Convention on Mutual Administrative Assistance in Tax Matters as amended by the 2010 Protocol signed by India on 26 January 2012

Introduction

The Multilateral Convention on Mutual Administrative Assistance in Tax Matters was originally developed by the Organisation for Economic Co-operation and Development (OECD) and the Council of Europe in 1988.

In April 2009, the G20 nations called for action ‘to make it easier for developing countries to secure the benefits of the new cooperative tax environment, including a multilateral approach for the exchange of information.’ In response the OECD and the Council of Europe developed a Protocol amending the multilateral Convention on Mutual Administrative Assistance in Tax Matters to bring it into line with the international standards on the exchange of information for tax purposes. Previously, it was only open to members of the OECD and of the Council of Europe but from June 2011 it has been opened to all countries.

The Convention facilitates international co-operation for improved operation of national tax laws, while respecting the fundamental rights of taxpayers. The Convention provides for all forms of administrative co-operation between states in the assessment and collection of taxes, in particular with a view to combating tax
avoidance and evasion. This co-operation ranges from exchange of information, including automatic exchanges, to the recovery of foreign tax claims.

The present signatories to the amended convention are: Argentina, Australia, Belgium, Brazil, Canada, Denmark, Finland, France, Georgia, Germany, Iceland, India, Indonesia, Ireland, Italy, Japan, Korea, Mexico, Moldova, Netherlands, Norway, Poland, Portugal, Russia, Slovenia, South Africa, Spain, Sweden, Turkey, Ukraine, the United Kingdom and the United States.

**Key features of the Convention**

- The scope of the Convention is broad. It covers a wide range of taxes and goes beyond the exchange of information on request. It also provides for other forms of assistance such as: automatic exchange of information (Article 6), spontaneous exchange of information (Article 7), simultaneous tax examinations (Article 8), tax examinations abroad (Article 9), recovery of tax claims (Article 11), measures of conservancy (Article 12) and service of documents (Article 17). It can also be used to facilitate joint audits.

- The Convention may apply to all forms of compulsory payments to the government except for customs duties. It applies to taxes on income, profits, capital gains and net wealth levied at central government level. It also covers local taxes, compulsory social security contributions, estate, inheritance or gift taxes, etc.

- This instrument is multilateral and a single legal basis for multi-country co-operation, unlike the Double Taxation Avoidance Agreements/Tax Information Exchange Agreements which are bilateral. It provides for an extensive network and there will be consistent application of provisions leaving limited scope for deviation.

- It not only facilitates the exchange of information, but also provides for assistance in the recovery of taxes. This will aid the efforts of the Government to recover Indian money illegally retained and/or transferred abroad.

- It provides for simultaneous tax examinations and participation in tax examinations in other countries. This provides for the examination of the tax affairs of taxpayers simultaneously in their own territory and abroad, and the sharing of relevant information between countries. This allows tax officials to enter into the territory of the other country to interview individuals and examine records.

- The convention explicitly provides for Automatic Exchange of information and Spontaneous Exchange of information.

- It provides for service of documents to the other country.

- The information received under the Convention can also be used for other purposes besides those related to tax co-operation, for example to counter money laundering with the approval of the state supplying the information.

- The convention also provides that the information so exchanged can be disclosed only to the persons and authorities (including courts and administrative or supervisory bodies) concerned with:
  - The assessment, collection or recovery of the relevant taxes.
  - Enforcement or prosecution in relation to these taxes.
  - The determination of appeals in relation to these taxes.
The information so collected shall be treated as secret or protected in the same manner as information obtained under domestic laws. It should not be disclosed to persons or authorities, other than those mentioned above, regardless of domestic information disclosure laws such as freedom of information or other legislation that allows greater access to government documents. However, it may be disclosed in a public court proceedings or judicial precedents, relating to such taxes.

Conclusion

With taxpayers operating on a global basis, tax authorities are moving from bilateral to multilateral co-operation and from exchange of information on request to other closer forms of co-operation. The Convention is an effective and practical tool to help the tax authorities in their everyday work. The signatories will only increase with time as each government seeks an increase in its share of tax revenues.

Our Offices

For private circulation only

Ahmedabad
President Plaza, 1st Floor Plot No 36
Opp Muktidham Derasar
Thaltej Cross Road, SG Highway
Ahmedabad, Gujarat 380054
Phone +91-79 3091 7000

Bangalore
6th Floor, Millenia Tower ‘D’
1 & 2, Murphy Road, Ulsoor,
Bangalore 560 008
Phone +91-80 4079 7000

Bhubaneswar
IDCOL House, Sardar Patel Bhawan
Block III, Ground Floor, Unit 2
Bhubaneswar 751009
Phone +91-674 253 2279 / 2296

Chennai
PwC Center, 2nd Floor
32, Khader Nawaz Khan Road
Nungambakkam
Chennai 600 006
Phone +91-44 4228 5000

Hyderabad
#8-2-293/82/A/113A Road no. 36,
Jubilee Hills, Hyderabad 500 034,
Andhra Pradesh
Phone +91-40 6624 6600

Kolkata
South City Pinnacle, 4th Floor,
Plot – XI/1, Block EP, Sector V
Salt Lake Electronic Complex
Bidhan Nagar
Kolkata 700 091
Phone +91-33 4404 6000 / 44048225

Mumbai
PwC House, Plot No. 18A,
Guru Nanak Road - (Station Road),
Bandra (West), Mumbai - 400 050
Phone +91-22 6689 1000

Gurgaon
Building No. 10, Tower - C
17th & 18th Floor,
DLF Cyber City, Gurgaon
Haryana -122002
Phone : +91-124 330 6000

Pune
GF-02, Tower C,
Panchshil Tech Park,
Don Bosco School Road,
Yerwada, Pune - 411 006
Phone +91-20 4100 4444

For more information contact us at,
pwcts.knowledgemanagement@in.pwc.com

The above information is a summary of recent developments and is not intended to be advice on any particular matter. PricewaterhouseCoopers expressly disclaims liability to any person in respect of anything done in reliance of the contents of these publications. Professional advice should be sought before taking action on any of the information contained in it. Without prior permission of PricewaterhouseCoopers, this Alert may not be quoted in whole or in part or otherwise referred to in any documents

©2012 PricewaterhouseCoopers. All rights reserved. “PwC”, a registered trademark, refers to PricewaterhouseCoopers Private Limited (a limited company in India) or, as the context requires, other member firms of PricewaterhouseCoopers International Limited, each of which is a separate and independent legal entity.