

二零一七年六月五日
討論文件

立法會財經事務委員會

《多邊稅收徵管互助公約》適用於香港事宜

目的

本文件告知委員政府擬將《多邊稅收徵管互助公約》(“《多邊公約》”)的適用範圍延伸至香港，使香港能有效履行在國際稅務合作方面的責任。

《多邊公約》

2. 《多邊公約》由經濟合作與發展組織(“經合組織”)與歐洲委員會在一九八八年共同訂立，其後在二零一零年藉議定書修訂。該公約旨在便利締約國在評稅和徵稅方面一切可行形式的行政合作，以打擊避稅和逃稅活動。《多邊公約》自二零一一年六月一日起開放予各國簽署，其最新文本載於 **附件 A**。截至二零一七年五月十二日，共有 111 個稅務管轄區參與《多邊公約》(**附件 B**)，當中包括 15 個藉地域延伸身分加入的稅務管轄區。

3. 為了與國際交換稅務資料的標準接軌，我們近年修訂了《稅務條例》，以提供法律依據予按請求交換稅務資料、落實全面性避免雙重課稅協定(“全面性協定”)以外的稅務資料交換協定(“交換協定”)，以及實施經合組織就稅務事宜自動交換財務帳戶資料(“自動交換資料”)安排所訂的共同匯報標準。

4. 香港至今一直以**雙邊**模式落實上述國際標準。隨着我們的稅務協定網絡不斷擴展，加上國際間陸續實施新標準打擊侵蝕稅基及轉移利潤(“BEPS”)活動，以雙邊模式商討和修訂協定，**不再是有效率和具成效的方法**。我們有實際需要考慮將《多邊公約》的適用範圍延伸至香港，藉此以多邊模式執行各項協定。

自動交換資料

5. 為稅務目的交換資料是經合組織倡議的主要措施之一，以提升稅務透明度和打擊跨境逃稅活動。一直以來，香港依據雙邊協定(全面性協定或交換協定)，與其他稅務管轄區建立交換資料關係。二零一四年七月，經合組織就自動交換資料安排頒布新的國際標準，藉以提升稅務透明度和打擊跨境逃稅活動。至今，已有100個稅務管轄區承諾實施這項國際標準。香港在二零一四年九月表示，支持以雙邊模式與合適伙伴實施自動交換資料安排，以期在二零一八年年底前進行首次資料交換。

6. 經合組織容許稅務管轄區採用雙邊或多邊模式實施自動交換資料安排。雙邊模式是以全面性協定/交換協定為基礎，與其他稅務管轄區再就自動交換資料簽訂雙邊主管當局協定；多邊模式則以《多邊公約》為基礎，另簽訂多邊主管當局協定。截至二零一七年四月三十日，香港簽訂37份全面性協定和七份交換協定¹，並就自動交換資料簽訂11份雙邊主管當局協定²。然而，商討雙邊主管當局協定需時，而且往往須修訂我們現有的全面性協定/交換協定，才可進行自動交換資料。值得指出的是，在100個承諾實施自動交換資料安排的稅務管轄區中，有90個已加入《多邊公約》。

¹ 與香港簽訂**全面性協定**的稅務管轄區包括比利時(二零零三年)、泰國(二零零五年)、中國內地(二零零六年)、盧森堡(二零零七年)、越南(二零零八年)、文萊、荷蘭、印尼、匈牙利、科威特、奧地利、英國、愛爾蘭、列支敦士登、法國、日本、新西蘭(二零一零年)、葡萄牙、西班牙、捷克共和國、瑞士、馬耳他(二零一一年)、澤西島、馬來西亞、墨西哥、加拿大(二零一二年)、意大利、根西島、卡塔爾(二零一三年)、韓國、南非、阿拉伯聯合酋長國(二零一四年)、羅馬尼亞(二零一五年)、俄羅斯、拉脫維亞(二零一六年)、白俄羅斯和巴基斯坦(二零一七年)。與香港簽訂**交換協定**的稅務管轄區包括美國、挪威、丹麥、瑞典、冰島、格陵蘭和法羅群島(二零一四年)。(括號所示為簽訂年份)

² 此外，我們在今年三月向立法會提交《2017年稅務(修訂)(第3號)條例草案》，建議擴大“申報稅務管轄區”名單(由現時兩個稅務管轄區增至75個)。條例修訂後，香港的財務機構須進行盡職審查程序，向屬香港自動交換資料準伙伴和已確認伙伴的稅務居民的帳戶持有人收集所需資料，以及把所得資料提交稅務局，讓稅務局能備存由二零一七年下半年起的財務帳戶資料，以便日後與其他稅務管轄區交換。

BEPS

7. 二零一五年十月，經合組織與二十國集團推出一套涵蓋 15 個範疇的行動計劃打擊 BEPS。BEPS 是指跨國企業利用各經濟體間稅務規則的差異及錯配，以人為方式轉移利潤至低稅或無稅地方的稅務規劃策略；由於企業在這些地方只有很少或沒有經濟活動，因此整體上支付很少或不須支付公司稅。香港在二零一六年六月向經合組織承諾實施 BEPS 方案。為符合 BEPS 方案四項最低標準，香港須實施自動交換國別報告安排，以作評估跨國企業的轉讓定價風險(第 13 項行動計劃)，以及實施自發交換稅務裁定資料(第 5 項行動計劃)³。

8. 雖然我們可採用雙邊模式實施上述 BEPS 措施，但由於國際社會交換稅務資料的範圍不斷擴大，這種模式**愈來愈不切實際**。稅務管轄區亦可採用多邊模式，憑藉《多邊公約》實施 BEPS 各項措施。我們須物色適合的平台，讓香港與其他參與 BEPS 項目的稅務管轄區交換所需資料。

經合組織和歐洲聯盟制訂“不合作”稅務管轄區名單

9. 在香港着手落實自動交換資料安排和 BEPS 方案的國際標準同時，經合組織和歐洲聯盟(“歐盟”)已開始各自制訂“不合作”稅務管轄區名單，預期名單會在二零一七年年末前備妥。

10. 根據經合組織建議並獲二十國集團領袖通過的準則，稅務管轄區如未能符合**下述三項準則中至少兩項**，會被視為“不合作”稅務管轄區：

³ 該四項最低標準包括：打擊具損害性的稅務措施(第 5 項行動計劃)、防止濫用稅收協定的情況(第 6 項行動計劃)、訂立國別報告的規定(第 13 項行動計劃)，以及引入爭議解決機制(第 14 項行動計劃)。為了藉交換資料安排提升稅務透明度，以打擊具損害性的稅務措施(第 5 項行動計劃)，經合組織強制規定稅務管轄區須自發交換六種指定稅務裁定的資料，即(a)與優惠制度有關的裁定；(b)單方面的預先定價安排及其他就跨境轉讓定價作出的單方面裁定；(c)就調低應課稅利潤的跨境裁定；(d)就常設機構的裁定；(e)就關聯轉付公司的裁定；以及(f)任何在沒有自發交換資料情況下會引起 BEPS 問題的其他各類裁定。至於國別報告(第 13 項行動計劃)，經合組織規定每年集團總收入達 7.5 億歐元或以上的跨國企業須提交國別報告。參與計劃的稅務管轄區收到國別報告後，須自動與其他稅務管轄區交換這些報告。

- (a) 《多邊公約》——加入《多邊公約》，或容許按請求交換資料及自動交換資料的網絡廣闊；
- (b) 自動交換資料——最遲在二零一八年首次交換資料(涵蓋二零一七年的財務帳戶資料)；以及
- (c) 按請求交換資料——獲稅務透明化及資料交換全球論壇(“全球論壇”)給予至少“大致符合標準”的評級⁴。

11. 另一方面，任何稅務管轄區如未能符合**下述三項準則中至少兩項**，歐盟會視為在稅務透明度方面不符合標準：

- (a) 《多邊公約》——加入《多邊公約》，或容許按請求交換資料及自動交換資料的協定網絡已涵蓋歐盟所有成員國，而該等協定須已生效或預計會在合理時限內生效；
- (b) 自動交換資料——在二零一七年年底前與歐盟所有成員國訂立自動交換資料安排，可藉簽訂多邊主管當局協定，或通過雙邊主管當局協定訂立有關安排；以及
- (c) 按請求交換資料——獲全球論壇給予至少“大致符合標準”的評級。

除稅務透明度外，歐盟也會評估該稅務管轄區在公平課稅和實施BEPS 措施(包括國別報告安排)方面是否符合標準；未能達標者會被列為“不合作”稅務管轄區。

12. 香港仍未建立廣泛的自動交換資料網絡，也沒有加入《多邊公約》，因此面對**未能**符合經合組織和歐盟就**遵守自動交換資料規定**所定的評估準則的**風險**。此外，加入《多邊公約》不但可加快擴大自動交換資料網絡，而且是經合組織和歐盟考慮稅務管轄區是否屬“**不合作**”的重要因素。被列為“不合作”的稅務管轄區或會遭受國際的**抵制措施，令其投資和營商吸引力下降**。有關的抵

⁴ 香港在全球論壇二零一三年就按請求交換資料進行的首輪成員相互評估中獲評為“大致符合標準”，香港將會在二零一八年上半年接受第二輪評估，屆時的評級須視乎香港能否按照經合組織的標準交換資料。

制措施或會包括被其他稅務管轄區徵收預扣稅項和在計算須在當地應繳稅款時不獲扣減交易成本。

立法建議

13. 《多邊公約》僅供締約國簽署。中央人民政府(“中央政府”)在二零一五年十月批准履行《多邊公約》。因應香港的要求，中央政府最近**原則上批准**將《多邊公約》的適用範圍延伸至香港。我們建議修訂《稅務條例》(第 112 章)，令《多邊公約》適用於香港並以其作為資料交換平台，以便香港根據自動交換資料安排和 BEPS 方案與締約方交換所需資料。

14. 我們打算實施《多邊公約》的**強制性條文**，同時對**非強制性條文**訂定適當的保留條款/聲明，令這些非強制性條文不適用於(或局部適用於)香港。我們就《多邊公約》⁵主要條文的分析及建議載列如下：

條文	性質	分析及建議
(a) 涵蓋的稅種 (第二條)	—	<p>《多邊公約》涵蓋的基本稅種，包括所得稅或利得稅、在所得稅或利得稅以外另行徵收的資本增值稅，以及淨值財富稅。</p> <p>雖然《多邊公約》可涵蓋其他稅種，但我們建議香港只就以上稅種提供協助。</p>
(b) 按請求交換資料 (第五條)	強制性	<p>香港一直有處理全面性協定/交換協定伙伴提出的交換資料要求。再者，按照經合組織的標準，根據全面性協定/交換協定與根據《多邊公約》提供的資料範圍相同。</p> <p>我們建議這項強制條文應適用於香港。</p>

⁵ 下表並未載列的條文涉及技術和運作層面，例如定義、收到互相矛盾資料的處理方法，以及傳送資料的語言。

(c) 自動交換資料 (第六條)	強制性	<p>香港已為實施自動交換資料安排提供法律框架，並打算藉《多邊公約》擴展自動交換資料網絡。另一方面，香港可依據此條文實施自動交換國別報告的安排；這項安排屬 BEPS 方案的最低標準。</p> <p>我們建議這項強制性條文應適用於香港。</p>
(d) 自發交換資料 (第七條)	強制性	<p>雖然香港至今沒有自發與全面性協定/交換協定伙伴交換資料，但我們承諾根據 BEPS 方案的最低標準，自發交換六種稅務裁定資料。香港可依據此條文實施有關交換資料安排。</p> <p>我們建議這項強制性條文應適用於香港。</p>
(e) 同步稅務調查 (第八條)	強制性，但由締約一方決定是否參與某項調查	<p>同步稅務調查指以下安排：由稅務管轄區在各自境內對彼此有共同或關聯利益的人進行稅務調查，以便交換各自由此所得的相關資料。</p> <p>我們建議香港一般不會參與任何同步稅務調查。</p>
(f) 境外稅務調查 (第九條)	非強制性	<p>境外稅務調查指以下安排：某稅務管轄區可按另一稅務管轄區的請求，在境內進行稅務調查的某一適當環節時，允許後者的代表在場。</p> <p>我們建議根據《多邊公約》作出聲明，指香港一般不會接納這類請求。</p>

(g) 協助追討稅款 (第十一至 十二條)	非強制性	<p>這些條文指稅務管轄區可協助另一稅務管轄區追討其徵收的稅款。</p> <p>我們建議香港不會提供這類協助。</p>
(h) 送達文書 (第十七條)	非強制性	<p>這項條文指稅務管轄區可按另一稅務管轄區的請求，協助後者送達與《多邊公約》涵蓋的稅種有關的文書，包括與司法判決有關的文書。</p> <p>我們建議香港不會提供這類協助。</p>

未來路向

15. 我們擬於**二零一七年十月**向立法會提交修訂條例草案，以落實上述建議。在所需條文制定後，我們須請中央政府協助把《多邊公約》適用的地域範圍延伸至香港的聲明，連同適用於香港的保留條款及聲明(見上文第 14 段)，交存經合組織。《多邊公約》將在經合組織收到通知當日起計三個月後的下一個月首日開始在香港生效。這項安排對於香港有效履行國際稅務合作責任，至為重要。

財經事務及庫務局
庫務科
二零一七年五月

Convention on Mutual Administrative Assistance in Tax Matters

Text amended by the provisions of the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters, which entered into force on 1st June 2011.

Preamble

The member States of the Council of Europe and the member countries of the Organisation for Economic Co-operation and Development (OECD), signatories of this Convention,

Considering that the development of international movement of persons, capital, goods and services – although highly beneficial in itself – has increased the possibilities of tax avoidance and evasion and therefore requires increasing co-operation among tax authorities;

Welcoming the various efforts made in recent years to combat tax avoidance and tax evasion on an international level, whether bilaterally or multilaterally;

Considering that a co-ordinated effort between States is necessary in order to foster all forms of administrative assistance in matters concerning taxes of any kind whilst at the same time ensuring adequate protection of the rights of taxpayers;

Recognising that international co-operation can play an important part in facilitating the proper determination of tax liabilities and in helping the taxpayer to secure his rights;

Considering that fundamental principles entitling every person to have his rights and obligations determined in accordance with a proper legal procedure should be recognised as applying to tax matters in all States and that States should endeavour to protect the legitimate interests of taxpayers, including appropriate protection against discrimination and double taxation;

Convinced therefore that States should carry out measures or supply information, having regard to the necessity of protecting the confidentiality of information, and taking account of international instruments for the protection of privacy and flows of personal data;

Considering that a new co-operative environment has emerged and that it is desirable that a multilateral instrument is made available to allow the widest number of States to obtain the benefits of the new co-operative environment and at the same time implement the highest international standards of co-operation in the tax field;

Desiring to conclude a convention on mutual administrative assistance in tax matters,

Have agreed as follows:

Chapter I – Scope of the Convention

Article 1 – Object of the Convention and persons covered

- 1 The Parties shall, subject to the provisions of Chapter IV, provide administrative assistance to each other in tax matters. Such assistance may involve, where appropriate, measures taken by judicial bodies.
- 2 Such administrative assistance shall comprise:
 - a exchange of information, including simultaneous tax examinations and participation in tax examinations abroad;
 - b assistance in recovery, including measures of conservancy; and
 - c service of documents.
- 3 A Party shall provide administrative assistance whether the person affected is a resident or national of a Party or of any other State.

Article 2 – Taxes covered

- 1 This Convention shall apply:
 - a to the following taxes:
 - i taxes on income or profits,
 - ii taxes on capital gains which are imposed separately from the tax on income or profits,
 - iii taxes on net wealth,imposed on behalf of a Party; and
 - b to the following taxes:
 - 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
 - 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,
 - C. general consumption taxes, such as value added or sales taxes,
 - D. specific taxes on goods and services such as excise taxes,
 - 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.
- 2 The existing taxes to which the Convention shall apply are listed in Annex A in the categories referred to in paragraph 1.
 - 3 The Parties shall notify the Secretary General of the Council of Europe or the Secretary General of OECD (hereinafter referred to as the “Depositaries”) of any change to be made to Annex A as a result of a modification of the list mentioned in paragraph 2. Such change shall take effect on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Depositary.
 - 4 The Convention shall also apply, as from their adoption, to any identical or substantially similar taxes which are imposed in a Contracting State after the entry into force of the Convention in respect of that Party in addition to or in place of the existing taxes listed in Annex A and, in that event, the Party concerned shall notify one of the Depositaries of the adoption of the tax in question.

Chapter II – General definitions

Article 3 – Definitions

- 1 For the purposes of this Convention, unless the context otherwise requires:
 - a the terms “applicant State” and “requested State” mean respectively any Party applying for administrative assistance in tax matters and any Party requested to provide such assistance;
 - b the term “tax” means any tax or social security contribution to which the Convention applies pursuant to Article 2;
 - c the term “tax claim” means any amount of tax, as well as interest thereon, related administrative fines and costs incidental to recovery, which are owed and not yet paid;

- d the term “competent authority” means the persons and authorities listed in Annex B;
- e the term “nationals” in relation to a Party means:
 - i all individuals possessing the nationality of that Party, and
 - ii all legal persons, partnerships, associations and other entities deriving their status as such from the laws in force in that Party.

For each Party that has made a declaration for that purpose, the terms used above will be understood as defined in Annex C.

- 2 As regards the application of the Convention by a Party, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that Party concerning the taxes covered by the Convention.
- 3 The Parties shall notify one of the Depositaries of any change to be made to Annexes B and C. Such change shall take effect on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Depositary in question.

Chapter III – Forms of assistance

Section I – Exchange of information

Article 4 – General provision

- 1 The Parties shall exchange any information, in particular as provided in this section, that is foreseeably relevant for the administration or enforcement of their domestic laws concerning the taxes covered by this Convention.
- 2 Deleted.
- 3 Any Party may, by a declaration addressed to one of the Depositaries, indicate that, according to its internal legislation, its authorities may inform its resident or national before transmitting information concerning him, in conformity with Articles 5 and 7.

Article 5 – Exchange of information on request

- 1 At the request of the applicant State, the requested State shall provide the applicant State with any information referred to in Article 4 which concerns particular persons or transactions.
- 2 If the information available in the tax files of the requested State is not sufficient to enable it to comply with the request for information, that State shall take all relevant measures to provide the applicant State with the information requested.

Article 6 – Automatic exchange of information

With respect to categories of cases and in accordance with procedures which they shall determine by mutual agreement, two or more Parties shall automatically exchange the information referred to in Article 4.

Article 7 – Spontaneous exchange of information

- 1 A Party shall, without prior request, forward to another Party information of which it has knowledge in the following circumstances:
 - a the first-mentioned Party has grounds for supposing that there may be a loss of tax in the other Party;
 - b a person liable to tax obtains a reduction in or an exemption from tax in the first-mentioned Party which would give rise to an increase in tax or to liability to tax in the other Party;
 - c business dealings between a person liable to tax in a Party and a person liable to tax in another Party are conducted through one or more countries in such a way that a saving in tax may result in one or the other Party or in both;
 - d a Party has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises;
 - e information forwarded to the first-mentioned Party by the other Party has enabled information to be obtained which may be relevant in assessing liability to tax in the latter Party.
- 2 Each Party shall take such measures and implement such procedures as are necessary to ensure that information described in paragraph 1 will be made available for transmission to another Party.

Article 8 – Simultaneous tax examinations

- 1 At the request of one of them, two or more Parties shall consult together for the purposes of determining cases and procedures for simultaneous tax examinations. Each Party involved shall decide whether or not it wishes to participate in a particular simultaneous tax examination.
- 2 For the purposes of this Convention, a simultaneous tax examination means an arrangement between two or more Parties to examine simultaneously, each in its own territory, the tax affairs of a person or persons in which they have a common or related interest, with a view to exchanging any relevant information which they so obtain.

Article 9 – Tax examinations abroad

- 1 At the request of the competent authority of the applicant State, the competent authority of the requested State may allow representatives of the competent authority of the applicant State to be present at the appropriate part of a tax examination in the requested State.
- 2 If the request is acceded to, the competent authority of the requested State shall, as soon as possible, notify the competent authority of the applicant State about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the requested State for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the requested State.
- 3 A Party may inform one of the Depositaries of its intention not to accept, as a general rule, such requests as are referred to in paragraph 1. Such a declaration may be made or withdrawn at any time.

Article 10 – Conflicting information

If a Party receives from another Party information about a person's tax affairs which appears to it to conflict with information in its possession, it shall so advise the Party which has provided the information.

Section II - Assistance in recovery

Article 11 – Recovery of tax claims

- 1 At the request of the applicant State, the requested State shall, subject to the provisions of Articles 14 and 15, take the necessary steps to recover tax claims of the first-mentioned State as if they were its own tax claims.
- 2 The provision of paragraph 1 shall apply only to tax claims which form the subject of an instrument permitting their enforcement in the applicant State and, unless otherwise agreed between the Parties concerned, which are not contested.

However, where the claim is against a person who is not a resident of the applicant State, paragraph 1 shall only apply, unless otherwise agreed between the Parties concerned, where the claim may no longer be contested.

- 3 The obligation to provide assistance in the recovery of tax claims concerning a deceased person or his estate, is limited to the value of the estate or of the property acquired by each beneficiary of the estate, according to whether the claim is to be recovered from the estate or from the beneficiaries thereof.

Article 12 – Measures of conservancy

At the request of the applicant State, the requested State shall, with a view to the recovery of an amount of tax, take measures of conservancy even if the claim is contested or is not yet the subject of an instrument permitting enforcement.

Article 13 – Documents accompanying the request

- 1 The request for administrative assistance under this section shall be accompanied by:
 - a a declaration that the tax claim concerns a tax covered by the Convention and, in the case of recovery that, subject to paragraph 2 of Article 11, the tax claim is not or may not be contested,
 - b an official copy of the instrument permitting enforcement in the applicant State, and
 - c any other document required for recovery or measures of conservancy.
- 2 The instrument permitting enforcement in the applicant State shall, where appropriate and in accordance with the provisions in force in the requested State, be accepted, recognised, supplemented or replaced as soon as possible after the date of the receipt of the request for assistance, by an instrument permitting enforcement in the latter State.

Article 14 – Time limits

- 1 Questions concerning any period beyond which a tax claim cannot be enforced shall be governed by the law of the applicant State. The request for assistance shall give particulars concerning that period.
- 2 Acts of recovery carried out by the requested State in pursuance of a request for assistance, which, according to the laws of that State, would have the effect of suspending or interrupting the period mentioned in paragraph 1, shall also have this effect under the laws of the applicant State. The requested State shall inform the applicant State about such acts.
- 3 In any case, the requested State is not obliged to comply with a request for assistance which is submitted after a period of 15 years from the date of the original instrument permitting enforcement.

Article 15 – Priority

The tax claim in the recovery of which assistance is provided shall not have in the requested State any priority specially accorded to the tax claims of that State even if the recovery procedure used is the one applicable to its own tax claims.

Article 16 – Deferral of payment

The requested State may allow deferral of payment or payment by instalments if its laws or administrative practice permit it to do so in similar circumstances, but shall first inform the applicant State.

Section III – Service of documents

Article 17 – Service of documents

- 1 At the request of the applicant State, the requested State shall serve upon the addressee documents, including those relating to judicial decisions, which emanate from the applicant State and which relate to a tax covered by this Convention.
- 2 The requested State shall effect service of documents:
 - a by a method prescribed by its domestic laws for the service of documents of a substantially similar nature;
 - b to the extent possible, by a particular method requested by the applicant State or the closest to such method available under its own laws.
- 3 A Party may effect service of documents directly through the post on a person within the territory of another Party.
- 4 Nothing in the Convention shall be construed as invalidating any service of documents by a Party in accordance with its laws.
- 5 When a document is served in accordance with this article, it need not be accompanied by a translation. However, where it is satisfied that the addressee cannot understand the language of the document, the requested State shall arrange to have it translated into or a summary drafted in its or one of its official languages. Alternatively, it may ask the applicant State to have the document either translated into or accompanied by a summary in one of the official languages of the requested State, the Council of Europe or the OECD.

Chapter IV – Provisions relating to all forms of assistance

Article 18 – Information to be provided by the applicant State

- 1 A request for assistance shall indicate where appropriate:
 - a the authority or agency which initiated the request made by the competent authority;
 - b the name, address, or any other particulars assisting in the identification of the person in respect of whom the request is made;
 - c in the case of a request for information, the form in which the applicant State wishes the information to be supplied in order to meet its needs;
 - d in the case of a request for assistance in recovery or measures of conservancy, the nature of the tax claim, the components of the tax claim and the assets from which the tax claim may be recovered;

- e in the case of a request for service of documents, the nature and the subject of the document to be served;
 - f whether it is in conformity with the law and administrative practice of the applicant State and whether it is justified in the light of the requirements of Article 21.2.g.
- 2 As soon as any other information relevant to the request for assistance comes to its knowledge, the applicant State shall forward it to the requested State.

Article 19 – Deleted

Article 20 – Response to the request for assistance

- 1 If the request for assistance is complied with, the requested State shall inform the applicant State of the action taken and of the result of the assistance as soon as possible.
- 2 If the request is declined, the requested State shall inform the applicant State of that decision and the reason for it as soon as possible.
- 3 If, with respect to a request for information, the applicant State has specified the form in which it wishes the information to be supplied and the requested State is in a position to do so, the requested State shall supply it in the form requested.

Article 21 – Protection of persons and limits to the obligation to provide assistance

- 1 Nothing in this Convention shall affect the rights and safeguards secured to persons by the laws or administrative practice of the requested State.
- 2 Except in the case of Article 14, the provisions of this Convention shall not be construed so as to impose on the requested State the obligation:
- a to carry out measures at variance with its own laws or administrative practice or the laws or administrative practice of the applicant State;
 - b to carry out measures which would be contrary to public policy (*ordre public*);
 - c to supply information which is not obtainable under its own laws or its administrative practice or under the laws of the applicant State or its administrative practice;
 - d 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*);
 - e to provide administrative assistance if and insofar as it considers the taxation in the applicant State to be contrary to generally accepted taxation principles or to the provisions of a convention for the avoidance of double taxation, or of any other convention which the requested State has concluded with the applicant State;

- f to provide administrative assistance for the purpose of administering or enforcing a provision of the tax law of the applicant State, or any requirement connected therewith, which discriminates against a national of the requested State as compared with a national of the applicant State in the same circumstances;
 - g to provide administrative assistance if the applicant State has not pursued all reasonable measures available under its laws or administrative practice, except where recourse to such measures would give rise to disproportionate difficulty;
 - h to provide assistance in recovery in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the applicant State.
- 3 If information is requested by the applicant State in accordance with this Convention, the requested State shall use its information gathering measures to obtain the requested information, even though the requested State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations contained in this Convention, but in no case shall such limitations, including in particular those of paragraphs 1 and 2, be construed to permit a requested State to decline to supply information solely because it has no domestic interest in such information.
- 4 In no case shall the provisions of this Convention, including in particular those of paragraphs 1 and 2, be construed to permit a requested 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.

Article 22 – Secrecy

- 1 Any information obtained by a Party under this Convention shall be treated as secret and protected in the same manner as information obtained under the domestic law of that Party and, to the extent needed to ensure the necessary level of protection of personal data, in accordance with the safeguards which may be specified by the supplying Party as required under its domestic law.
- 2 Such information shall in any case be disclosed only to persons or authorities (including courts and administrative or supervisory bodies) concerned with the assessment, collection or recovery of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, taxes of that Party, or the oversight of the above. Only the persons or authorities mentioned above may use the information and then only for such purposes. They may, notwithstanding the provisions of paragraph 1, disclose it in public court proceedings or in judicial decisions relating to such taxes.

- 3 If a Party has made a reservation provided for in sub-paragraph a. of paragraph 1 of Article 30, any other Party obtaining information from that Party shall not use it for the purpose of a tax in a category subject to the reservation. Similarly, the Party making such a reservation shall not use information obtained under this Convention for the purpose of a tax in a category subject to the reservation.
- 4 Notwithstanding the provisions of paragraphs 1, 2 and 3, information received by a Party may be used for other purposes when such information may be used for such other purposes under the laws of the supplying Party and the competent authority of that Party authorises such use. Information provided by a Party to another Party may be transmitted by the latter to a third Party, subject to prior authorisation by the competent authority of the first-mentioned Party.

Article 23 – Proceedings

- 1 Proceedings relating to measures taken under this Convention by the requested State shall be brought only before the appropriate body of that State.
- 2 Proceedings relating to measures taken under this Convention by the applicant State, in particular those which, in the field of recovery, concern the existence or the amount of the tax claim or the instrument permitting its enforcement, shall be brought only before the appropriate body of that State. If such proceedings are brought, the applicant State shall inform the requested State which shall suspend the procedure pending the decision of the body in question. However, the requested State shall, if asked by the applicant State, take measures of conservancy to safeguard recovery. The requested State can also be informed of such proceedings by any interested person. Upon receipt of such information the requested State shall consult on the matter, if necessary, with the applicant State.
- 3 As soon as a final decision in the proceedings has been given, the requested State or the applicant State, as the case may be, shall notify the other State of the decision and the implications which it has for the request for assistance.

Chapter V – Special provisions

Article 24 – Implementation of the Convention

- 1 The Parties shall communicate with each other for the implementation of this Convention through their respective competent authorities. The competent authorities may communicate directly for this purpose and may authorise subordinate authorities to act on their behalf. The competent authorities of two or more Parties may mutually agree on the mode of application of the Convention among themselves.
- 2 Where the requested State considers that the application of this Convention in a particular case would have serious and undesirable consequences, the competent authorities of the requested and of the applicant State shall consult each other and endeavour to resolve the situation by mutual agreement.

- 3 A co-ordinating body composed of representatives of the competent authorities of the Parties shall monitor the implementation and development of this Convention, under the aegis of the OECD. To that end, the co-ordinating body shall recommend any action likely to further the general aims of the Convention. In particular it shall act as a forum for the study of new methods and procedures to increase international co-operation in tax matters and, where appropriate, it may recommend revisions or amendments to the Convention. States which have signed but not yet ratified, accepted or approved the Convention are entitled to be represented at the meetings of the co-ordinating body as observers.
- 4 A Party may ask the co-ordinating body to furnish opinions on the interpretation of the provisions of the Convention.
- 5 Where difficulties or doubts arise between two or more Parties regarding the implementation or interpretation of the Convention, the competent authorities of those Parties shall endeavour to resolve the matter by mutual agreement. The agreement shall be communicated to the co-ordinating body.
- 6 The Secretary General of OECD shall inform the Parties, and the Signatory States which have not yet ratified, accepted or approved the Convention, of opinions furnished by the co-ordinating body according to the provisions of paragraph 4 above and of mutual agreements reached under paragraph 5 above.

Article 25 – Language

Requests for assistance and answers thereto shall be drawn up in one of the official languages of the OECD and of the Council of Europe or in any other language agreed bilaterally between the Contracting States concerned.

Article 26 – Costs

Unless otherwise agreed bilaterally by the Parties concerned:

- a ordinary costs incurred in providing assistance shall be borne by the requested State;
- b extraordinary costs incurred in providing assistance shall be borne by the applicant State.

Chapter VI – Final provisions

Article 27 – Other international agreements or arrangements

- 1 The possibilities of assistance provided by this Convention do not limit, nor are they limited by, those contained in existing or future international agreements or other arrangements between the Parties concerned or other instruments which relate to co-operation in tax matters.

- 2 Notwithstanding paragraph 1, those Parties which are member States of the European Union can apply, in their mutual relations, the possibilities of assistance provided for by the Convention in so far as they allow a wider co-operation than the possibilities offered by the applicable European Union rules.

Article 28 – Signature and entry into force of the Convention

- 1 This Convention shall be open for signature by the member States of the Council of Europe and the member countries of OECD. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with one of the Depositaries.
- 2 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five States have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 1.
- 3 In respect of any member State of the Council of Europe or any member country of OECD which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.
- 4 Any member State of the Council of Europe or any member country of OECD which becomes a Party to the Convention after the entry into force of the Protocol amending this Convention, opened for signature on 27th May 2010 (the “2010 Protocol”), shall be a Party to the Convention as amended by that Protocol, unless they express a different intention in a written communication to one of the Depositaries.
- 5 After the entry into force of the 2010 Protocol, any State which is not a member of the Council of Europe or of the OECD may request to be invited to sign and ratify this Convention as amended by the 2010 Protocol. Any request to this effect shall be addressed to one of the Depositaries, who shall transmit it to the Parties. The Depositary shall also inform the Committee of Ministers of the Council of Europe and the OECD Council. The decision to invite States which so request to become Party to this Convention shall be taken by consensus by the Parties to the Convention through the co-ordinating body. In respect of any State ratifying the Convention as amended by the 2010 Protocol in accordance with this paragraph, this Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of ratification with one of the Depositaries.
- 6 The provisions of this Convention, as amended by the 2010 Protocol, shall have effect for administrative assistance related to taxable periods beginning on or after 1 January of the year following the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party, or where there is no taxable period, for administrative assistance related to charges to tax arising on or after 1 January of the year following the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party. Any two or more Parties may mutually agree that the Convention, as amended by the 2010 Protocol, shall have effect for administrative assistance related to earlier taxable periods or charges to tax.

- 7 Notwithstanding paragraph 6, for tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party, the provisions of this Convention, as amended by the 2010 Protocol, shall have effect from the date of entry into force in respect of a Party in relation to earlier taxable periods or charges to tax.

Article 29 – Territorial application of the Convention

- 1 Each State may, at the time of signature, or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Convention shall apply.
- 2 Any State may, at any later date, by a declaration addressed to one of the Depositaries, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Depositary.
- 3 Any declaration made under either of the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to one of the Depositaries. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Depositary.

Article 30 – Reservations

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval or at any later date, declare that it reserves the right:
- a not to provide any form of assistance in relation to the taxes of other Parties in any of the categories listed in sub-paragraph b. of paragraph 1 of Article 2, provided that it has not included any domestic tax in that category under Annex A of the Convention;
 - b not to provide assistance in the recovery of any tax claim, or in the recovery of an administrative fine, for all taxes or only for taxes in one or more of the categories listed in paragraph 1 of Article 2;
 - c not to provide assistance in respect of any tax claim, which is in existence at the date of entry into force of the Convention in respect of that State or, where a reservation has previously been made under sub-paragraph a. or b. above, at the date of withdrawal of such a reservation in relation to taxes in the category in question;
 - d not to provide assistance in the service of documents for all taxes or only for taxes in one or more of the categories listed in paragraph 1 of Article 2;

- e not to permit the service of documents through the post as provided for in paragraph 3 of Article 17;
 - f to apply paragraph 7 of Article 28 exclusively for administrative assistance related to taxable periods beginning on or after 1 January of the third year preceding the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party, or where there is no taxable period, for administrative assistance related to charges to tax arising on or after 1 January of the third year preceding the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party.
- 2 No other reservation may be made.
- 3 After the entry into force of the Convention in respect of a Party, that Party may make one or more of the reservations listed in paragraph 1 which it did not make at the time of ratification, acceptance or approval. Such reservations shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of the reservation by one of the Depositaries.
- 4 Any Party which has made a reservation under paragraphs 1 and 3 may wholly or partly withdraw it by means of a notification addressed to one of the Depositaries. The withdrawal shall take effect on the date of receipt of such notification by the Depositary in question.
- 5 A Party which has made a reservation in respect of a provision of this Convention may not require the application of that provision by any other Party; it may, however, if its reservation is partial, require the application of that provision insofar as it has itself accepted it.

Article 31 – Denunciation

- 1 Any Party may, at any time, denounce this Convention by means of a notification addressed to one of the Depositaries.
- 2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Depositary.
- 3 Any Party which denounces the Convention shall remain bound by the provisions of Article 22 for as long as it retains in its possession any documents or information obtained under the Convention.

Article 32 – Depositaries and their functions

- 1 The Depositary with whom an act, notification or communication has been accomplished, shall notify the member States of the Council of Europe and the member countries of OECD and any Party to this Convention of:
- a any signature;

- b the deposit of any instrument of ratification, acceptance or approval;
 - c any date of entry into force of this Convention in accordance with the provisions of Articles 28 and 29;
 - d any declaration made in pursuance of the provisions of paragraph 3 of Article 4 or paragraph 3 of Article 9 and the withdrawal of any such declaration;
 - e any reservation made in pursuance of the provisions of Article 30 and the withdrawal of any reservation effected in pursuance of the provisions of paragraph 4 of Article 30;
 - f any notification received in pursuance of the provisions of paragraph 3 or 4 of Article 2, paragraph 3 of Article 3, Article 29 or paragraph 1 of Article 31;
 - g any other act, notification or communication relating to this Convention.
- 2 The Depositary receiving a communication or making a notification in pursuance of the provisions of paragraph 1 shall inform immediately the other Depositary thereof.

In witness whereof the undersigned, being duly authorised thereto, have signed the Convention.

Established by the Depositaries the 1st day of June 2011 pursuant to Article X.4 of the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters, in English and French, both texts being equally authentic, in two copies of which one shall be deposited in the archives of each Depositary. The Depositaries shall transmit a certified copy to each Party to the Convention as amended by the Protocol and to each State entitled to become a party.

參與《多邊公約》的稅務管轄區

(截至二零一七年五月十二日)

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|---------------|--------------|------------------|
| 1. 阿爾巴尼亞 | 41. 希臘 | 81. 巴拿馬 |
| 2. 安道爾 | 42. 格陵蘭 # | 82. 菲律賓 |
| 3. 安圭拉 # | 43. 危地馬拉 | 83. 波蘭 |
| 4. 阿根廷 | 44. 根西島 # | 84. 葡萄牙 |
| 5. 阿魯巴 # | 45. 匈牙利 | 85. 羅馬尼亞 |
| 6. 澳大利亞 | 46. 冰島 | 86. 俄羅斯 |
| 7. 奧地利 | 47. 印度 | 87. 聖基茨和尼維斯 |
| 8. 阿塞拜疆 | 48. 印度尼西亞 | 88. 聖盧西亞 |
| 9. 巴巴多斯 | 49. 愛爾蘭 | 89. 聖文森特和格林納丁斯 |
| 10. 比利時 | 50. 萌島 # | 90. 薩摩亞 |
| 11. 伯利茲 | 51. 以色列 | 91. 聖馬力諾 |
| 12. 百慕達 # | 52. 意大利 | 92. 沙地阿拉伯 |
| 13. 巴西 | 53. 牙買加 | 93. 塞內加爾 |
| 14. 英屬維爾京群島 # | 54. 日本 | 94. 塞舌爾 |
| 15. 保加利亞 | 55. 澤西島 # | 95. 新加坡 |
| 16. 布基納法索 | 56. 哈薩克斯坦 | 96. 聖馬丁島 # |
| 17. 喀麥隆 | 57. 肯亞 | 97. 斯洛伐克共和國 |
| 18. 加拿大 | 58. 韓國 | 98. 斯洛文尼亞 |
| 19. 開曼群島 # | 59. 科威特 | 99. 南非 |
| 20. 智利 | 60. 拉脫維亞 | 100. 西班牙 |
| 21. 中國內地 | 61. 黎巴嫩 | 101. 瑞典 |
| 22. 哥倫比亞 | 62. 列支敦士登 | 102. 瑞士 |
| 23. 庫克群島 | 63. 立陶宛 | 103. 突尼西亞 |
| 24. 哥斯達黎加 | 64. 盧森堡 | 104. 土耳其 |
| 25. 克羅地亞 | 65. 馬來西亞 | 105. 特克斯和凱科斯群島 # |
| 26. 庫拉索 # | 66. 馬爾他 | 106. 烏干達 |
| 27. 塞浦路斯 | 67. 馬紹爾群島 | 107. 烏克蘭 |
| 28. 捷克共和國 | 68. 毛利求斯 | 108. 阿拉伯聯合酋長國 |
| 29. 丹麥 | 69. 墨西哥 | 109. 英國 |
| 30. 多米尼加共和國 | 70. 摩爾多瓦 | 110. 美國 |
| 31. 薩爾瓦多 | 71. 摩納哥 | 111. 烏拉圭 |
| 32. 愛沙尼亞 | 72. 蒙特塞拉特島 # | |
| 33. 法羅群島 # | 73. 摩洛哥 | |
| 34. 芬蘭 | 74. 瑙魯 | |
| 35. 法國 | 75. 荷蘭 | |
| 36. 加蓬 | 76. 新西蘭 | |
| 37. 格魯吉亞 | 77. 尼日利亞 | |
| 38. 德國 | 78. 紐埃 | |
| 39. 迦納 | 79. 挪威 | |
| 40. 直布羅陀 # | 80. 巴基斯坦 | |

藉地域延伸身分加入