PS LA 2007/13 - Exchange of Information with foreign revenue authorities in relation to goods and services tax, under international tax agreements

Australian Government
Australian Taxation Office

Practice Statement Law Administration

PS LA 2007/13

This law administration practice statement is issued under the authority of the Commissioner and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. ATO personnel, including non ongoing staff and relevant contractors, must comply with this law administration practice statement, unless doing so creates unintended consequences or is considered incorrect. Where this occurs, ATO personnel must follow their business line's escalation process.

SUBJECT: **Exchange of Information with foreign revenue authorities in relation to goods and services tax, under international tax agreements**

PURPOSE: **To explain:**

- **what kinds of information relating to GST or obtained through the use of GST access powers may or may not be sent to foreign revenue authorities under our international tax agreements**
- **when information received directly or indirectly from foreign revenue authorities, under our international tax agreements, can be used for GST purposes, and**
- **how those things should be done**

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SCOPE

1. This practice statement sets out the legal basis for exchanging goods and services tax (GST) information with foreign revenue authorities under international tax agreements. 'GST information' for the purposes of this practice statement means any of the following:
   - information obtained through use of GST access powers
   - information relating to GST that directly or indirectly identifies a person or other entity, and
   - information of the kind discussed in paragraphs 7 to 9 of this practice statement that does not directly or indirectly identify an entity.
2. The practice statement warns that certain exchanges are not allowed under our existing international tax agreements (treaties). It describes the strictly limited kinds of GST information that can be sent to foreign revenue authorities without the authority of a treaty. Finally, the practice statement outlines the process that must be followed in order to make information exchanges under treaties happen, within the proper legal framework.
3. This practice statement applies to all business and service lines within the ATO which want to:
   (a) send GST information to a foreign revenue authority
   (b) request information from a foreign revenue authority for the purposes of GST administration ('GST purposes'), or
   (c) arrange for use of information for GST purposes, when this information has been sent by a foreign revenue authority for GST, income tax or other tax purposes.

4. This practice statement does not cover gathering information where ATO personnel are seeking voluntary cooperation from the foreign sources of information, without the backing of a treaty. For information on this kind of information exchange, read Law Administration Practice Statement PS LA 2007/14 *Gathering and use of information from foreign agencies or sources in relation to goods and services tax, wine equalisation tax and luxury car tax administration*.

5. Where a treaty allows for exchange of information on indirect taxes, the basic legal principles set out in this practice statement will also cover the exchange of information in relation to indirect taxes apart from GST. Likewise the warnings given about what information cannot be exchanged will apply equally to other indirect tax information. However, the focus of this practice statement is the exchange of GST information under treaties, and the procedures to be followed in GST exchange of information. This practice statement does not lay down procedures for exchange of information in relation to other Australian indirect taxes.

STATEMENT

Sending information to a foreign revenue authority

Requirement for treaty to cover GST Exchange of Information

6. GST information that directly or indirectly identifies a person or other entity generally cannot be sent to foreign revenue authorities as the secrecy provisions in our legislation do not generally allow us to give out such information. However, where Australia has a treaty with the other country, and the treaty covers Exchange of Information in relation to GST, then *subject to the approval of the GST Exchange of Information Section* (GST EOI), such information can be sent to a foreign revenue authority through the proper channels (refer to paragraphs 26 to 31 of this practice statement). A list of countries that have treaties that cover GST is provided on the GST Exchange of Information intranet page. This list will be regularly updated.

Information that can be sent where the treaty does not cover GST Exchange of Information

7. There are also two classes of GST information that may be sent, subject to the approval of GST EOI (refer to paragraphs 10 to 13 of this practice statement), to foreign revenue authorities or to other foreign government agencies even where no relevant treaty provides for this.

8. First, information that has already been made publicly available can be sent. For example, material from a business's public website can be sent to a foreign revenue authority, even though it identifies a person by name. A judgment delivered in an Australian court on a case concerning GST can be sent to a foreign revenue authority. A copy of a public ruling can be sent, or other material from the ATO's public website.

9. Secondly, information that does not directly or indirectly identify a taxpayer or other person can in some cases be sent to foreign revenue authorities, even if this information is not publicly available. Sending this kind of internal information requires particular approval from the relevant manager or Senior Executive Service member as well as from GST EOI (see paragraphs 10 to 13 of this practice statement). Such information might include:

   (a) statistics about the GST paid by businesses in various industries

(b) a description of a scheme whose participants cannot be identified directly or indirectly, or

(c) an account of how non-residents of Australia can register for Australian GST and claim input tax credits.

Requirement to consult GST EOI on sending information to foreign revenue authorities

10. If ATO personnel want to send GST information to a foreign revenue authority, that officer must contact GST EOI. The sending of a publicly available document need not go through formal channels, and can be expected to proceed quickly. Where detailed correspondence, a phone hook up or a meeting is planned, this needs to be discussed with GST EOI beforehand. If there is any doubt as to whether the request is made under a treaty, GST EOI needs to be consulted.

11. Where the treaty allows for exchange of GST information, information that is not publicly available may be sent via GST EOI through formal channels. GST EOI acts as the gatekeeper for requests to send GST information to foreign revenue authorities under our treaty provisions. GST EOI will pass approved information on to the Australian competent authority (see paragraphs 26 to 31 of this practice statement). The competent authority will consider the matter, and pass on appropriate information to the competent authority of the relevant foreign revenue authority.

12. Where there is no provision for exchange of GST information in the treaty, and the information falls within the ambit of paragraph 9 of this practice statement, GST EOI must still be consulted. This is because such information may be sensitive. Information that ATO personnel send may end up being published overseas. Also, if there are only a few entities working in a particular industry, it may be possible for them to be identified indirectly. GST EOI will also determine whether the information should be sent through formal channels.

13. A list of GST EOI contacts is available on the GST Exchange of Information Section intranet page.

Requirement to label GST information

14. Sometimes, the GST information may be in the possession of a business line other than the GST business line. Other business lines must not send taxpayer specific or personal GST information to a foreign revenue authority, unless it is permitted under a treaty with an Exchange of Information (EOI) provision that covers GST. For this reason, when GST information is in the possession of another business line, it should be clearly labelled as GST information and it must not be sent to a foreign revenue authority without advice from GST EOI. Advice on labelling is contained on the GST EOI intranet page.

Requesting information from a foreign revenue authority

Requirement to consult GST EOI

15. As with sending information, any requests to a foreign revenue authority for GST information are subject to approval from GST EOI. If ATO personnel want to request GST information from a foreign revenue authority, then that officer should consult GST EOI before approaching the foreign revenue authority. The officer must have tried every reasonable avenue for getting the information from the taxpayer, or from other Australian or public sources. GST EOI will advise on what information can be sought from the foreign revenue authority, and how this should be done. Where the information will be sought under a treaty, then special rules will apply, as set out in this practice statement. In particular, the request for information can only by made to GST EOI. GST EOI will pass the request to Australia's competent authority (see paragraphs 26 to 31 of this practice statement). Our competent authority will pass on the request to the competent authority of the foreign country.

16. Where no treaty applies, sometimes foreign agencies will be prepared to send information voluntarily. Requesting the voluntary sending of information still needs the approval of the GST EOI Section. For information about this kind of information gathering, read PS LA 200714.

Dealing with information already in the ATO

17. Likewise, if an officer wants to:

    (a) use information for GST purposes that has been spontaneously sent by a foreign revenue authority, or

    (b) share information for GST purposes, when a foreign revenue authority has sent this information for income tax or other tax purposes, in answer to a request by the ATO,

    then that officer should first consult GST EOI. GST EOI will advise whether the information can be used for GST purposes.

Requirement to quarantine or label information

18. Information that comes from a foreign revenue authority may be quarantined or labelled to prevent use of this information for purposes other than those allowed for under the relevant treaty. For instance, information sent by a foreign revenue authority under some treaties may only be allowed to be used for income tax purposes, and not for GST. Advice on the use of information received from a foreign revenue authority is contained on the GST EOI intranet page.

Requirement to maintain secrecy of information received

19. Information from a foreign revenue authority that directly or indirectly identifies people or other entities must be kept secret. If a freedom of information request is lodged in respect of information previously provided by a tax treaty partner that is held for GST purposes, the officer handling the request must inform GST EOI and International Strategy and Operations (ISO) in the Large Business and International business line immediately.

Procedure on GST EOI intranet page

20. If after reading this practice statement, ATO personnel have reason to believe that the information exchange they want to make is, or may be, permitted under Australian law and ATO policy, they should check with GST EOI and follow the procedures set out on the GST EOI intranet page. These procedures cover both sending information to and requesting information from foreign revenue authorities.

EXPLANATION

21. As stated above, unless a treaty specifically provides for this, taxpayer specific GST information cannot be sent to foreign revenue authorities, subject to paragraph 8 of this practice statement. (The legislation that covers this is explained at paragraphs 22 to 25 of this practice statement.) Whether information is GST information may depend on how the information was originally collected. Where information is gathered under composite (both GST and income tax) notices, and the relevant treaty only covers exchanges of income tax information, then the ATO will only send this information if it can be clearly identified as being obtained under the income tax law.

Laws that prevent sending information except under treaty

22. Taxpayer information is protected by secrecy provisions in the tax law. In particular, section 355-5 of Schedule 1 to the *Taxation Administration Act 1953* (TAA) protects the confidentiality of indirect tax information and documents. (This section is reproduced in Attachment A to this practice statement). This section provides that, subject to certain exceptions, an officer must not make a record of, or disclose to someone else, information that the officer obtained under an indirect tax law. This section applies to information about any entity other than ATO personnel. The penalty for breaching this section is up to two years' imprisonment.

23. However, it is not an offence for an officer to make a record of or disclose information to someone else if it is done for the purposes of complying with an obligation Australia has under an agreement with another country. (This is made clear by paragraph 355-5(4)(a) and Note 2 following subsection 355-5(4) of Schedule 1 to the TAA and section 23 of the *International Tax Agreements Act 1953.* All of these provisions can be found in Attachment A to this practice statement.) In the past, our international tax agreements (treaties) have generally been written to cover only a few named taxes, and these did not include GST. However, it is anticipated that, over time, an increasing number of foreign countries will enter into revised treaties that will allow for the exchange of GST information between each particular foreign revenue authority and the ATO, through each country's competent authority.

24. 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*. Disclosure of personal information is limited by Information Privacy Principle 11 (IPP 11) in section 14 of the *Privacy Act 1988* (reproduced in Attachment B to this practice statement).

25. However, if a disclosure is required or authorised by law, then it is lawful under IPP 11.1(d) of the *Privacy Act 1988*. A disclosure of GST information under a treaty, consistently with section 23 of the *International Tax Agreements Act 1953*, will be authorised by law for the purposes of IPP 11.1(d).

Information must be relevant and must pass through the competent authority

26. Our treaties state that exchange of information is to be done through each country's 'competent authority'. Australia's competent authority is the Commissioner of Taxation or an authorised representative. Under delegation and various authorisations, the Exchange of Information (EOI) Unit of ISO in Large Business and International carries out the functions of the competent authority for exchange of information between Australia and its treaty partners.

27. Typically, an exchange of information clause in a treaty will contain a statement like the following:

> The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant to the administration or enforcement of the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes to which this Convention applies insofar as the taxation under those laws is not contrary to this Convention.

Refer also to Attachment C to this practice statement for an example of an exchange of information clause.

28. Thus, any information sent under a treaty must:

(a) relate to taxes to which the treaty applies. If the treaty states that it applies to GST, it may be possible to send certain information that relates to GST

(b) be 'foreseeably relevant' to the administration or enforcement of the tax laws in the other country which is party to the treaty. In determining whether disclosure is 'foreseeably relevant', it needs to be established that information is of some demonstrable benefit or assistance to the other country. A mere suspicion that information may be relevant is not enough. However, if available evidence makes it seem reasonably likely that there is a link between a person, other entity or scheme and the other country, then the information about that entity or scheme can be sent to that foreign revenue authority, and

(c) be sent through our competent authority, with its approval, to the other country's competent authority or its authorised representative. This will normally be done in response to a request received by our competent authority. Information can also be sent spontaneously through our competent authority. In special circumstances our competent authority may authorise officers involved in complex cases to directly liaise with similarly authorised representatives of the foreign revenue authority.

29. If ATO personnel receive a request from a foreign revenue authority, which has by-passed the foreign competent authority or the Australian competent authority, they should immediately pass the request on to our competent authority, via GST EOI. The EOI Unit in ISO, which administers the competent authority, will ensure that requests pass through the proper channels.

30. ATO personnel who do not hold a delegation of competent authority power but wish to contact officers of a foreign revenue authority on GST matters should discuss the proposed contact with GST EOI first. If the foreign competent authority agrees to the requested contact, our competent authority will provide the necessary letter of authorisation to the foreign competent authority. This will ensure that the EOI tax treaty rules are being observed.

31. Any visits to overseas tax authorities to discuss exchanges of information must be authorised by our competent authority, which will also co-ordinate the necessary authorisation by the foreign revenue authority through their competent authority.

Requesting information from a foreign revenue authority

32. Any requests to a foreign revenue authority for information, whether under a treaty or not, must be vetted by GST EOI.

33. The request for information itself may disclose confidential information about the taxpayer. For instance, the request may contain the names of the person's family members, and associated entities, or ask about the person's activities in a particular industry, or on visits to the other country. Where a treaty allows for the exchange of information in relation to GST, disclosures of this kind of information, obtained under GST law, will be permitted under the treaty.

34. However, if there is no treaty coverage in relation to indirect tax with that country, then some disclosures of indirect tax information may nevertheless be permitted under an exception in section 355-5 of Schedule 1 to the TAA. One possibility is where disclosures are for the purpose of an Australian indirect tax law (paragraph 355-5(4)(a) of Schedule 1 to the TAA). Another exception is where disclosures are made in the course of the performance of the duties of Commonwealth employment (subparagraph 355-5(4)(b) of Schedule 1 to the TAA). (Section 355-5 is reproduced in Attachment A of this practice statement). Possible exceptions must be discussed with GST EOI.

Using information previously sent

35. GST EOI will need to clear any proposed use, for GST purposes, of information that has been sent to the ATO by a foreign revenue authority for a non-GST purpose.

Maintaining secrecy of information that a treaty partner has sent to Australia

36. Australia's tax treaties generally require that information obtained from a treaty partner must be kept secret in the same way as information obtained from Australian sources, and only used for tax related purposes. You should refer to the ATO Guide to Information Security and the GST guide 'Security of Information – A Quick Guide'. Any breach of a treaty's secrecy provisions could have serious consequences for the ATO or the Australian government. These treaties have been given the force of law in Australia through the *International Tax Agreements Act 1953*. Also, under some treaties information can only be obtained from a treaty partner on certain named taxes, and can only be used in relation to administration or enforcement of those taxes. This means that where information is received for income tax purposes under a treaty that only applies to income tax and fringe benefits tax, that information can not be used for GST purposes (for example, it cannot be shared with the GST business line).

37. In some cases, a treaty partner will send general information that does not identify a person. If the treaty does not allow for GST exchange of information, then the information cannot be used for GST purposes, even though it is just general, non-identifying information.

38. If information from a treaty partner is used contrary to the provisions of a treaty, a decision based on that information could be compromised. If such a decision were subject to review by the Administrative Appeals Tribunal, for example, the Tribunal could well take the view that this information should not have been taken into account.

39. If a freedom of information request is lodged in respect of information previously provided by a tax treaty partner and held for GST purposes, GST EOI and ISO are to be informed immediately.

Process for requesting information

40. The following process must be followed by officers who want to seek information relevant to GST from a foreign revenue authority under an international tax agreement (treaty).

Identification

41. During enquiry or audit activities, ATO personnel may identify issues where tax information held overseas would be helpful. In these circumstances, ATO personnel should discuss with their manager the critical elements of the information and its relevance to the matter. Where necessary, they should seek advice from an access specialist about trying to collect the information locally. They can also approach GST EOI informally at this stage.

42. Where ATO personnel and their manager agree that:

    (a) the information is required to establish a sound assessment or otherwise assist administration of the tax laws

    (b) all reasonable enquiries from taxpayer and domestic sources and publicly available information have been made, and

    (c) they believe that this request would be covered by a treaty,

    a request for assistance in gathering this information should be made to GST EOI using the referral form available on the GST EOI intranet page.

Sending request to GST EOI

43. When ATO personnel send a request for information to GST EOI, sufficient detail must be included to provide a sound understanding of the situation, the relevant transactions and the parties involved. The Indirect Tax International Information Gathering Referral Form should clearly set out:

- details of the requesting officer
- reasons for conducting the compliance or other activity
- details of avenues already undertaken to gather the relevant information
- the name of any GST international officer consulted
- the name of any access specialist consulted
- the name of the other country with which Australia has a treaty, which appears to allow for this request
- background information to enable GST EOI and the foreign revenue authority to understand the request, and why it is reasonably necessary
- exact information requested with clear questions for any tax periods subject to review
- the nexus between the information requested and how it will establish a sound assessment or assist administration of the tax laws
- if an urgent answer is requested, details and explanation of time constraints, and
- a supporting statement from the relevant Executive Level 2 manager, or member of the Senior Executive Service (SES), as appropriate. In exceptional circumstances, a supporting statement by a manager at a lower level than Executive Level 2 will be accepted.

Approval of request

44. On receipt and consideration of the referral, GST EOI will contact the referring staff member to confirm receipt and discuss any further required details.

45. Authorised requests will be forwarded by GST EOI to ISO, as our competent authority. The requesting officer and manager will be informed of the date on which this happens. Requests which are approved by the competent authority will be forwarded by them to the foreign revenue authority.

46. Where the request is considered to be not appropriate for any reason, the request will be returned by GST EOI to the requesting officer with an explanation. If a modified request could be successful, GST EOI may suggest possible modifications.

Progression and finalisation

47. When the information request is made to the foreign revenue authority, GST EOI will inform the requesting officer of:

    (a) the date the information was requested from the foreign revenue authority, and

    (b) an expected timeframe for the receipt in the ATO of the requested information.

48. Our competent authority will receive the requested information and pass it on to GST EOI. GST EOI will verify the taxpayer identification and forward the information received to the requesting officer.

49. Where the information requested cannot be provided by the foreign revenue authority, GST EOI will advise the requesting officer and manager as soon as possible.

Recording on register

50. GST EOI will update the Indirect Tax Information Request Register once a request has been received, and when a request has been forwarded to ISO.

51. This register will be updated by GST EOI to show the result of the request.

Exchange of information within the guidelines is encouraged

52. This practice statement has delivered warnings about limitations on the exchange of GST information between the ATO and foreign revenue authorities. Within these limitations, the ATO encourages the sharing of information with foreign revenue authorities. The ATO will be expected to respond to specific requests made by foreign revenue authorities under treaties. Alternatively, at times the ATO may consider sending information spontaneously. For example, material uncovered during an investigation that has just finished could be of interest to a particular foreign revenue authority. Spontaneous passing on of information may foster a spirit of co-operation between revenue authorities of different governments. This could result in the ATO receiving information that is very helpful in audit and other work. Consult GST EOI, follow the correct procedures, and GST EOI will make every effort to facilitate a successful exchange of information.

TAXATION ADMINISTRATION ACT 1953

SCHEDULE 1 – COLLECTION AND RECOVERY OF INCOME TAX AND OTHER LIABILITIES

Chapter 5 – Administration

PART 5-1 – THE AUSTRALIAN TAXATION OFFICE

Division 355 – Confidentiality

Subdivision 355-A – Protection of confidentiality of indirect tax information

SECTION 355-5 PROTECTION OF CONFIDENTIALITY OF INDIRECT TAX INFORMATION

355-5(1) Object

The object of this section is to protect the confidentiality of taxpayers' personal tax affairs by restricting what you may do with *indirect tax information and *indirect tax documents.

355-5(2) Offence

You commit an offence if:

(a) you:

(i) make a record of information; or

(ii) disclose information to anyone else; and

(b) the information was disclosed to you, or obtained by you, in the course of:

(i) your appointment or employment by the Commonwealth; or

(ii) the performance of services by you for the Commonwealth; or

(iii) the exercise of powers, or the performance of functions, by you under a delegation by the Commissioner; and

(c) the information was disclosed to you, or obtained by you, under an *indirect tax law; and

(d) the information relates to the affairs of an entity other than you.

Penalty: Imprisonment for 2 years.

355-5(3)

Strict liability applies to paragraph (2)(c).

355-5(4)

Subsection (2) does not apply if you make the record for, or you disclose the information to, an entity who is not a Minister and:

(a) the making of the record or the disclosure is for the purposes of an *indirect tax law; or

(b) the making of the record or the disclosure is in the course of:

(i) the performance of the duties of your appointment or employment by the Commonwealth; or

(ii) the performance of services by you for the Commonwealth; or

(iii) the exercise of powers, or performance of functions, by you under a delegation by the Commissioner.

Note 1: A defendant bears an evidential burden in relation to the matters in subsection (4): see subsection 13.3(3) of the Criminal Code.

Note 2: It is not a breach of subsection (2) to record or disclose information in accordance with an obligation Australia has under an agreement with another country. See section 23 of the *International Tax Agreements Act 1953*.

355-5(5)

Subsection (2) does not apply if:

(a) you are:

(i) the Commissioner; or

(ii) a Deputy Commissioner; or

(iii) an individual authorised by the Commissioner or a Deputy Commissioner to disclose the information; and

(b) an item in the following table covers your disclosure:

Disclosures		
Item	**The disclosure is to...**	**and the disclosure...**
1	any entity (other than a Minister)	is for the purpose of the entity carrying out functions under a *taxation law.
2	the Administrative Appeals Tribunal	is in connection with proceedings under a *taxation law.
3	the Australian Statistician	is of information to be used for the purposes of the *Census and Statistics Act 1905*.
4	the Chief Executive Officer of the Commonwealth Services Delivery Agency	is of information to be used for the purpose of the administration of the social security law (within the meaning of the *Social Security Act 1991*).
5	the Chief Executive Officer of Customs	is for any purpose.
6	the Secretary of the Department dealing with matters relating to the social security law (within the meaning of the *Social Security Act 1991*)	is of information to be used for the purpose of the administration of that law.
7	an individual who holds an office of a State or Territory, being an office prescribed for the purposes of this table item	both: (a) relates to alcoholic beverages; and (b) is for the purpose of the individual administering an *arrangement for the rebate, refund or other payment or credit by a State or Territory in respect of alcoholic beverages.

Protection of confidentiality of indirect tax information and documents from courts

355-5(6)

You are not to be required:

(a) to disclose *indirect tax information to a court; or

(b) to produce an *indirect tax document to a court; unless it is necessary for the purposes of an *indirect tax law.

INTERNATIONAL TAX AGREEMENTS ACT 1953

23 Gathering and exchanging information

(1) The Commissioner or an officer authorised by the Commissioner may use the information gathering provisions for the purpose of gathering information to be exchanged in accordance with the Commissioner's obligations under an international agreement.

(2) Making a record of, and exchanging, information in accordance with the Commissioner's obligations under an international agreement is not a breach of a provision of a taxation law that prohibits the Commissioner or an officer from making a record of, or disclosing, information.

Example: An example of such a provision is section 3C of the *Taxation Administration Act 1953*.

(3) Subsections (1) and (2) have effect whether or not the information relates to Australian tax.

(4) In this section:

information gathering provision means a provision of a taxation law that allows the Commissioner:

(a) to access land, premises, documents, information, goods or other property; or

(b) to require or direct a person to provide information; or

(c) to require or direct a person to appear before the Commissioner or an officer and give evidence or produce documents.

international agreement means:

(a) an agreement given the force of law under this Act; or

(b) some other agreement that allows for the exchange of information on tax matters between Australia and:

(i) a foreign country or a constituent part of a foreign country; or

(ii) an overseas territory.

taxation law has the same meaning as in the *Income Tax Assessment Act 1997*.

PRIVACY ACT 1988

No 119 of 1988

PART II – INTERPRETATION

SECTION 6 INTERPRETATION

In this Act, unless the contrary intention appears:

…

'**personal information**' means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

…

PART III – INFORMATION PRIVACY

Division 2 – Information Privacy Principles

SECTION 14 INFORMATION PRIVACY PRINCIPLES

14 The Information Privacy Principles are as follows:

INFORMATION PRIVACY PRINCIPLES

Principle 11 Limits on disclosure of personal information

1 A record-keeper who has possession or control of a ***record*** that contains ***personal information*** shall not disclose the information to a person, body or ***agency*** (other than the ***individual concerned***) unless:

(a) the ***individual concerned*** is reasonably likely to have been aware, or made aware under Principle 2, that information of that kind is usually passed to that person, body or ***agency***;

(b) the ***individual concerned*** has consented to the disclosure;

(c) the record-keeper believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the ***individual concerned*** or of another person;

(d) the disclosure is required or authorised by or under law; or

(e) the disclosure is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue.

2 Where ***personal information*** is disclosed for the purposes of enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the purpose of the protection of the public revenue, the record-keeper shall include in the ***record*** containing that information a note of the disclosure.

3 A person, body or ***agency*** to whom ***personal information*** is disclosed under clause 1 of this Principle shall not ***use*** or disclose the information for a purpose other than the purpose for which the information was given to the person, body or ***agency***.

Attachment C

An example of an Exchange of Information provision in a treaty with a foreign country:

INTERNATIONAL TAX AGREEMENTS ACT 1953

SCHEDULES

SCHEDULE 4 – New Zealand Agreement

New Zealand Agreement

AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF NEW ZEALAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

ARTICLE 2

Taxes covered

1. The existing taxes to which this Agreement shall apply are:

   (a) In New Zealand:

   the income tax and the fringe benefit tax;

   (b) In Australia:

   the income tax, the resource rent tax in respect of offshore projects relating to exploration for or exploitation of petroleum resources and the fringe benefits tax imposed under the federal law of Australia.

2. This Agreement shall apply also to any identical or substantially similar taxes which are imposed under the federal law of Australia or the law of New Zealand after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other within a reasonable period of time of any significant changes which have been made in the law of their respective States relating to the taxes to which this Agreement applies.

3. Notwithstanding paragraphs 1 and 2, the taxes to which Articles 26 and 27 shall apply are:

   a) in the case of New Zealand, taxes of every kind and description imposed under its tax laws; and

   b) in the case of Australia, taxes of every kind and description imposed under the federal tax laws administered by the Commissioner of Taxation.

…

ARTICLE 26

Exchange of information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic law concerning taxes referred to in Article 2, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1.

2. 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 law 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.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures at variance with the law and administrative practice of that or of the other Contracting State;

b) to supply information which is not obtainable by the competent authority under the law or in the normal course of the administration of that or of the other Contracting State;

c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information 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.

Amendment history

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Legislative references	Census and Statistics Act 1905 International Tax Agreements Act 1953 23 International Tax Agreements Act 1953 Sch 4 ITAA 1997 Privacy Act 1988 6(1) Privacy Act 1988 14 Social Security Act 1991 TAA 1953 3C TAA 1953 Sch 1 355-5 TAA 1953 Sch 1 355-5(4) TAA 1953 Sch 1 355-5(4)(a) TAA 1953 Sch 1 355-5(4)(b)
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