



OECD International Academy for Tax and Financial Crime Investigation

International Cooperation in Financial Investigations

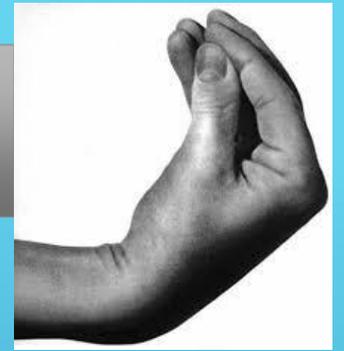


THE INTERNATIONAL COOPERATION SUPPORTING THE ECONOMIC AND FINANCIAL INVESTIGATIONS



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LET'S CLARIFY THE MISUSE OF THIS ITALIAN HAND GESTURE



In Italy, this gesture is used when someone says something that doesn't make much sense to you or to ask someone:



What* are you saying/doing?!?

What's happening?!?

Why!?!

Who is that person?

**the hell (or something less polite...)*

Please, once you come back home, spread the truth!



THE MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS

INTERNATIONAL COOPERATION ACTIVITIES IN FISCAL MATTERS



(Tax crimes are included!)

*Information
exchange «upon
request»
EOIR*

*«Spontaneous»
Information
exchange
SEOI*

*«Automatic»
Exchange of
Information
AEOI*

*The most widely used
form of cooperation*

does not imply reply

*Constantly evolving
(CRS-CbCR- APA etc.)*

INTERNATIONAL COOPERATION IN TAX MATTERS – LEGAL BASIS



BILATERAL

- DTC Double Taxation Convention (Model OECD – art. 26) on EOI
- TIEA (*Tax Information Exchange Agreement*) - Model Agreement developed by the OECD in 2002

MULTILATERAL

- Convention OECD – Council of Europe (MAAC) signed in Strasbourg in 1988, amended in 2010

Taxes of every kind and description imposed on behalf of the Contracting States

INTERNATIONAL COOPERATION ACTIVITIES IN FISCAL MATTERS



ACTIVE COOPERATION



**NEED FOR
COOPERATION
ARISING FROM THE **MY**
UNIT**

PASSIVE COOPERATION



**NEED FOR
COOPERATION
ARISING FROM THE
FOREIGN
COUNTERPART
AGENCY**



INFORMATION THAT CAN BE (GENERALLY) OBTAINED WITH A MAA REQUEST

Every information which may be linked to tax evasion/avoidance and other tax crimes.

- **Information on the identity and legal and beneficial ownership on all forms of domestic or foreign legal entities** (e.g. companies, partnerships, foundations) and arrangements (e.g. trusts, *fideicomisos*, *fiducies*).
- **Accounting information including accounting records, financial accounting statements, underlying supporting documentation** (e.g. invoices, contracts, receipts), deeds, asset documents and correspondence).
- **Banking information:** account, identity, legal structure and beneficial owner of the account holder.
- **Information on assets held by individuals, directly or indirectly**, such as immovable property or financial assets.

Foreseeable Relevance

In the context of international exchange of information upon request (EoIR), 'foreseeable relevance' is a condition for the obligation of the requested state to provide information to the requesting state.

List of information to be provided

- 1 The identity of the person under examination or investigation;
- 2 A statement of the information sought including its nature and the form in which the requesting authority wishes to receive the information from the requested authority;
- 3 The tax purpose for which the information is sought;
- 4 Grounds for believing that the information requested is held in the requested jurisdiction or is in the possession or control of a person within the jurisdiction of the requested authority;
- 5 To the extent known, the name and address of any person believed to be in possession of the requested information;
- 6 A statement that the request is in conformity with the law and administrative practices of the requesting authority, that if the requested information was within its jurisdiction it would be able to obtain it;
- 7 A statement that the requesting authority has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

These requirements are intended to ensure that fishing expeditions do not occur, they nevertheless need to be interpreted liberally in order not to frustrate effective EOI.

OECD-Council of Europe Convention on Mutual Administrative Assistance in Tax Matters - MAAC (signed in Strasbourg 1988, amended in 2010)

The treaty allows the Parties to develop an extensive administrative cooperation covering all compulsory taxes (with the exception of customs duty). The types of assistance are varied, EOIR, simultaneous tax examinations and participation in tax examinations carried out abroad, the recovery of taxes and notification of documents.



Total number of ratifications around **140 Countries**

<https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=127>

OECD Website on Tax Cooperation

<https://www1.compareyourcountry.org/tax-cooperation/en/0/all/default>

Compare your country
Tax co-operation

Exchange of information on request (EOIR) Automatic exchange of information (AEOI) BEPS Glossary

select jurisdiction

Global Forum membership
EOIR rating round 1
EOIR rating round 2
 Mutual Administrative Assistance Convention

Mutual Administrative Assistance Convention, Current status

- = in force
- = signed
- = requested to join
- = no

click on a jurisdiction to access a detailed summary

THE IMPORTANCE OF THE AEOI

Did you know that your National Tax Administration has (probably) already available information regarding your taxpayers' economic and financial “foreign interests” received from abroad?

(Around 120 Jurisdictions have subscribed the MCAA)

- ***No request;***
- ***Systematic mandatory exchange;***
- ***Predetermined periods;***
- ***Data and information on one or more categories of income (e.g., earned income, pensions, life insurance products), originating in one Jurisdiction and received by residents of the other Jurisdiction.***

THE DATA EXCHANGED WITH THE AEOI

Common Reporting Standard

The CRS seeks to establish the tax residency of customers. Under the CRS, financial institutions are required to identify customers who appear to be tax resident outside of the country/jurisdiction where they hold their accounts and products, and report certain information to the local tax authority.

THE DATA EXCHANGED WITH THE AEOI

CRS: (it contains the reporting and CDD standards)

1. Name, address, Taxpayer Identification Number (TIN) and date and place of birth of each Reportable Person.
2. Account number
3. Name and identifying number of the reporting financial institution;
4. Account balance or value as of the end of the relevant calendar year or at its closure, if the account was closed.
5. Distributions made to the account (dividends, interest, gross proceeds/redemptions, other)

in case of an entity that is an account holder and that is identified as having one or more controlling persons they should communicate all the relevant data of the entity and of each controlling person who is reportable.

THE DATA EXCHANGED WITH THE AEOI

Crypto-Asset Reporting Framework (CARF)

In August 2022, the OECD approved amendments to the CRS to bring certain electronic money products and Central Bank Digital currencies in scope.

The following three types of transactions are Relevant Transactions that are reportable under the CARF:

- exchanges between Relevant Crypto-Assets and Fiat Currencies;
- exchanges between one or more forms of Relevant Crypto-Assets; and
- Transfers (including Reportable Retail Payment Transactions) of Relevant Crypto-Assets.

THE DATA EXCHANGED WITH THE AEOI

Advanced Pricing Agreement (APA)

“Is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustments thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time”

THE DATA EXCHANGED WITH THE AEOI

CBCR: Country-by-Country Reporting

Applies to all large multinational entities (MNEs) with annual consolidated group revenue equal to or higher than EUR 750 Million in a fiscal year. MNEs are required to prepare a CbC Report with aggregate data on the global allocation of income, profit, taxes paid and economic activity among tax jurisdictions in which they operate

MUTUAL ADMINISTRATIVE ASSISTANCE

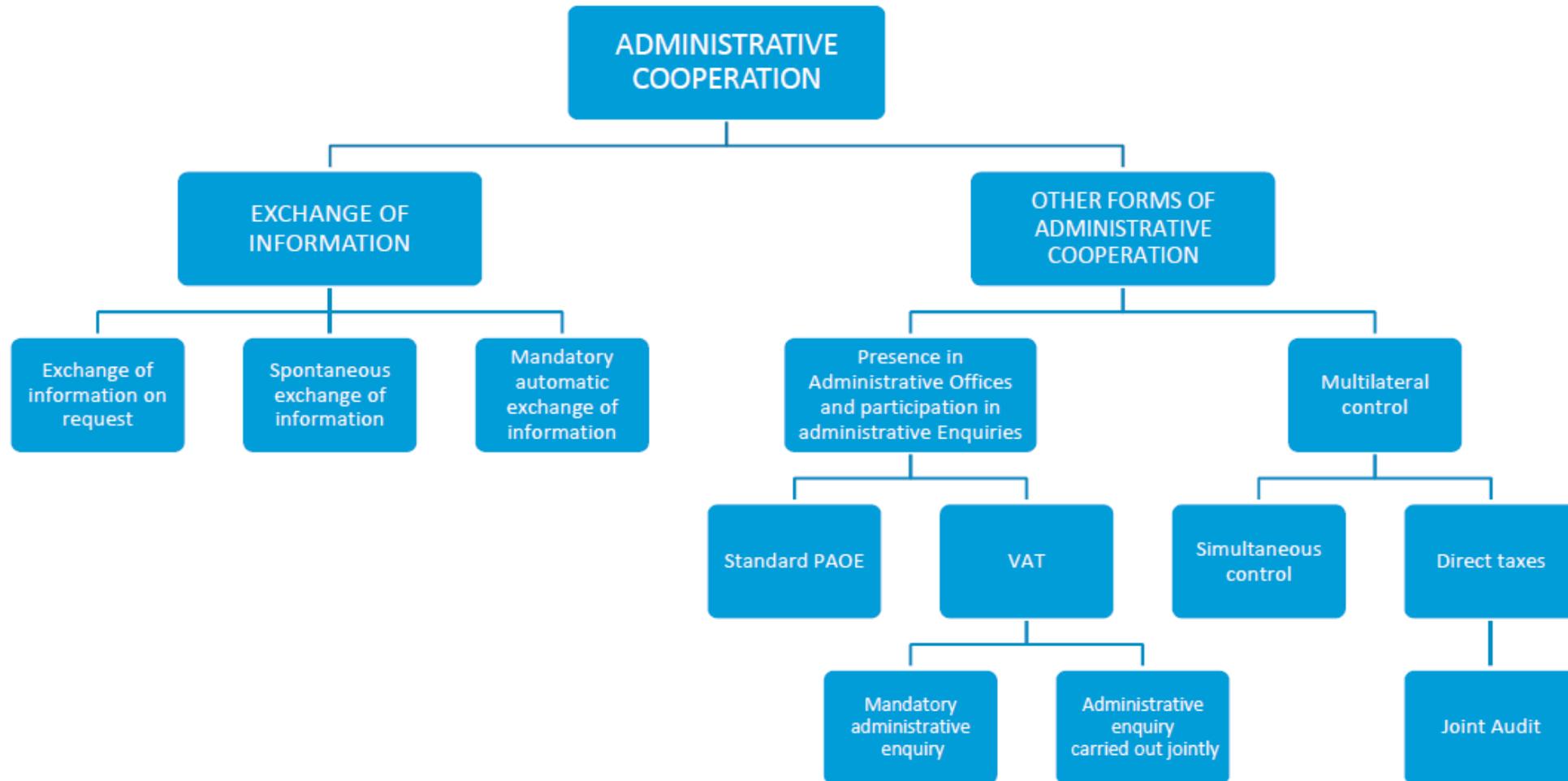
AUTOMATIC EXCHANGE OF INFORMATION



Directive on Administrative Cooperation – DAC

DAC1	DAC1	DAC2	DAC3	DAC4	DAC5	DAC6	DAC 7	DAC 8
2011/16/EU NON AEOI	2011/16/EU AEOI ITEMS	2014/107/EU AEOI ITEMS	2015/2376/EU AEOI ITEMS	2016/881/EU: AEOI ITEMS	2016/2258/EU NON AEOI	2018/822/EU AEOI ITEMS	2021/514/EU AEOI	2023/2226/EU AEOI
Applies:1/2013	Applies:1/2015	Applies:1/2016	Applies:1/2017	Applies:6/2017	Applies:1/2018	Applies:7/2020		
All exchanges of info except Art. 8	1 st exchanges on 2014 by: 30.6.2015	1st exchanges on 2016 by: 30.9.2017	1st exchanges by 30.9.2017	1st exchanges on 2016 by: 30.6.2018	Art. 22, para 1a	1st exchanges by: 31.8.2020	Obligation for EU and non-EU platform operators to provide information on income derived by sellers through platforms	Subject to report all crypto-assets used for payment and investment purposes, i.e. cryptocurrencies, stablecoins including e-money and also NFTs. Crypto Assets SPs will need to identify both the originators and beneficiaries of cryptoasset transactions.
*Exchanges on request	Art. 8	Art. 8, para 3a	Art. 8a	Art. 8aa	Access by tax authorities to beneficial ownership information as collected under AML rules	Art. 8aaa and hallmarks in Annex 4	Identification and residence of the sellers (TIN/VRN); An overview of amounts paid/payable to sellers from the reportable activities, platform fees, commissions or taxes withheld; Location of the rented immovable property when relevant.	Information include names, addresses, TINs, residence states within the EU and the total value of transactions.
*Spontaneous exchanges	*Automatic exchange of information on 5 non-financial categories:	Automatic exchange on financial account information:	Automatic exchange of information (using a central directory as from 1.2018) of:	Automatic exchange of information on country-by-country reports on certain financial information:		*Mandatory disclosure rules for intermediaries and		
*Presence in adm. offices	*Income from employment	*Interests, dividends or other income generated by financial account	*Advance cross-border rulings	*Revenues				
*Simultaneous controls	*Directors fees	*Gross proceeds from sale or redemption	*Advance pricing arrangements	*Profits				
*Request for notification	*Pensions	*Account balances		*Taxes paid and accrued				
*Sharing best practices	*Life insurance products			*Accumulated earnings				
*Use of standard forms	*Immovable property (income and ownership)			*Number of employees				
				*Certain assets				

ADVANCED COOPERATION TOOLS



Regulations on administrative cooperation



DTT / OCDE

- Art. 26 Model Tax Convention on Income and on Capital
- Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the OECD and the Council of Europe in 1988 and amended by Protocol in 2010

EU

- COUNCIL REGULATION (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of VAT
- COUNCIL REGULATION (EU) No 389/2012 of 2 May 2012 on administrative cooperation in the field of excise duties and repealing Regulation (EC) No 2073/2004
- COUNCIL DIRECTIVE 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC
- COUNCIL DIRECTIVE 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures

Simultaneous control

12 DAC, 13 R Excises, 29-30 R VAT, 8 MAAC

Prerequisite: two or more Member States **agree** to conduct **in their own territory**

Objective: Exchange of information of one or more persons of **common or complementary interest** to them

Proposal: shall identify **the persons** targeted for a simultaneous control and the **reasons** for the selection. It also specify the period of time the controls are to be conducted.

Free participation: each Member State concerned shall decide whether it wishes to take part in simultaneous controls. It shall confirm its agreement or communicate its reasoned refusal (60days DAC, 1 month VAT & Excises)

Representative responsible for supervising and coordinating the control

PAOE (Presence in administrative offices and participation in administrative enquiries)

- 11 DAC, 12 R IIEE, 28.1 R IVA, 9 MAAC
- With a view to **exchange information**
- Procedure: Requesting authority request the requested authority that officials authorised by the former and in accordance with the procedural arrangements laid down by the latter (2023):
 - (a) be **present in the offices** where the administrative authorities of the requested Member State carry out their duties;
 - (b) be **present during administrative enquiries** carried out in the territory of the requested Member State;
 - (c) **participate** in the administrative enquiries carried out by the requested Member State through the use of electronic means of communication.
- Included interview individuals and examine records under requested MS procedure (2023 DAC). By agreement VAT excises.

THE SHARING AND USE OF EOI DATA

A tax administration may share information obtained from a foreign tax authority pursuant to an EOI agreement with persons or authorities concerned with the enforcement of tax laws, including law enforcement authorities, courts, administrative, or supervisory bodies that are concerned with the investigation, prosecution, and recovery of assets linked to tax crimes.

USE OF EOI DATA TO COMBAT OTHER (NON-TAX) RELATED SERIOUS CRIMES

As a notable exception to the rule that exchanged information must be only used for tax purposes, it can be used to fight other serious crimes, including money laundering terrorism financing, bribery, corruption.

For example, the 2012 update to Article 26(2) of the OECD Model Tax Convention and Article 22(4) of the MAAC provide for **use of EOI data for such “non-tax” purposes if it is allowed under the laws of both States and the competent authority of the supplying jurisdiction authorises such use.**

EXCHANGE POSSIBLE ONLY BETWEEN COMPETENT AUTHORITIES

Where can I find the competent authorities database?



<https://www.oecd.org/securesites/gfcompetentauthorities/>



The screenshot shows a web browser displaying the OECD website. The page title is "GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES". The main content area is titled "Jurisdictions" and lists "Competent authorities' contact details (A-Z):". The list includes links for Albania, Algeria, Andorra, Angola, Antigua and Barbuda, Argentina, Armenia, Aruba, Australia, Austria, Azerbaijan, The Bahamas, and Bahrain. On the left side, there is a sidebar with the heading "Competent Authorities" and a list of links: "List of Jurisdictions", "Pretty Good Privacy (PGP)", "EOI case laws", and "Give us feedback". The OECD logo and tagline "BETTER POLICIES FOR BETTER LIVES" are visible at the top of the page.



THE COOPERATION IN CUSTOMS MATTER

INTERNATIONAL COOPERATION ACTIVITIES IN CUSTOMS MATTERS



LEGAL FRAMEWORK FOR CUSTOMS COOPERATION

World dimension

Customs Co-operation
Council



182 Members

**Non Binding
Instruments**

Council Recommendation on Mutual Administrative Assistance (Brux., 5 Dec. 1953)

Declaration of the on the improvement of Customs co-operation and mutual administrative assistance (Cyprus, June 2000)

Model Bilateral Agreement on Mutual Administrative Assistance in Customs Matters (June 2004)

**Binding
Instruments**

Convention on mutual administrative assistance for the prevention, investigation and repression of Customs offences (Nairobi, 9 June 1977)



*International Convention on Mutual Administrative Assistance in Customs matters (Johannesburg, June 2003) **not yet in force!***

INTERNATIONAL COOPERATION ACTIVITIES IN CUSTOMS MATTERS

Customs & Excise

- **EC Reg. 515/97 on Customs and agricultural matters** (U.E. countries) as amended by EC Reg. 766/2008
- **Convention “Naples II”** for the mutual assistance in custom matters (E.U. countries)
- National e multilateral **Agreements** (with extra EU countries)

EC Reg. n. 515/97

Collaboration between administrations of the MSs customs and agricultural legislation

Assistance on request
Title I art. 4-12

Spontaneous assistance
Title II art. 13 - 16

- exchange of information

- special surveillance on goods, means of transports, warehouses, individuals

- Administrative enquiries

COOPERATION WITH OLAF



Legal framework

Reg. UE 883/2013

(functioning and power of OLAF –
which repealed Reg.1073/99)

Reg. EURATOM 2185/96

(external investigations and on-the-
spot checks)

The European Anti-Fraud Office (**OLAF**) investigates fraud against the EU budget, corruption and serious misconduct within the European institutions, and develops anti-fraud policy.

OLAF is part of the European Commission, but has operational independence.

COOPERATION WITH OLAF



(Only Administrative Investigations!)

What can OLAF investigate:

OLAF can investigate matters relating to fraud, corruption and other offences affecting the EU financial interests concerning:

- **all EU expenditure:** the main spending categories are Structural Funds, agricultural policy and rural development funds, direct expenditure and external aid;
- some areas of EU revenue, mainly **customs duties**;
- **suspicious of serious misconduct** by EU staff and members of the EU institutions.



THANKS FOR YOUR ATTENTION
ANY QUESTIONS?