

TU-3

Format for making reference involving information relating to agreement entered under section 90 or 90A – SOP TU H.1.1

APPENDIX: Form A: Request for Information under the Provisions of Tax Treaties

Part I of Form A

Request for Information			
1	Taxpayer under investigation/examination in India	Name	
		Full Address	
		PAN	
		Current Jurisdiction	
2	Country/jurisdiction to whom request is being made		
3	Contact details of Assessing Officer/ DDIT(Investigation)/ Transfer Pricing Officer	Name	
		Designation	
		Address	
		Email	
		Telephone and Fax	
4	Contact details of Range/Unit Head	Name	
		Designation	
		Address	
		Email	
		Telephone and Fax	
5	Contact details of Pr. CIT/CIT/Pr. DIT/DIT concerned	Name	
		Designation	
		Address	
		Email	
		Telephone and Fax	
6	Name of the foreign taxpayer/holder of information if referred to in the request (Row 15 of Part B)		

Part II of Form A

2	To:		
3	From:		
5	Contact Point	Name:	
		Email:	
		Telephone:	
		Fax:	
4	Legal Basis:		
5	Reference numbers and related matters	Reference number:	
		Initial request:	Please check the box: <input type="checkbox"/> Yes <input type="checkbox"/> No
		If no, please provide reference number(s) and date(s) of any related request(s):	
		Acknowledgement needed:	Please check the box: <input type="checkbox"/> Yes <input type="checkbox"/> No
		Number of attachments to the request:	
Total number of pages for all attachments:			
6	Urgency of reply	Urgent reply required due to:	Please check the box: <input type="checkbox"/> Statute of limitation <input type="checkbox"/> Suspected fraud <input type="checkbox"/> Court case <input type="checkbox"/> Other reasons (please specify):
7	Identity of person(s)		

	under examination or investigation:	
8	Request to refrain from notifying the taxpayer(s) involved:	<p>Please check the box:</p> <p>No <input type="checkbox"/></p> <p>Yes <input type="checkbox"/></p> <p>Reasons:</p> <p>If yes, the competent authority confirms that the requesting country would be able to refrain from notifications in similar circumstances.</p>
9	Time period or taxable event for which or in relation to which the information is sought:	
10	Tax(es) to which the request relates:	

	Tax purpose for which the information is requested:	Please check the box: <input type="checkbox"/> determination, assessment and collection of taxes, <input type="checkbox"/> recovery and enforcement of tax claims, <input type="checkbox"/> investigation or prosecution of tax matters , <input type="checkbox"/> other (please specify):	
	Relevant background:		
13	Information requested:		
14	Grounds for believing that the requested information is held in the requested jurisdiction or is within the possession or control or is within the possession or control of a person within its jurisdiction:		
15	Name and address of any person believed to be in possession of the information requested (to the extent known):		
16	Form, if any, in which information is requested:	For copies of documents what type of authentication, if any, is requested:	
		other form requirements, if any:	
17	Translation of reply requested:	Please check the box: <input type="checkbox"/> Yes <input type="checkbox"/> No Language requested:	

In making the request, the requesting competent authority states that:

- (a) All information received in relation to the request will be kept confidential and used only for the purposes permitted in the agreement which forms the basis for the request.
- (b) The request is in conformity with Indian laws and administrative practice and is further in conformity with the agreement on the basis of which it is made.
- (c) Such information would be obtainable under Indian laws and the normal course of administrative practice in similar circumstances.
- (d) We have pursued all means available in our own territory to obtain the information, except those that would give rise to disproportionate difficulties.

Signature of the Pr.CIT of AU

Name and Designation

General Instructions for filling up Form A

1. Both Parts I and Parts II of this Form should be filled up by the Pr.CIT/Pr.DIT/CIT/DIT concerned and sent to the Competent Authority, i.e., JS (FT&TR-I) and JS(FT&TR-II), as the case maybe. The request for information in this Form should not be routed through the office of Pr.CCIT/Pr.DGIT/CCIT/DGIT but a copy may be sent to that office for information.

1. Part I contains basic information about the taxpayer under investigation/examination in India and the officers making the request. This Part needs to be filled up for record purposes and is not sent to foreign authorities.

2. Part II is modelled on the lines of the template formulated by the OECD and is essentially the same as Annexure-D of the Manual on Exchange of Information issued in 2013. Part II of Form A is forwarded to the foreign authorities and thus all the relevant information mentioned in covering letters, assessment orders etc. must be captured in this Part II. The background note, summary of the case, factual analysis etc. should be included in Part II and if necessary, Annexures may be added to this Part of the Form. Since the information sent is treated as confidential by the tax authorities in other jurisdictions, copies of relevant incriminating documents seized can and should be enclosed if the same are considered useful for the foreign tax administration, in order to facilitate the obtaining of information by them.

3. Where EOI requests are to be made in a group of cases under inquiry/investigation, separate Forms should be filled up for different taxpayers. Further, separate Forms need to be filled up for EOI requests to different countries/jurisdictions in the case of the same taxpayer. Thus, for instance, if three members of a family have received gifts from persons located in three different jurisdictions, the total number of Forms to be filled in would be nine.

4. Row wise instructions for filling up the Form are provided in the later part of these Instructions which must be followed by the CIT/DIT concerned. The guidelines for assistance in preparing the

references have been provided in Para 3.5.1 to 3.5.21 of the Manual on Exchange of Information which should be followed by the officers concerned.

5. It shall be ensured that request for only that information is made which has demonstrable "foreseeable relevance" to the investigation carried out in India. Further, before making the request, efforts should be made to obtain information in India and this fact should be mentioned in the request. Not satisfying these conditions may result in the request being treated as "defective" and will be returned in original to be resubmitted again after removing these deficiencies

7. In time barring cases, the requests should be made at least three months before the cases are getting time barred giving sufficient time in the office of Competent Authority to process the requests and allow re-submission in cases where the original requests are found to be defective. In exceptional cases, where requests need to be made at the last moment, for instance on account of some new evidence becoming available, the reasons for the same should be clearly explained in the covering letter of the P.CIT/Pr.DIT/CIT/DIT concerned.

8. It would be responsibility of the Range/Unit Head that requests for information under the provisions of tax treaties are made in all appropriate cases including carrying out multi-level enquiry to take the investigation to their logical conclusion. They are also responsible for ensuring that clarifications and feedback are provided in a timely manner and this aspect should be monitored by the Pr.CIT/Pr.DIT/CIT/DIT concerned and appropriate action should be taken wherever required.

Instructions for filling up Part I of Form A

1. The purpose of filling up Part I of Form A is to have basic records of the taxpayer under investigation in India and the contact details of the officers making the request in the office of the Competent Authority so that the information provided by the foreign authorities or their requests for clarifications are sent to the correct jurisdiction.

2. In **Row 1**, the name, full address, PAN and the current jurisdiction of the taxpayer under investigation in India should be mentioned.

3. The country/jurisdiction to whom the request is made should be mentioned in **Row 2**.

4. The contact details of officers handling the Investigation presently should be mentioned in **Rows 3, 4 and 5**.

5. The name of the foreign person/entity or the holder of the information in a foreign country if mentioned in the request may be stated in **Row 6** for statistical purposes.

Instructions for Filling up Part II of Form A

- Part II of Form A is essentially the same as Annexure-D of the Manual on Exchange of Information issued in 2013 and only this Part will be sent to the Competent Authority of the country/jurisdiction from where the request for information will be made. Accordingly all the information which may be useful for the foreign tax authorities for providing assistance, including copies of the documents etc., must be captured here, if necessary through Annexures.
- Row wise instructions for filling up Part II of Form A are given below:

Row	Description
Row 1	The name of the country/jurisdiction from where the information is requested should be mentioned.
Row 2	The name and designation of the Indian Competent Authority, i.e., JS (FT&TR-I) and JS (FT&TR-II) as the case maybe needs to be mentioned here. This will be filled up by FT&TR Division and thus should be left blank.
Row 3	The contact details of the officers in the FT&TR Division needs to be mentioned in this row. This will be filled up by FT&TR Division and thus should be left blank.
Row 4	The legal basis of making the request, for instance Article 26 of the DTAA between India and ----- or Article 5 of the TIEA between India and ----- or Article 4 of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters or Article 5 of the SAARC Multilateral Limited Agreement should be mentioned here. There may be more than one legal instrument available for administrative assistance with the same country. In such situations, the instrument having the provision for particular administrative assistance required may be selected. If the administrative assistance required is available in more than one instrument, the one which is wider in scope should be selected.
Row 5	This row contains reference number, acknowledgment etc. These details will be filled up by FT&TR Division and should be left blank.
Row 6	The reasons for urgency of reply, if any, for example on account of statute of limitation, necessity of conducting investigation quickly on account of suspected fraud, court case etc. should be mentioned here. If in the request it is mentioned that information should be provided by a particular date, it should be added, in appropriate cases, that the information received after date will be useful in penalty or appellate proceedings.
Row 7	Full details of the person under investigation or examination by the Indian tax authorities, including PAN, date of birth/date of incorporation, full address and other details as available in the records should be mentioned here. As explained in Para 2.2.2 of the Manual on Exchange of Information, the tax treaties do not restrict administrative assistance to residents of either Contracting States and thus information about residents of third countries can also be requested. However, relevance of the information about residents of third countries vis-a-vis the person under investigation in India must be clearly explained in the request.
Row 8	Under the laws of certain countries/jurisdictions, the taxpayer or the holder of the information has certain rights including a right to be informed or notified that a

	request concerning him for information under a tax treaty has been made. The requesting country, however, in certain exceptional cases can make a request that the taxpayer/holder of information may not be so notified. If a request to refrain from notifying the taxpayer(s) concerned is made, the reasons for the same must be clearly explained. Such reasons could be that the information is of a very urgent nature and the process of prior notification to the taxpayer will delay supply of information or the prior notification is likely to undermine the success of the investigation being conducted. A request to refrain from notifying the taxpayer should not be made in a routine manner and such request should be made only if it is essential and can be justified on the basis of documentary evidence. The reason that the taxpayer concerned is likely to file an appeal against the supply of information may not be a valid reason for making such a request.
Row 9	The time period or the taxable event (e.g. the date on which withholding tax is imposed) for which the information or in relation to which the information is sought should be mentioned. If the information is relevant for the current period, this fact should also be mentioned.
Row 10	The taxes for which the request is made should be mentioned. As stated in Para 2.2.2 of the Manual on Exchange of Information, in most of the tax treaties, requests for information regarding taxes not cover by the treaty, such as indirect taxes or taxes levied by State Government, can be made.
Row 11	The relevant box needs to be ticked and if necessary more than one box may be ticked.
Row 12	Detailed background of the case should be mentioned clearly including the fact that how the information requested is foreseeably relevant for administration and enforcement of the domestic tax laws of India. This background information should also include a brief summary of the ongoing examination or investigation and how the requested information relates to this examination or investigation. The efforts made for collecting the information in India and the results thereof should be clearly specified. Details of foreign taxpayers related to the person under investigation/examination in India, as available in the records, and which may be of the assistance to the foreign tax authorities in providing the information may be mentioned as part of the background information.
Row 13	<p>The information which is requested from the foreign Competent Authority should be listed point-wise preferably as questions. The information sought should be specific and should be described as clearly as possible. The language should be simple and easily understandable to foreign authorities who may not be aware of India's tax laws and procedures or the terminologies used. The questions should be framed in such a manner that they can be answered directly on the basis of documents and other information available and the details requested should be specific.</p> <p>The information requested should be foreseeably relevant to the administration or enforcement of the Indian tax laws and their relevance should be clearly explained in light of the background information provided. Information in the form of "fishing expedition" should not be requested.</p> <p>In some cases, it has been observed that a large number of Questions are asked in the request for EOI even though some of the questions do not appear to emanate</p>

	<p>from the issues under investigation and the relevant questions which should actually be asked are not specifically stated. Request for voluminous information should be avoided as it may become counter-productive on account of the following reasons:</p> <ul style="list-style-type: none"> ➤ The request may be considered as having been made in a casual and perfunctory manner and may be responded to accordingly by the foreign tax authorities ➤ More critical information which is actually required may be missed by the foreign tax authorities in a request with a long list of questions and the useful information may not be received ➤ Though the foreign tax authorities may be genuinely trying to provide assistance they may not be able to do so as they would need to collect the requested information from various sources which they may not be able to do in a timely manner ➤ This may also adversely affect our reputation on a bilateral and multilateral basis and may impact on our ability and moral authority to request information even in genuine cases
Row 14	The grounds for believing that the information is available in the requested jurisdiction should be mentioned.
Row 15	The name and address (to the extent known) of the person believed to be in possession of the information should be mentioned. This could be name and address of the Bank (in case of bank accounts), tax administration of the other country (in case of return of income or taxes paid), name and address of agents/service providers (in case of say financial accounts requested from offshore financial centres) etc. The purpose of this information is to assist the foreign tax authorities to locate the information quickly and should be mentioned only to the extent known.
Row 16	The form in which the information is required for evidentiary value, for example, the specific forms for deposition of witnesses or the manner in which copies of original documents are authenticated may be mentioned.
Row 17	If the information is requested in English, the same may be indicated here.
Row 18	Before making the request, it should be ensured that the four conditions mentioned here have been satisfied as before making the request undertaking to this effect needs to be given.

3. The name and designation of the Pr. CIT/CIT/Pr. DIT/DIT concerned making the request should be mentioned and he should sign and verify the content of the information contained in the request.