

***Guide to Exchange of Information  
under Council Directive 2011/16/EU, Ireland's Double  
Taxation Agreements and Tax Information Exchange  
Agreements and the OECD/Council of Europe Convention on  
Mutual Administrative Assistance in Tax Matters***

***Role of International Tax Division***

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## A. SCOPE OF THIS GUIDE

### 1. What is the scope of this Guide?

Exchange of taxpayer information between Revenue and other tax administrations is provided for in various legal instruments such as Ireland's Double Taxation Agreements. The extent of the exchange provided for, and the taxes covered, depend on the provisions in the relevant instrument.

This Guide sets out:

- the role of Exchange of Information Branch, International Tax Division, in relation to exchange of information under Council Directive 2011/16/EU on administrative cooperation in the field of taxation, Ireland's Double Taxation Agreements and Tax Information Exchange Agreements and the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters;
- the procedures for dealing with the making of requests for information and the receipt of requests for information in relation to those requests that fall to Exchange of Information Branch to process.

*The Exchange of Information provisions in Council Directive 2011/16/EU, Ireland's Double Taxation Agreements and Tax Information Exchange Agreements and the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters can be used to source information from foreign tax administrations for use in an audit/investigation. You are urged to consider using these provisions in suitable cases.*

*Where you come across information in a particular case that you consider might be of interest to one of Ireland's exchange of information partners (e.g. because it could affect the tax base of that partner), please bring it to the attention of Exchange of Information Branch.*

*This Guide relates solely to the exchange of information provisions operated by Exchange of Information Branch, International Tax Division. The contact numbers for Exchange of Information Branch are VPN 48130, 48290, 48796, 48127 and 48639*

## BACKGROUND INFORMATION

### 2. What is Exchange of Information (EOI)?

EOI is the cross-border sharing of taxpayer information between tax administrations to detect and prevent tax evasion and to ensure, among other things, the correct application of a country's domestic tax legislation.

### 3. Why is it important to exchange information?

Many taxpayers now operate cross-border and, therefore, tax administrations need to co-operate with each other to protect their respective tax bases. One of the key elements of this co-operation is EOI.

### 4. What is the legal basis for exchanging information?

Information may be exchanged under the following legal instruments:

- Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (“[Council Directive 2011/16/EU](#)”). The relevant national implementing provision is S.I. 549 of 2012 (European Union (Administrative Cooperation in the field of Taxation) Regulations, 2012);
- The Exchange of Information Article (normally Article 26) in Ireland’s Double Taxation Agreements (“[DTAs](#)”). Ireland’s DTAs are given force of law under Section 826(1) of the Taxes Consolidation Act 1997, as amended. All of Ireland’s DTAs contain an Exchange of Information Article;
- Ireland’s Tax Information Exchange Agreements (“[TIEAs](#)”). Ireland’s TIEAs are given force of law under Section 826(1B) of the Taxes Consolidation Act, 1997, as amended;
- OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters (“the [Convention](#)”). The relevant national implementing provision is S.I. 34 of 2013 (Mutual Assistance in Tax Matters Order 2013).

### 5. With which countries does Ireland exchange information?

Council Directive 2011/16/EU enables information to be exchanged between all Member States of the EU.

Ireland has a wide network of DTAs and TIEAs and new agreements are in the pipeline. Details of DTAs/TIEAs in effect and under negotiation are available on [www.revenue.ie](http://www.revenue.ie) or by clicking [here](#).

The Convention enables information to be exchanged among those countries that are Parties to that Convention. A list of those countries is available on [www.oecd.org](http://www.oecd.org) or by clicking [here](#)

### 6. What taxes are covered?

Council Directive 2011/16/EU provides for the exchange of information relating to taxes of “any kind levied by, or on behalf of, a Member State or the Member State’s territorial or administrative subdivisions, including the local authorities”. However, Council Directive 2011/16/EU does not apply to VAT, customs duties, and EU excise duties as these are covered by other EU legislation on administrative cooperation between Member States.

Ireland’s older DTAs provide for exchange of information relating to direct taxes only. However, more recent DTAs provide for exchange of information relating to taxes of every kind and description.

All of Ireland’s TIEAs provide for the exchange of information relating to direct taxes and to such other taxes as are specified in the TIEA.

The Convention provides for the exchange of information relating to direct taxes and taxes on net wealth. Parties to the Convention may also agree that information may be exchanged in relation to other taxes listed in the Convention. Information on the taxes in respect of which information may be exchanged between Ireland and other Parties to the Convention is available by clicking on the following link: [covered taxes](#).

## **7. Does a person need to be authorised to exchange information with another country?**

Yes. Taxpayer information is confidential and may only be exchanged by persons authorised by the Board of the Revenue Commissioners to effect such exchanges. Certain staff in Exchange of Information Branch are so authorised. Every exchange of information, whether incoming to Ireland or going out from Ireland, must be effected by an authorised person in Exchange of Information Branch.

## **8. How is information actually exchanged?**

Information is usually exchanged on request, spontaneously or automatically. This Guide deals only with EOI on request and spontaneously.

### **EXCHANGE OF INFORMATION ON REQUEST**

#### **(a) Requests for Information Initiated by Revenue**

## **9. What is EOI on request?**

EOI on request is where a tax administration has a particular case in mind. For example, during the course of an audit the auditor may become aware of UK source income and may wish to have the quantum of the income verified by HMRC.

## **10. What should I do if I want to request information from another tax administration?**

You should complete the template which is available on request from Exchange of Information Branch. Insofar as it is possible, all available domestic sources of information should be exhausted before a request is sent to Exchange of Information Branch.

## **11. How far back in time can I go in requesting information?**

Council Directive 2011/16/EU and Ireland's DTAs (with the exception of the DTA with Switzerland) do not contain any time limits in relation to requesting information from another tax administration although it is unlikely that information relating to tax years more than 5 years prior to the request will be available for exchange.

In relation to TIEAs, the normal rule is that information relating to civil cases may only be requested for taxable periods from the date the TIEA takes effect and information relating to criminal matters may be requested without any restriction. Individual TIEAs (normally Article 13) should be consulted for details.

In relation to the Convention, information relating to civil cases may only be requested for taxable periods from the date the Convention takes effect in both countries. [The Convention came into effect in Ireland on 1 January 2014.] Generally information relating to criminal matters may be requested without restriction.

## 12. Are there restrictions on the use of information received?

Yes. The general rules are:

- Council Directive 2011/16/EU (Article 16) provides that information received under the Directive may only be used for the administration and enforcement of the domestic laws concerning the taxes referred to in Article 2 of the Directive i.e. to taxes of “any kind levied by, or on behalf of, a Member State or the Member State’s territorial or administrative subdivisions, including the local authorities” but does not apply to VAT, customs duties and EU excise duties;
- Ireland’s older DTAs (the Exchange of Information Article (usually Article 26)) provide that information received under those Agreements may only be used for direct tax purposes. Some of Ireland’s more recent DTAs (signed on or after 24 October 2008) are wider in scope and allow information received to be used for any tax purpose;
- TIEAs (usually Article 8) generally allow the information to be used for all the taxes covered by the TIEA;
- The Convention (Article 22) allows information to be used for other purposes provided that the laws of the Party which supplied the information permits this and that that Party authorises such use. However, where a category of tax is subject to a reservation by the sending Party, the receiving Party cannot use the information for the category of tax that is subject to this reservation.

All documentation received by Exchange of Information Branch on foot of a request sent to another tax administration is stamped, before it is passed to the Business Unit/District that initiated the request, with a stamp indicating that the use to which it may be put is restricted. Business Units/Districts should ensure that the information is only used for the uses permitted by the instrument in accordance with which the information was received - the relevant instrument should be consulted. Exchange of Information Branch should be contacted if there is any doubt regarding the use to which information received may be put.

### **(b) Requests for Information Received by Revenue**

## 13. How long do I have to respond to a request for information?

Exchange of Information Branch is responsible for responding to requests and to that end the Branch accesses information on Revenue databases and publicly available information. The Branch also contacts taxpayers and third parties. From time to time it is necessary for the Branch to seek input from Business Units/Districts. In such cases we ask that you provide the information needed in a timely manner. It is essential that requests for information be responded to as quickly as possible as information provided after a long delay may be of little value to the requesting tax administration. Delays in providing information may also affect how Ireland is perceived internationally.

## 14. Is Ireland obliged to respond?

Council Directive 2011/16/EU and all of Ireland’s DTAs, TIEAs and the Convention oblige the contracting parties to respond to valid requests for information.

**15. Are there restrictions on the use of information sent to another tax administration?**

Yes, the same restrictions apply as are set out in Q12.

### SPONTANEOUS EXCHANGE OF INFORMATION

**16. What is spontaneous EOI?**

Spontaneous EOI is where a Business Unit/District has information that may be of interest to another tax administration, e.g. the receipt by a company resident in another country of substantial consultancy fees from an Irish company, and wishes the other country concerned to be made aware of that information even though no request has been received.

Council Directive 2011/16/EU and all of Ireland's DTAs and the Convention provide for spontaneous EOI. Ireland's TIEAs only provide for EOI on request.

Article 9 of Council Directive 2011/16/EU obliges Member States to spontaneously exchange information where the tax base of another Member State may be at risk. A separate instruction i.e. TDM 37-00-35, issued in March 2015 concerning the spontaneous exchange of **cross-border rulings** and the provisions of that instruction should be followed in relation to such rulings.

If you become aware of information not covered by instruction TDM 37-00-35 and which you consider would affect the tax base of a country with which Ireland may spontaneously exchange information, you should bring that information to the attention of Exchange of Information Branch.

### GENERAL INFORMATION

**17. Can the information exchanged be disclosed to a third party?**

Information received from a foreign tax administration must be kept confidential in the same way as information obtained from domestic sources. It may only be disclosed as provided for in Council Directive 2011/16/EU (Article 16), the relevant DTA (Article 26) or TIEA (Article 8), or the Convention (Article 22) i.e. usually only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes covered by the instruments concerned.

Most countries also regard as confidential the fact that they have made requests for information to another country. Therefore, without the express permission of the other country, we do not disclose (for example, in reply to a PQ or press query) the existence of correspondence to third parties. Exchange of Information Branch should be contacted where a reply to a third party would involve the disclosure that correspondence existed and/or the content of that correspondence.

All documentation received by Exchange of Information Branch on foot of a request sent to another tax administration is stamped, before it is passed to the Business Unit/District that initiated the request, with a stamp indicating that the use to which it may be put is restricted. Business Units/Districts should ensure that the information is only disclosed to the persons permitted by the instrument in accordance with which the information was received. In all cases the relevant instrument should be consulted where disclosure other than to persons within Revenue is being

contemplated. Exchange of Information Branch should be contacted if there is any doubt regarding the persons to which disclosure may be made.

#### **18. What should I do if I receive a Freedom of Information request?**

Any request received under the Freedom of Information Act in relation to EOI under Council Directive 2011/16/EU, DTAs, TIEAs or the Convention should be referred to Exchange of Information Branch.

Updated: July 2015

A more recent version of this manual is available.