authorities will have to consider how to provide for a transmittal that meets this need. (See also the comment on documents in the section above dealing with rules applicable to the specific request.)

*Consultation among several competent authorities*

2244.-     Countries may wish to give consideration to procedures developed by the competent authorities for consultations covering more than the two competent authorities under a particular treaty. Thus, if countries A, B and C are joined in a network of treaties, the competent authorities of A, B and C might desire to hold a joint consultation. This A joint meeting could be desired whether or not all three countries are directly intertwined, by their treaty network. For example, the joint meeting might be desirable where there are A-B, A-C and B-C treaties, or where one country is a link in a chain but not fully joined, for example, B-C treaties or where there are A-B and B-C treaties but not an A-C treaty. Countries desiring to have their competent authorities engage in such consultations should provide the legal basis for the consultations by adding the necessary authority in their treaties. Some countries may feel that Article 26 permits joint consultation where all three countries are directly linked by bilateral treaties. However, the guideline does not cover joint consultation where a link in the chain is not fully joined, as in the second situation described above. In such a case, it would be necessary to add a treaty provision allowing the competent authority of country B to provide information received from country A to the competent authority of country C. Such a treaty provision could include a safeguard that the competent authority of country A must consent to the action of the competent authority of country B. Presumably, it would so consent only where it was satisfied as to the provisions regarding protection of secrecy in the B-C treaty.

*Overall factors*





expenses incurred in another country, then the treaty should be developed on the basis of the substantive appropriateness of such deduction.

- (f)      The competent authorities will have to determine to what extent there should be cost sharing or cost reimbursement with respect to the process of exchange of information.

*Factors affecting structure of exchange of information process*

2446.      (a)      It should be recognized that the arrangements regarding exchange of information worked out by country A with country B need not parallel those worked out between country A and country C or between country B and country C. The arrangements should in the first instance be responsive to the needs of the two countries directly involved and need not be fully parallel in every case just for the sake of formal uniformity. However, it should be observed that prevention of international tax evasion and avoidance will often require international cooperation of tax authorities in a number of countries. As a consequence, some countries may consider it appropriate to devise procedures and treaty provisions that are sufficiently flexible to enable them to extend their cooperation to multicountry consultation and exchange arrangements.

- (b)      The competent authorities will have to weigh the effect of a domestic legal restriction on obtaining information in a country that requests information from another country not under a similar domestic legal restriction. Thus, suppose country A requests information from country B, and the tax authorities in country B are able to go to their financial institutions to obtain such information, whereas the tax authorities in country A are generally not able to go to their own financial institutions to obtain information for tax purposes. How should the matter be regarded in country B? It should be noted that ~~a~~ Article 26 here permits country B to obtain the information from its financial institutions and transmit it to country A. Thus, country B is not barred by its domestic laws regarding tax secrecy if it decides to obtain and transmit the information. ~~It~~ Thus, it becomes a matter of discretion in country B as to whether it should respond, and may perhaps become a matter for negotiation between the competent authorities. It should be noted that many countries in practice do respond in this situation and that such a course is indeed useful in achieving effective exchange of information to prevent tax avoidance. However, it should also be noted that country A, being anxious to obtain information in such cases from other countries, should also recognize its responsibility to try to change its domestic laws to strengthen the domestic authority of its own tax administration and to enable it to respond to requests from other countries. It should be noted that countries that have entered into a tax convention that includes paragraph 5 of Article 26 of the United Nations Model Convention are required to provide information to its treaty partner notwithstanding its domestic bank secrecy laws.

- (c)

or in particular aspects, should country B be willing to respond to requests of country A even when country A would not be able to respond to requests of country B? This matter is similar to that discussed in the preceding paragraph, and a similar response should be noted.

      (d)- It should be noted that Article 26 authorizes a transmitting country to use its