

INTERNATIONAL TAX

DOUBLE TAX AGREEMENTS

ADMINISTRATIVE PROVISIONS

Administrative Provisions

1. Mutual Agreement Procedures/APA – Article 25
2. Exchange of Information – Article 26
3. Mutual Administrative Assistance – Article 27

Mutual Agreement Procedure (MAP)

- A MAP is an instrument for competent authorities to discuss cross-border taxation of specific transactions
- Aim is to coordinate their approach for the benefit of the taxpayer
- This process is available under a tax treaty so that treaty partners can resolve cases involving their taxpayers where there have been disputes
- Authorised under Article 25 (1) of the OECD & UN Model Tax Convention

Scope of MAP

- MAP applies solely to taxes that are expressly covered by the applicable DTT as well as to persons that are residents of one of the Contracting States
- A taxpayer may file a MAP request if she considers that the actions of one or both of the Contracting State resulted or will result in taxation not in accordance with the provisions of the DTT,
- She may present her case to the competent authority of the Contracting state of which she is resident.

Cases that may be covered within the scope of MAP

1. Dual residence cases
2. Where WHT in the Source State is not in accordance with the applicable DTT
3. Where a State taxes a particular type of income in respect of which the DTT gives an exclusive right to tax to the other State.
4. Where a person has rendered services abroad or receives pension from abroad and both Contracting States claim the right to tax this income.

Cases that may be covered within the scope of MAP

5. Dispute over the type of income
6. Dispute over the existence of a permanent establishment
7. where the arm's length principle is not applied to the allocation of profits between associated enterprises
8. where the imposition of tax infringes the non-discrimination provisions of DTTs.

MAP Weaknesses

1. Limit taxpayer participation in the MAP process
2. In practice, a MAP can take a very long time to complete
3. MAPs are often non-binding on tax authorities

Advance Pricing Arrangements (APA)

- Based on Article 25 of the Model Convention
- *APAs are defined as “Arrangements between the tax authority(ies) and the taxpayer(s) that determines in advance, for a controlled transaction, an appropriate set of criteria for determining the transfer pricing structure for those transactions over a fixed period of time.”*
- Are binding written agreement between the taxpayer and the tax authority.
- Similar to MAP as their purpose is to eliminate double taxation

Advance Pricing Arrangements (APA)

- There are three different types of APA

1. Unilateral

2. Bilateral

3. Multilateral

Advance Pricing Arrangements (APA)

- APAs are a dispute resolution mechanism for Transfer Pricing cases
- that are generally binding on the parties and a valid for a period that lasts 3 to 5 years
- An APA will apply to future period
- The tax authority will not audit the years under APA but to review continuous compliance with the APA

Termination of an APA

- An APA may be terminated if;
 1. There is a breach of its terms
 2. There was material non-disclosure of pertinent terms
 3. Material changes in future events that the pricing in the APA is no longer tenable

Tax Information Exchange Agreement

- TIEAs are based on Article 26 of the model treaties
- May be stand alone agreements or part of a treaty
- and must be recognized by the domestic law and must specify the tax(es) to be covered.
- Administration is vested in the Competent Authorities of the contracting states
- Information that is relevant to the administration and enforcement of domestic tax laws are;
 1. Determination of tax
 2. Assessment
 3. Collection
 4. Recovery and enforcement

Exchange of Information

- Exchange of information (EOI) is the cross-border sharing of taxpayer information by tax administrations.
- A tax administration may ask for specific information on a particular case from another jurisdiction.

Types of EOI

Exchange of Information on Request (EOIR)

Spontaneous Exchange of Information (SEOI)

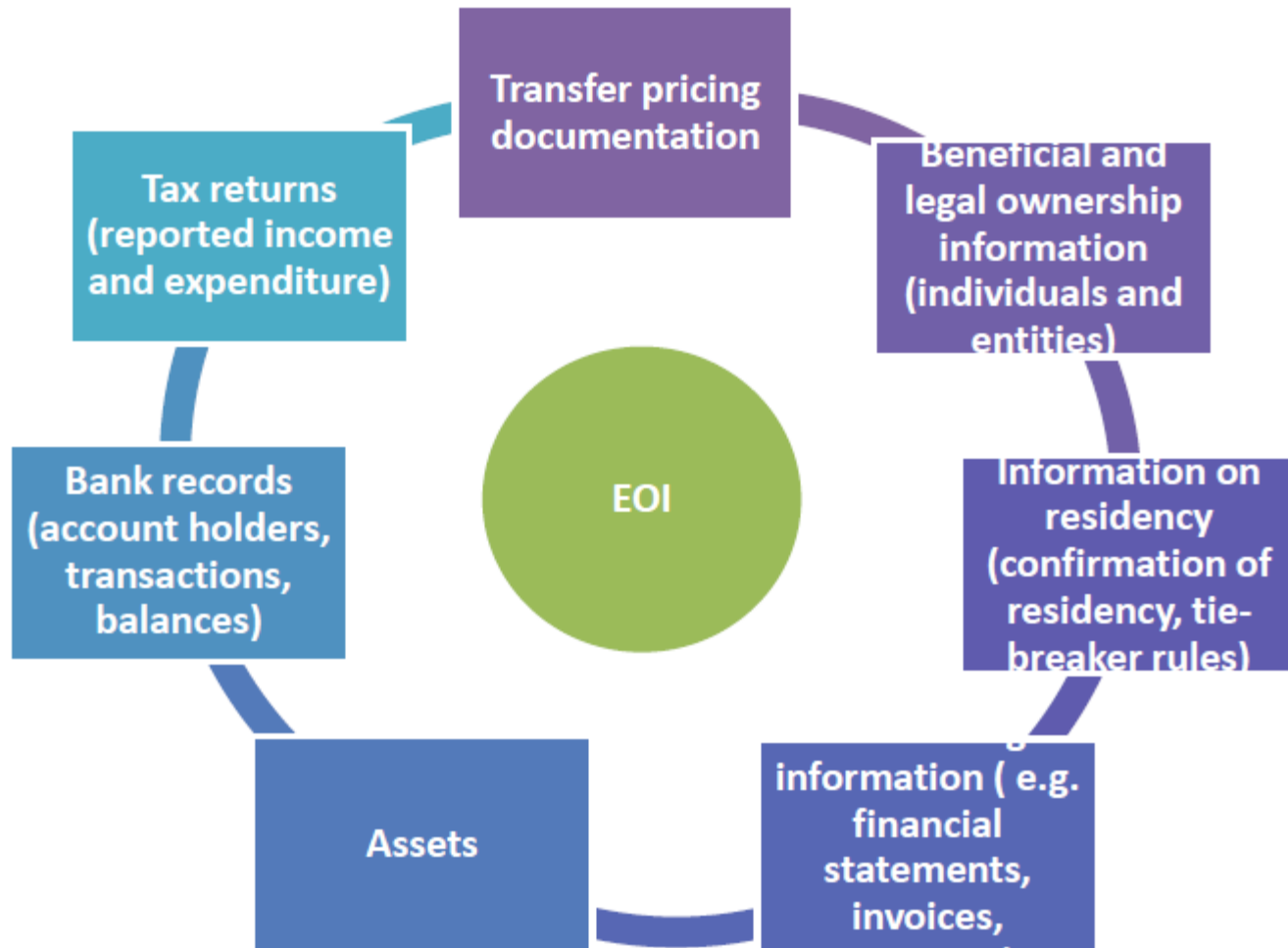
Automatic Exchange of Information (AEOI)

Simultaneous Tax Examination

Tax Examination Abroad

Industry-wide exchange

What must be provided, What can be obtained



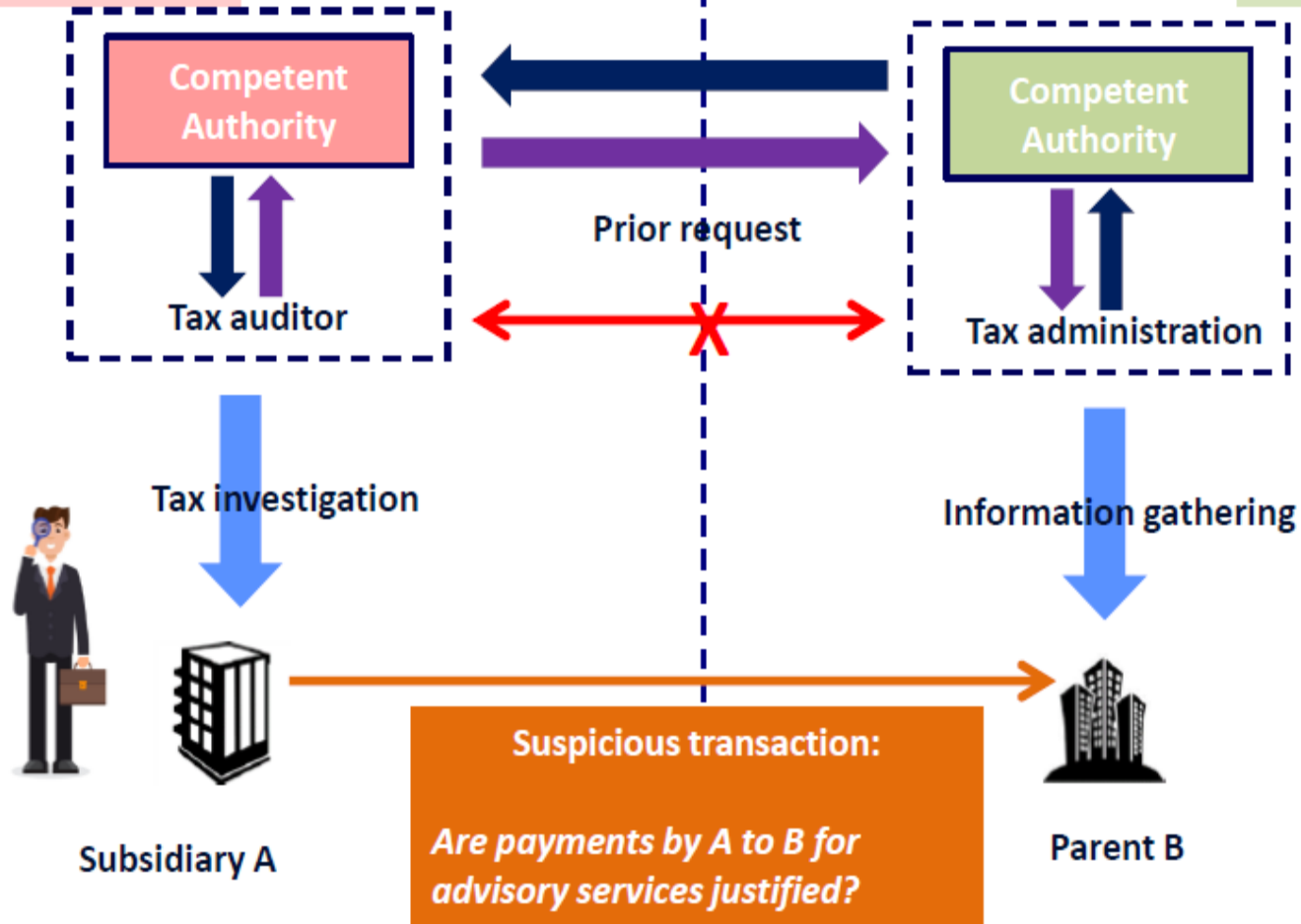
Exchange of Information on request (EOIR)

- As the name suggests ,this refers to information exchanged pursuant to a request for administrative assistance.
- Information foreseeably relevant;
 - i. Identify the concerned person
 - ii. For tax purposes
 - iii. Drafting the request.
- Based on bilateral agreements and the administrative assistance convention.
- Between designated competent authorities (CAs)
- Through a prior EOI request
- Based on a legal document

Exchange of information on request

Country A

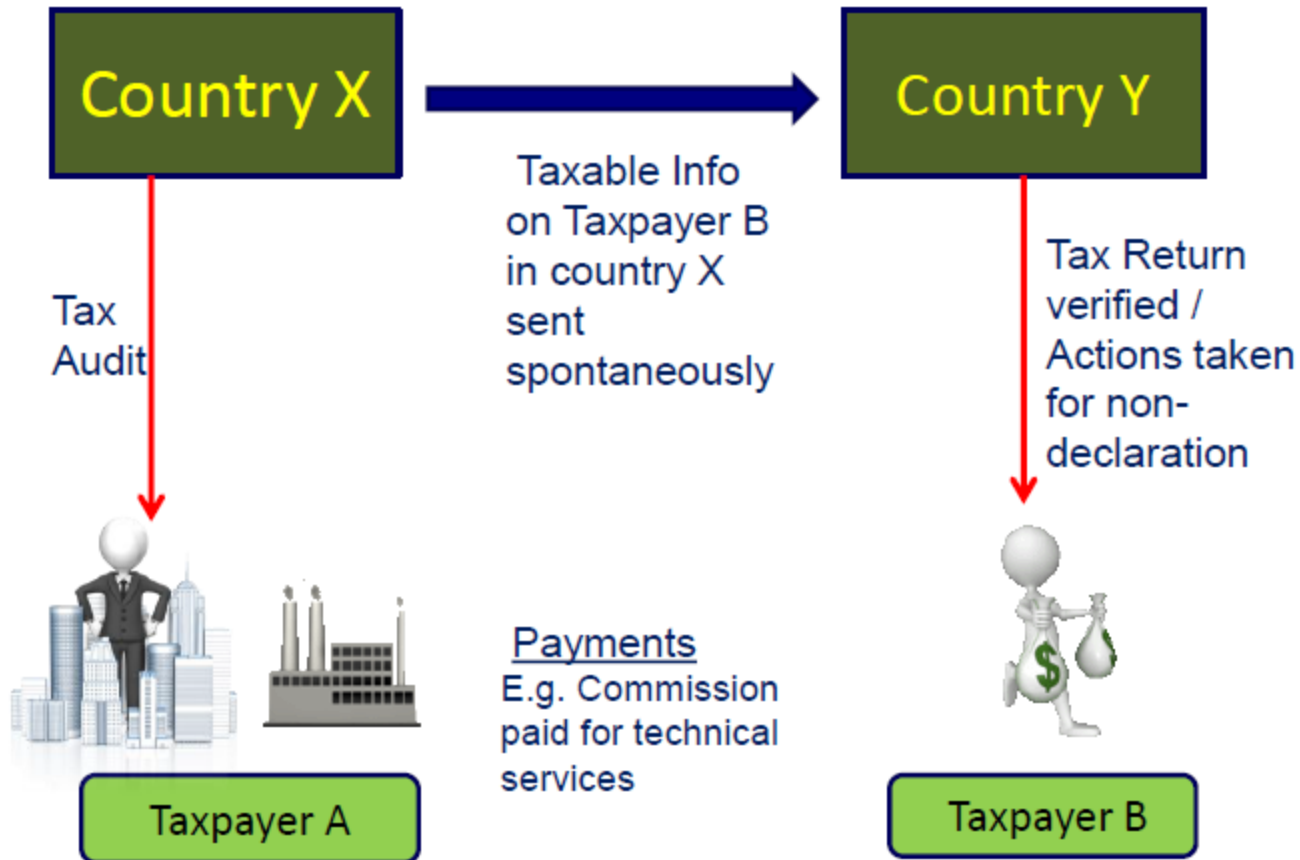
Country B



Spontaneous Exchange of Information

- This is the provision of information to another contracting party that is **foreseeably relevant** to that other party and that has not been previously requested.
- Information which may prove relevant to a treaty partner is forwarded voluntarily e.g.;
 - i. Excessive payments to associated entity in low tax jurisdiction
 - ii. Tax evasion schemes – double non taxation
 - iii. Transactions involving low tax jurisdictions
 - iv. Artificial transfer of profits between related parties

Spontaneous EOI



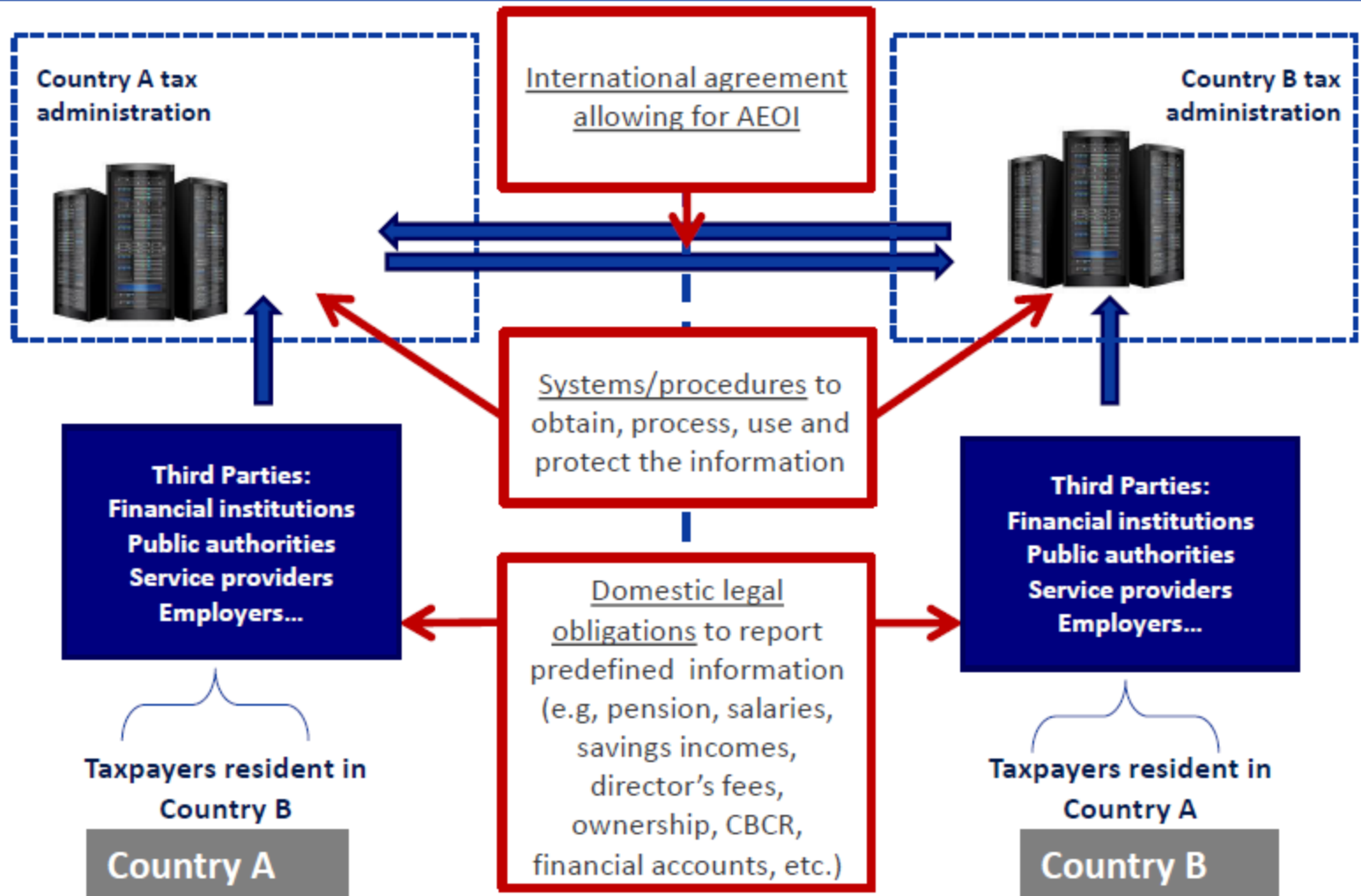
Spontaneous Exchange of Information

- Because of its nature, spontaneous exchange of information relies on the active participation and co-operation of local tax officials (e.g. tax auditors, etc).
- Information provided spontaneously is usually effective since it concerns particulars detected and selected by tax officials of the sending country during or after an audit or other type of tax investigation

Automatic Exchange of Information (AEOI)

- This involves the systematic and periodic transmission of “bulk” taxpayer information by the source country to the residence country
- The information which is exchanged automatically is collected in the source country on a routine basis, generally through reporting of the payments by the payer
- can also be used to transmit other types of useful information
- As a result, the tax authority of a taxpayer’s country of residence can check its tax records to verify that taxpayers have accurately reported their foreign source income

AEOI



Simultaneous Tax Examination

- An arrangement between two or more jurisdictions to examine the tax affairs of taxpayers in which they have a common or related interest.
- Performed simultaneously but independently
- Article 8 of the Multilateral Convention on Mutual Assistance (MAAC) provides for such simultaneous tax examination.

Tax examination Abroad

- One party allows the other to enter its territory for purposes of audit
- Must be done in accordance with the domestic law of the requested Party
- Requested Party must notify the applicant Party of the time and place of the audit
- The consent of the taxpayer must be obtained
- Passive or active – depending on the legislation of partner countries & rights and safeguards of taxpayers

Industry Wide Exchanges

- Exchange of tax information concerning a whole sector rather than particular taxpayers.
- E.g. Information Technology, Oil & Gas, Banking, Insurance, Utilities, Telecommunications
- Tax avoidance schemes
- Risk analysis strategies
- Sectoral studies for revenue comparison and forecasting
- Transfer pricing audit studies

Declining a request for information

Declining a request for information

- A request for information may be denied in the following instances;
 1. Information requested is not attainable under the domestic laws
 2. Information would reveal business/commercial secrets of a taxpayer
 3. Information would reveal confidential communication between a professional and a client
 4. Information is contrary to public policy
 5. Information would lead to discrimination of nationals of the requested party.

Confidentiality of information

- Information to be disclosed to persons or authorities concerned with assessment, collection, enforcement, prosecution or appeals relating to taxes
- May be disclosed to courts and administrative bodies permitted under the domestic laws
- Such information must be used solely for tax purposes
- Disclosure of information to third parties/entities to be done only with consent of competent authority of the requested Party

INTERNATIONAL TAXATION LAW

TRANSFER PRICING

ADMINISTRATIVE APPROACHES TO AVOIDING AND RESOLVING TRANSFER PRICING DISPUTES

SAFE HARBOUR RULES

- A safe harbour in a transfer pricing regime provision that applies to a defined category of taxpayers or transactions and that relieves eligible taxpayers from certain obligations otherwise imposed by a country's general transfer pricing rules.
- There are 2 types of Safe Harbours
 1. Simplified documentation requirements.
 2. Prescribed margins & mark-ups for particular types of transactions

SAFE HARBOUR RULES

- **Benefits of safe harbours**

1. Simplifying compliance and reducing compliance costs
2. Providing certainty to eligible taxpayers that the price charged or paid on qualifying controlled transactions will be accepted by the tax administrations
3. Permitting tax administrations to redirect their administrative resources from the examination of lower risk transactions to more complex or higher risk transactions and taxpayers.

SAFE HARBOUR RULES

- **Concerns over safe harbours**

1. The implementation of a safe harbour may lead to taxable income being reported that is not in accordance with the arm's length principle
2. They may increase the risk of double taxation or double non-taxation when adopted unilaterally
3. Potentially open avenues for inappropriate tax planning, and
4. May raise issues of equity and uniformity.

QUESTIONS?