

OECD International Academy for Tax and Financial Crime Investigation

Managing Financial Investigations



INTERNATIONAL COOPERATION

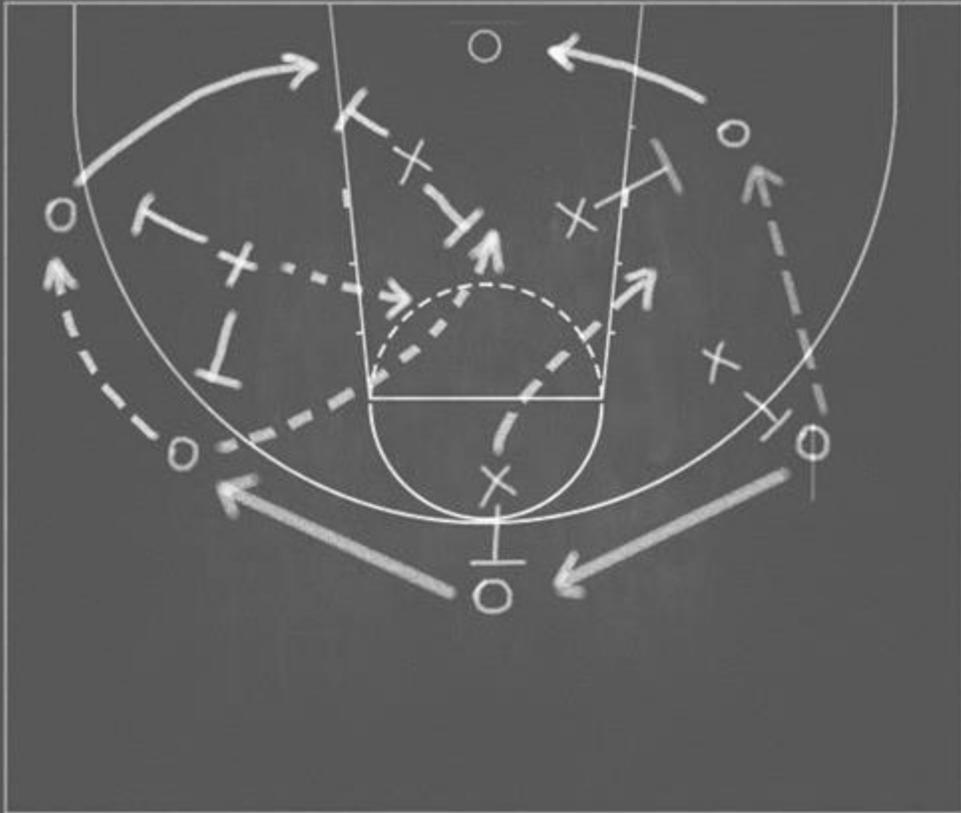
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DEPARTMENT OF JUSTICE CANADA

Objectives

- Get familiar with international cooperation agreements
 - Help guide you when making a decision as to which instrument to use
 - Draw your attention on how you can use information/evidence obtained
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GAMEPLAN



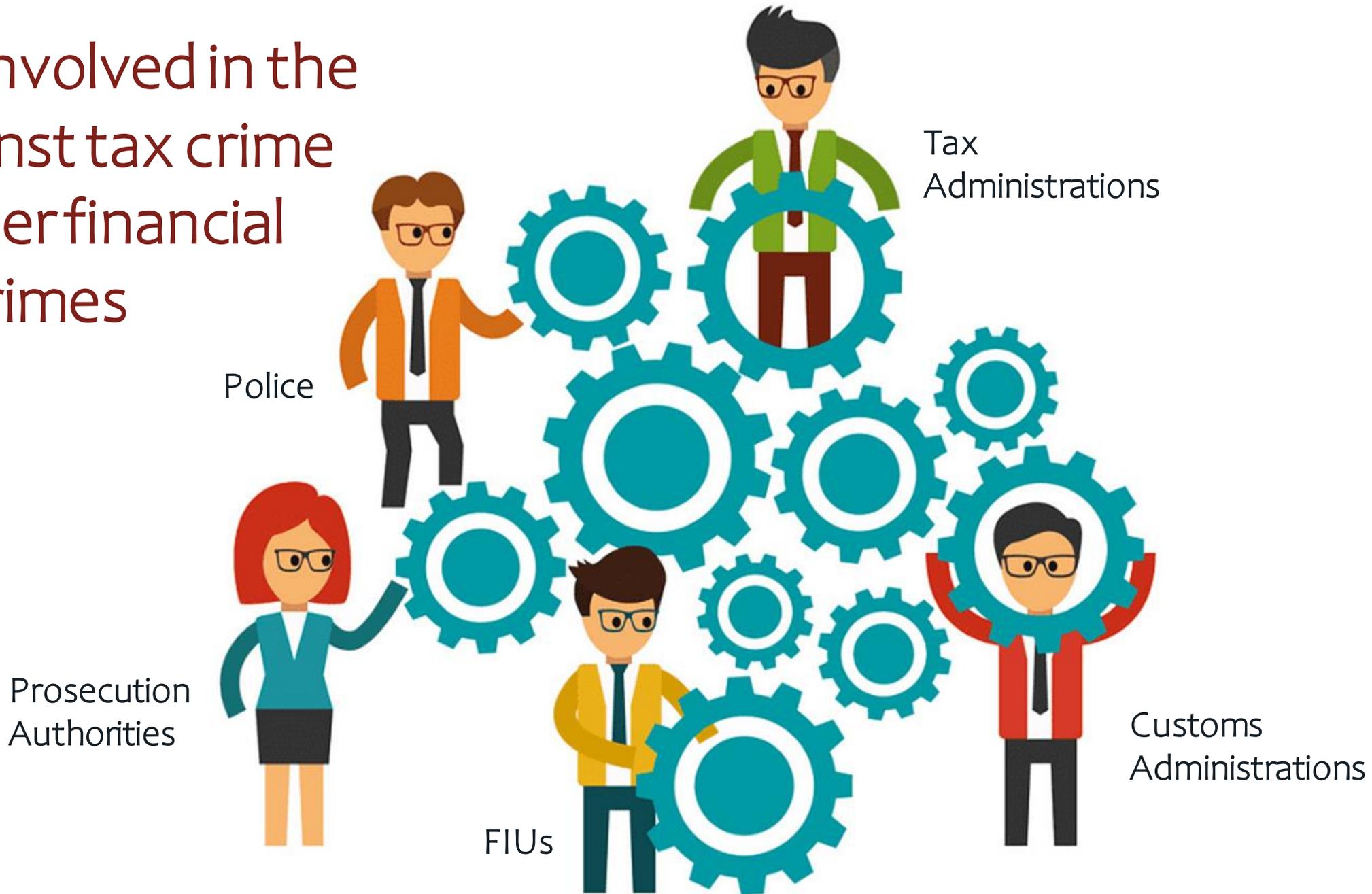
...FOR THE NEXT DAY AND A HALF

1. Bases of international cooperation
2. Exercise
3. Tax Agreements
4. Exercise
5. Mutual Legal Assistance Agreements
6. Scenario-based exercise
7. Wrap up

TRIVIA



Agencies involved in the fight against tax crime and other financial crimes



TEAM WORK

No borders for those who commit crimes

For government officials

- Borders are real
- Each country is sovereign

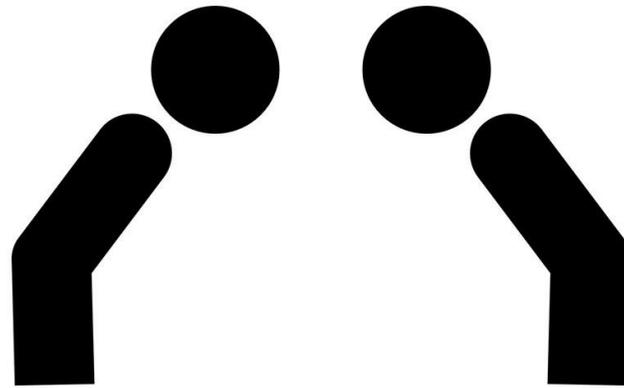


Importance of international cooperation
through proper channels

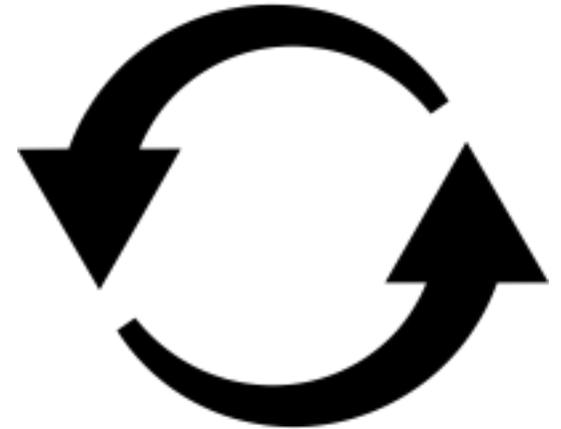
Governing principles



Sovereignty



Comity



Reciprocity

FACTORS AT PLAY

WHO?

- Requesting country & entity

WHAT?

- Type of offence / taxes investigated
- Type of assistance sought

TO
WHOM?

- Agreement with requested country
- Domestic laws of requested country

International Agreements

EU Directives

Basis for
assistance

Domestic Laws

« Police to Police »

International Agreements

Tax Administration
investigators only



Exchange of
Information (EOI)

Law
Enforcement
in general



Mutual Legal Assistance
in Criminal Matters
(MLA)

Tax – Agreements



Tax Agreements



Bilateral Agreements

Multilateral Conventions



Bilat Double Taxation Conventions (DTC)



Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAAC)



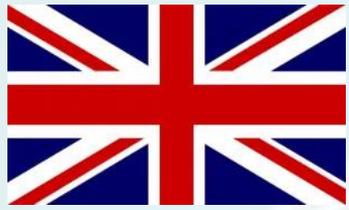
EU Directives & Regulations



Exercise #1

Tax Agreements

GROUP 1



Double Taxation Conventions (DTCs)



1. Does the UK have a DTC with the country from which each member of the group is?
2. There is a DTC between **UK & Oman** and **UK & Canada**. For those 2 DTCs:
 - a. What is/are the section(s) of the DTCs relevant to exchange of information?
 - b. Who can exchange information?
 - c. For what purpose(s) can information be exchanged?
 - d. What is the standard that has to be met to exchange information for this/these purpose(s)?
 - e. What information should an Exchange of Information request from the UK should contain?
 - f. What type of information can be exchanged?
 - g. Who can the information be shared with?

GROUP 2



Tax Information Exchange Agreements (TIEAs)



1. With which countries does South Africa have TIEAs in Force
2. Choose 2 of those TIEAs and compare them:
 - a. What is/are the section(s) of the TIEAs relevant to exchange of information?
 - b. Who can exchange information?
 - c. For what purpose(s) can information be exchanged?
 - d. What is the standard that has to be met to exchange information for this/these purpose(s)?
 - e. What information should an Exchange of Information Request from SA should contain?
 - f. What type of information can be exchanged?
 - g. Who can the information be shared with?

GROUP 3



Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAAC)



1. Has the country from whom each member of the group is ratified the MAAC?
2. Turkey has ratified the MAAC:
 - a. How many countries can Turkey exchange information with under the MAAC?
 - b. What is/are the section(s) of the MAAC relevant to exchange of information?
 - c. Who can exchange information?
 - d. For what purpose(s) can information be exchanged?
 - e. What is the standard that has to be met to exchange information for this/these purpose(s)?
 - f. What information should an Exchange of Information request to Turkey should contain?
 - g. What type of information can be exchanged?
 - h. Who can the information be shared with?

GROUP 4



EU Council Regulation No. 904/2010 on Administrative Cooperation and Combating Fraud in the Field of Value Added Tax



1. Italy is party to the Regulation...

- a. How many countries can Italy exchange information under the Regulation?
- b. What is/are the section(s) of the Regulation relevant to exchange of information?
- c. Who can exchange information?
- d. For what purpose(s) can information be exchanged?
- e. What is the standard that has to be met to exchange information for this/these purpose(s)?
- f. What information should an Exchange of Information request from Italy should contain?
- g. What type of information can be exchanged?
- h. Who can the information be shared with?

Tax – Who exchanges the info?



Agreements: « Competent Authority »



Minister of Finance / Taxation

(or authorized representative)



For Canada: Minister of National Revenue
(Canada Revenue Agency)

Tax – Ways to exchange info



On Demand



Spontaneously



Automatically

Tax – Standard



- Information that is **FORESEEABLY RELEVANT** to the:
 - Administration or enforcement of the domestic laws concerning ... taxes
 - Correct application of the provisions of the Convention (DTC only)
- “NECESSARY” = same as foreseeably relevant

Tax – Standard... Cont'd



Exchange of information
to the « WIDEST POSSIBLE EXTENT »

No fishing expeditions!!



- Information unlikely to be relevant to the tax affairs of a given taxpayer
- Speculative requests that have no apparent nexus to an open inquiry/investigation

Tax – Type of taxes



DTCs and TIEAs

What is the wording of the agreement?

- « Taxes of every kind and description imposed on behalf... » ?
- « Taxes covered by this Agreement » ?



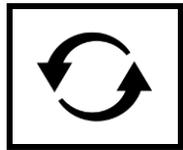
VAT often excluded

Tax – Type of taxes ... Cont'd



MAAC

Reservations entered by Requesting and Requested State?



Reciprocity



You cannot ask for what you cannot give!

Tax – Type of taxes ... Cont'd



E.g. Canada's reservations :

Canada will not provide any form of assistance in relation to the taxes of other parties described in any of sub-paragraphs 1(b)(i), (ii), (iii) A, B, E, F and G and (iv) of Article 2 of the Convention (as permitted by sub-paragraph 1(a) of Article 30 of the Convention).

Tax – Type of taxes ... Cont'd



Excerpt of Article 2(1)(b) of the MAAC

- i. taxes on income, profits, capital gains or net wealth which are **imposed on behalf of political subdivisions** or local authorities of a Party
- ii. compulsory **social security** contributions payable to general government or to social security institutions established under public law, and

Tax – Type of taxes ... Cont'd



iii. taxes in other categories, except **customs duties**, imposed on behalf of a Party, namely:

- A. Estate, inheritance or gift taxes,
- B. Taxes on immovable property
- E. Taxes on the use or ownership of motor vehicles
- F. Taxes on the use or ownership of movable property other than motor vehicles,
- G. Any other taxes;

iv. taxes in categories referred to in sub-paragraph iii. above which are imposed **on behalf of political subdivisions** or local authorities of a Party.

Tax – Type of taxes ... Cont'd



E.g. UK's reservations:

No reservation!



[UK's Reservations](#)

“UK” is not only UK! It includes other countries
Make sure you pick the right one!!

Tax – Type of taxes ... Cont'd



Council of Europe's website

Annexe A to the Convention

Taxes to which the
Convention would apply by
country: [here](#)

Tax – What can be obtained? Cont'd



Generally...



Legal & beneficial ownership information and identity



Accounting records



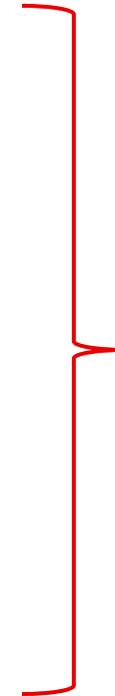
Banking information



Tax information

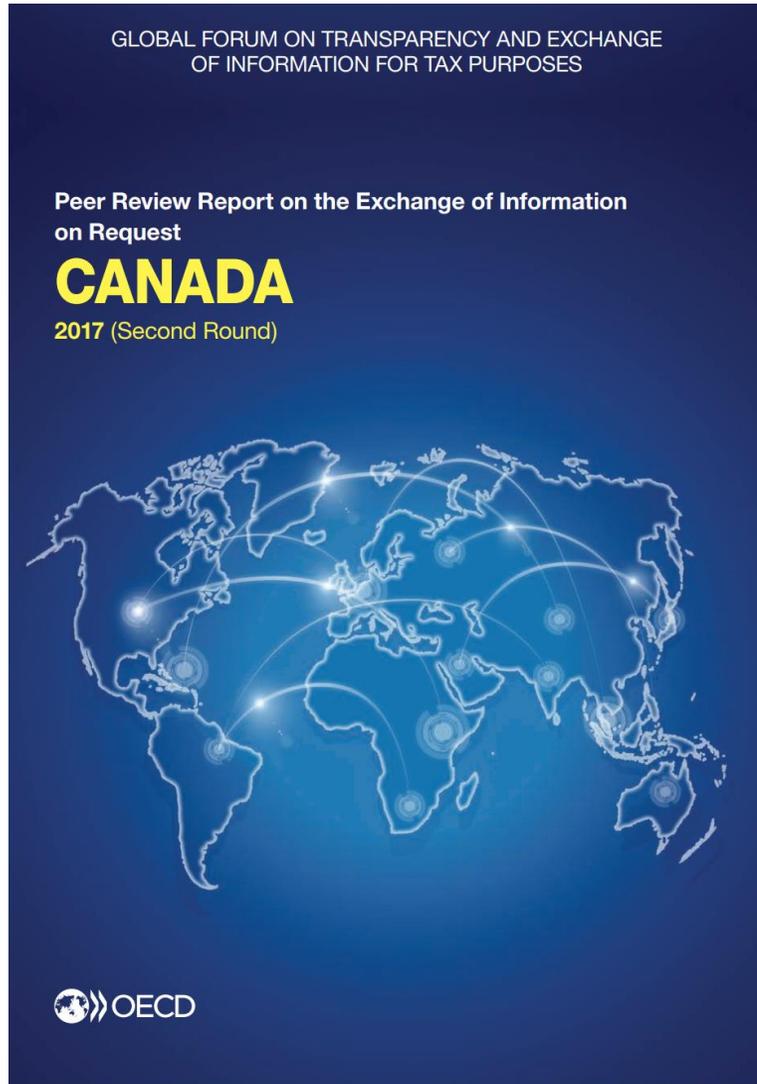


Interviews



Exceptions

Tax – What can be obtained? Cont'd



Global Forum on Transparency and Exchange of Information for Tax Purposes, Peer Reviews (second round or combined review)

- [English](#)
- [French](#)

Tax - Content of request (on demand)



Generally...

- Article 5 TIEA Model

May need more:

- What are you seeking?
- Domestic laws of the Requested State to obtain what you are seeking.



Tax – Use & Sharing



- Information may be disclosed to limited persons/authorities: « ... enforcement or prosecution in respect of taxes... »
- Information can only be used only for those purposes
- Depending on agreement: further disclosure possible ONLY with prior written consent.

MLA – Agreements



MLA – Agreements... Cont'd



Bilateral Treaties & Multilateral Conventions



[Canada
Treaties](#)



[Inter-
American
Convention
on MLA](#)

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

[List of COE
Treaties](#)



UNITED NATIONS

[List of UN Penal
Treaties](#)



Exercise #2

MLA Agreements

GROUP 1



UN Convention on Corruption (UNCAC)



1. From which countries can the United Arab Emirates request assistance to pursuant to this Convention?

2. Analyze the Convention:
 - a. For what type of offences can the Convention be used?
 - b. What type of assistance can be obtained?
 - c. Who is usually responsible for MLA under the Convention?
 - d. What is the content of a request under the Convention?
 - e. What can the information obtained be used for?
 - f. With whom can the information be shared?
 - g. ...

GROUP 2



OAE Inter-American Convention on Mutual Assistance in Criminal Matters

1. From which countries can Peru request assistance pursuant to this Convention?
2. Analyze the Convention:
 - a. For what type of offences can the Convention be used?
 - b. What type of assistance can be obtained?
 - c. Who is usually responsible for MLA under the Convention?
 - d. What is the content of a request under the Convention?
 - e. What can the information obtained be used for?
 - f. With whom can the information be shared?
 - g. ...

GROUP 3



Bilateral MLA Treaties



1. Does Jamaica have a MLA Treaty with the country from which each member of the group is?
2. Analyze one of Jamaica's bilat MLA treaties
 - a. For what type of offences can the treaty be used?
 - b. What type of assistance can be obtained?
 - c. Who is usually responsible for MLA under the treaty?
 - d. What is the content of a request under the treaty?
 - e. What can the information obtained be used for?
 - f. With whom can the information be shared?
 - g. ...

GROUP 4



OE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (COE 141)



1. From which countries can Portugal request assistance to pursuant to this Convention?
2. Analyze the Convention:
 - a. For what type of offences can the Convention be used?
 - b. What type of assistance can be obtained?
 - c. Who is usually responsible for MLA under the Convention?
 - d. What is the content of a request under the Convention?
 - e. What can the information obtained be used for?
 - f. With whom can the information be shared?
 - g. ...

MLA – Who exchanges the info?



Agreements: « Central Authority »



Ministry of Justice / Attorney General
(or officials designated)



For Canada: Minister of Justice (International Assistance Group)

MLA – Ways to exchange info



On Demand



Spontaneously

MLA – Standard



- « Afford the widest possible measure » of mutual assistance
- Exact standard not specified in agreements
- Depends on:
 - The type of assistance sought
 - The domestic laws of the Requested State

MLA – Type of offences



What is the wording of the agreement?

- Indictable offence?
- Offence punishable by ... years of imprisonment?
- Dual criminality? (conduct constitutes an offence in the Requested country?)

MLA – What can be obtained?



What does the agreement say?



Providing information/evidence
(compelled)



Executing searches & seizures



Witness statements



Witness testimony by videolink

MLA – What can be obtained? (Cont'd)



Enforcing restraint/forfeiture orders



Lending court exhibits



Enforcing fines



Transfer of sentenced person to give evidence or assist in an investigation

MLA – Content of request (on demand)



Generally...

- Article 5 MLAT Model

May need more:

- What are you seeking?
- Domestic laws of the Requested State to obtain what you are seeking.



MLA – Use & Sharing



- Cannot use or transfer information or evidence for investigations other than those stated in the request.
- Further disclosure: **ONLY** with prior written consent.

MLA – Non Treaty Request

- Discretion to assist
- Based on reciprocity
- Canada's assistance is limited





Exercise #3

Scenario

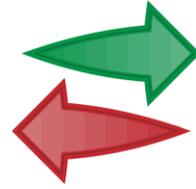
Which agreement to chose?



Considerations



Country



Reciprocity



Offence



Taxes under investigation



Assistance sought



Will you want to share the info?

