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**Committee of Experts on International
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Summary

The last update to Article 26 of the United Nations Model Double Taxation Convention between Developed and Developing Countries (UN Model) and its Commentary was finalized in 2008 and included in the 2011 update of the UN Model.

In light of the developments in exchange of information for tax purposes since 2008, including the 2012 update by the Organisation for Economic Co-Operation and Development of Article 26 (Exchange of information) of the OECD Model Tax Convention on Income and on Capital and its Commentary (2012 OECD update), Mexico submitted a proposal to the Committee at its October 2013 meeting to update Article 26 of the UN Model and the commentary thereon following the general pattern of updates agreed upon by OECD in 2012 (E/C.18/2013/CRP.21, available at http://www.un.org/esa/ffd/tax/ninthsession/CRP21_Article26.pdf). The Committee expressed support for further work on this and a subcommittee coordinated by the expert for Mexico was set up to provide any further input required to amend Article 26 and the commentary thereon.

This note contains a revised proposal to amend Article 26 of the UN Model and the commentary thereon, based on comments by members of the subcommittee on Mexico's initial proposal. The proposed additional changes are intended to bring the commentary to Article 26 of the UN Model as closely as possible in line with the updated OECD commentary. This is to underline, consistent with the updates proposed in the initial proposal, that the UN Model Convention does not establish a standard for exchange of information in tax matters which is different from the OECD Model. The proposed additional changes to the Commentary (**highlighted in bold italics underlined**) are as follows:

- a) Clarification that if a Contracting State applies measures not normally foreseen in its domestic law or practice, such as to access and exchange bank information, that State would be equally entitled to request similar information from the other Contracting State (see paragraph 18.1 of the Commentary); and
- b) Clarification that a requested State cannot use a lack of powers or resources as a basis for invoking paragraph 3 and declining to provide information. It uses an example to illustrate this (see paragraph 20.1 of the Commentary).

Further minor adjustments or additions (**highlighted in bold italics underlined**) are proposed to paragraphs 3, 4, 4.1, 4.3, 7.5, and 20.4.

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I. Introduction

1. The last update to Article 26 of the United Nations Model Double Taxation Convention between Developed and Developing Countries (UN Model) and its Commentary was finalized in 2008 and included in the 2011 update of the UN Model.

2. In light of the developments in exchange of information for tax purposes since 2008, including the 2012 update by the Organisation for Economic Co-Operation and Development of Article 26 (Exchange of information) of the OECD Model Tax Convention on Income and on Capital and its Commentary (2012 OECD update), Mexico submitted a proposal to the Committee at its October 2013 meeting to update Article 26 of the UN Model Convention and the commentary thereon following the general pattern of updates agreed upon by OECD in 2012 (E/C.18/2013/CRP.21, available at http://www.un.org/esa/ffd/tax/ninthsession/CRP21_Article26.pdf). The Committee expressed support for further work on this and a subcommittee coordinated by the expert for Mexico was set up to provide any further input required to amend Article 26 and the commentary thereon.

3. This note contains a revised proposal to update Article 26 of the UN Model and the commentary thereon, based on comments by members of the subcommittee on Mexico's initial proposal. The proposed additional commentary changes since the 2013 paper (highlighted in bold italics underlined) are intended to bring the commentary to Article 26 of the UN Model as closely as possible in line with the updated OECD commentary. This is to underline, consistently with the updates proposed in the initial proposal, that the UN Model does not establish a standard for exchange of information in tax matters which is different from the OECD Model. The proposed additional changes (highlighted in bold italics underlined) are as follows:

- a) Clarification that if a Contracting State applies measures not normally foreseen in its domestic law or practice, such as to access and exchange bank information, that State would be equally entitled to request similar information from the other Contracting State; and
- b)

II. Summary of the main proposed changes to Article 26 and its Commentary

5. Following the pattern of updates in the 2012 OECD update, it is proposed that Article 26 of the UN Model and its Commentary be amended as follows:

(a) Amendment of the text of paragraph 2 of Article 26 to expressly provide for the possibility of sharing information by tax authorities with other law enforcement agencies and judicial authorities if certain conditions are met

6. It is proposed that the text of Article 26 be amended to allow the competent authorities of Contracting States to use information received for tax purposes for non-tax purposes if such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorizes such use (see also the proposed revisions to paragraph 13.3 of the Commentary and the addition of a new paragraph 13.4). The relevant language was previously included as an optional provision in paragraph 13.3 of the Commentary.

7. The addition of this language to Article 26 itself is consistent with the 2012 OECD update which itself is consistent with the treaty policy of a growing number of countries, and paragraph 4 of Article 22 of the (amended) Multilateral Convention on Mutual Administrative Assistance in Tax Matters which has an ever increasing number of

other words, merely further clarify the interpretation of the standard of “foreseeable relevance”. The introductory new paragraph 4.2 of the Commentary would explain this.

9. It is proposed that the interpretation of the standard of foreseeable relevance and the term “fishing expeditions” be developed through the following additions to the Commentary.

(i) General clarifications on the meaning of “foreseeable relevance” and “fishing expeditions”

10. The proposed clarifications elaborate on the meaning of “foreseeable relevance” in the context of a request for information on request. The clarifications acknowledge that given the complexity of taxation laws and taxpayer investigations and examinations, it is the requesting country, with full knowledge of its taxation laws and its investigation or examination, that is in the best position to determine the foreseeable relevance of the requested information. At the same time, this does not obligate the requested state to provide information in response to requests that are fishing expeditions — that is, speculative requests that have no apparent connection to an open inquiry or investigation.

(ii) Clarification that the identification of the taxpayer does not always require a name and address

11. The proposed new paragraph 7.3 makes it clear that failure to provide the name or address (or both) of the taxpayer does not necessarily mean that the request fails to meet the standard of foreseeable relevance; however, in such cases, the requesting State should provide other information sufficient to identify the taxpayer. That situation is likely to be rare. One example when the tax authority may not have the name or address of the taxpayer under investigation is new example (g) of paragraph 10.2.

(iii) Clarification that group requests are covered under Article 26

12. The proposed additions in new paragraph 7.4 clarify that the standard of “foreseeable relevance” can be met in the case of one taxpayer or several taxpayers, meaning that a request for information can be made for a group of taxpayers also in cases in which those taxpayers are not individually identified. Group requests, as all other requests, must meet the standard of foreseeable relevance. The Commentary acknowledges that in such cases it will often be more difficult to establish that the request meets the standard because the requesting state cannot specify an ongoing investigation into the affairs of a particular taxpayer when making such a request (which in most cases would by itself dispel the notion of the request being random or speculative). The Commentary goes on to describe, in very general terms and at a conceptual level, the information a requesting State must provide to demonstrate that a group request is foreseeably relevant.

13.

(c) Clarifications in respect of the identification of the person believed to be in possession of requested information

18. A number of clarifications are proposed in respect of the identification of the person believed to be in possession of the requested information:

The proposed language in new paragraph 7.3 concerns situations in which the requesting State is not in a position to provide the name and/or address of the person believed to be in possession of the information. The language clarifies that this does not necessarily mean that the request fails to meet the standard of foreseeable relevance and that, in fact, this is more a question of practicability or feasibility within the scope of paragraph 3(a) and (b); and

The proposed language in new paragraph 20.5 articulates more clearly the relationship between paragraph 3 and paragraphs 4 and 5, i.e. that paragraphs 3(a) and (b) do not permit the requested State to decline a request where paragraph 4 or 5 applies. It illustrates the application of this rule in the context of situations in which the requested State's inability to obtain the information was specifically related to the fact that the requested information was believed to be held by a bank or other financial institution.

(d) Include optional language in the Commentary for Contracting States wishing to improve the speediness and timeliness of exchange of information under Article 26

19. Timeliness of exchanging information is one of the most important factors in effective exchange of information. The issue of timeliness has come under the spotlight as a result of the peer review work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, with many country reports noting that the timeliness of responses should be improved. Including such a provision in a treaty may help to improve timeliness, and in particular it is likely to facilitate reaching a competent authority agreement on timeliness.

20. The proposed language inserted in new paragraphs 29.5 and 29.6 of the Commentary provides for a framework for improving the speediness and timeliness of exchange of information and sets a default standard of time limits within which the information is required to be provided unless a different agreement for shorter or longer time limits has been made by the competent authorities.

(e) Addition of language to the Commentary to clarify a number of terms and concepts used in Article 26

21. It is proposed that the following clarifications of a number of terms and concepts used in Article 26 are incorporated into the Commentary:

III. Proposed changes to the existing text of Article 26 of the UN Model and its Commentary

1. The proposed changes to the existing text of Article 26 of the UN Model and its Commentary appear in ~~strike through~~ for deletions, **bold italics** for additions already contained in Mexico's original proposal, and **bold italics underlined** for additions subsequently added/changes subsequently made.

Article 26

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws of the Contracting States concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. In particular, information shall be exchanged that would be helpful to a Contracting State in preventing avoidance or evasion of such taxes. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and it shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. **Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorizes such use.**

3. In no case shall the provisions of paragraph 2(e do.4(t.9(ey.7(a)7.8(s)7.2(ge)6(utio).2(f)-3.1())T55 -1.3

(c) 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*).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested

by Article 26. From the perspective of many developing countries, Article 26 is particularly important not only for curtailing cross-border tax evasion and avoidance, but also to curtail the capital flight that is often accomplished through such evasion and avoidance.

1.2 Much of the language of Article 26 is also found in the comparable Article of the OECD Model Convention. Consequently, the OECD Commentary to that Article generally is relevant in interpreting Article 26 of the United Nations Model Convention. It should be understood, nevertheless, that Article 26 is intended to be broader in a number of respects than the comparable provision in the OECD Model Convention.

1.3 Although Article 26 imposes reciprocal obligations on the Contracting States, it does not allow a developed country to refuse to provide information to a developing country on the ground that the developing country does not have an administrative capacity comparable to

Commentary and was implicit in the language of the last sentence of prior paragraph 1, now revised and moved to paragraph 6. The statement of the purposes of information exchanges in the text of Article 26 is intended to provide guidance to the Contracting States on the proper interpretation of the Article.

4.35 Although tax evasion is illegal and tax avoidance is not, both result in loss of revenue to the government, and, by definition, both defeat the intent of the government in enacting its taxing statutes. Consequently, mutual assistance in combating tax avoidance is an important aspect of mutual cooperation on tax matters. In addition, some forms of aggressive tax avoidance are so close to the line between avoidance and evasion that a Contracting State is unlikely to know for sure whether the information it is requesting deals with avoidance or evasion until after it obtains the requested information. Information on tax avoidance may be extremely useful to a Contracting State in its efforts to close possible loopholes in its taxing statutes.

5. The term “exchange of information” should be understood broadly to include an exchange of documents and an exchange of information unrelated to specific taxpayers and the provision of information by one Contracting State whether or not information is also being provided at that time by the other Contracting State.

5.1 If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State should provide information under Article 26 in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts or writings), to the extent feasible. Under paragraph 3, the requested State may decline to provide the information in the specific form requested if, for instance, the requested form is not known or permitted under its law or administrative practice. A refusal to provide the information in the form requested does not affect the obligation to provide the information.

5.2 Contracting States may wish to use electronic or other communication and information technologies, including appropriate security systems, to improve the timeliness and quality of exchanges of information. Indeed, the Contracting States may be obligated to provide requested information in electronic form if such action is necessary for an effective exchange of information. Contracting States which are required, according to their law, to observe data protection laws may wish to include provisions in their bilateral conventions concerning the protection of personal data exchanged. Data protection concerns the rights and fundamental freedoms of an individual, and in particular, the right to privacy, with regard to automatic processing of personal data. In no event is a Contracting State relieved of its obligation to exchange information simply because its domestic laws do not allow it to provide the information in the form requested.

5.3 The scope of exchange of information covers all tax matters without prejudice to the general rules and legal provisions governing the rights of defendants and witnesses in judicial proceedings. Exchange of information for criminal tax matters can also be based on bilateral or multilateral treaties on mutual legal assistance (to the extent that they also apply to tax crimes).

5.4 Article 26 provides in paragraph 6 that “the competent authorities shall, through consultation, develop appropriate methods and techniques concerning the matters in respect of which exchanges of information under paragraph 1 shall be made”. This language authorizes the competent authorities to exchange information in at least three modes: exchange by specific request, automatic exchange, and other exchanges, understood to include spontaneous exchanges.

5.5 Nothing in the United Nations Model Convention prevents the application of the provisions of Article 26 to the exchange of information that existed prior to the entry into force of the Convention, as long as the assistance with respect to this information is provided after the Convention has entered into force and the provisions of the Article have become effective. Contracting States may find it useful, however, to clarify the extent to which the provisions of the Article are applicable to such information, in particular when the provisions of that Convention will have effect with respect to taxes arising or levied from a certain time.

6. The Committee of Experts has suggested some guidelines for arrangements regarding the implementation of appropriate exchanges of information (see paragraph 30 below). Those guidelines are in the form of an inventory of options available to the competent authorities. The inventory is not intended to be exhaustive or to impose any procedural obligations on a Contracting State. Instead, the inventory is a listing of suggestions to be examined by competent authorities in developing procedures for an effective exchange of information.

B. C f i n d i C

particular group of taxpayers in accordance with its laws, any request related to the investigation will typically serve “the administration or enforcement” of its domestic tax laws and thus comply with the requirements of paragraph 1, provided it meets the standard of “foreseeable relevance”. However, where the request relates to a group of taxpayers not individually identified, it will often be more difficult to establish that the request is not a fishing expedition, as the requesting State cannot point to an ongoing investigation into the affairs of a particular taxpayer which in most cases would by itself dispel the notion of the request being random or speculative. In such cases it is therefore necessary that the requesting State provide a detailed description of the group and the specific facts and circumstances that have led to the request,

that has asked for information), the requested State is not obligated to provide information in response to a request for information. The examples are for illustrative purposes only. They should be read in the light of the overarching purpose of article 26 not to restrict the scope of exchange of information but to allow information exchange “to the widest possible extent”.

10.1. Application of the Convention between State A and State B (information must be provided):

[text omitted]

10.2. Implementation of domestic laws (information must be provided)

[text omitted]

(d) A resident of State A holds a bank account in State B, and the income from that account is exempt from tax under the domestic laws of State B. State A may request that State B provide information on the amount of interest income earned on that account;

(e) The tax authorities of State A conduct a tax investigation into the affairs of Mr. X. Based on this investigation the tax authorities have indications that Mr. X holds one or several undeclared bank accounts with Bank B in State B. However, State A has experienced that, in order to avoid detection, it is not unlikely that the bank accounts may be held in the name of relatives of the beneficial owner. State A therefore requests information on all accounts with Bank B of which Mr. X is the beneficial owner and all accounts held in the names of his spouse E and his children K and L.

(ef) A financial intermediary invests money of its account holders in State A, earning therein dividends and interest. State A requires that the financial intermediary keep records of the beneficial owners of the accounts but does not routinely request those records in enforcing its domestic laws. State B suspects that some of the beneficiaries of the account holders of the financial intermediary are its residents and are properly taxable under its domestic laws. State B may request that State A obtain

and information transmitted in response to a request, the confidentiality rules cover, for instance, competent authority letters, including the letter requesting information. At the same time, it is understood that the requested State can disclose the minimum information contained in a competent authority letter (but not the letter itself) necessary for the requested State to be able to obtain or provide the requested information to the requesting State, without frustrating the efforts of the requesting State. If, however, court proceedings or the like under the domestic laws of the requested State necessitate the disclosure of the competent authority letter itself, the competent authority of the requested State may disclose such a letter unless the requesting State otherwise specifically provide the assurance of secrecy required for effective information exchange, paragraph 2 provides that information communicated under the provisions of the Convention shall be treated as secret in the receiving State in the same manner as information obtained under the domestic laws of that State. Sanctions for the violation of such secrecy in that State will be governed by the administrative and penal laws of that State. In situations in which the requested State determines that the requesting State does not comply with its duties regarding the confidentiality of the information exchanged under this Article, the requested State may suspend assistance under this Article until such time as proper assurance is given by the requesting State that those duties will indeed be respected. If necessary, the competent authorities may enter into specific arrangements or memoranda of understanding regarding the confidentiality of the information exchanged under this Article.

12. Of course, the information received under Article 26 would be useless, or nearly so, to the requesting State (the Contracting State requesting the information) if the prohibition against disclosure were absolute. Paragraph 2 provides that information received under Article 26 can be disclosed to persons and authorities involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes mentioned in paragraph 1. In addition, it is understood that the information may also be communicated to the taxpayer, his proxy or witnesses in a civil or criminal proceeding.

12.1 As stated in paragraph 12, the information obtained can be communicated to the persons and authorities mentioned and, on the basis of the last sentence of paragraph 2 of the Article, can be disclosed by them in court sessions held in public or in decisions which reveal the name of the taxpayer. Once information is used in public court proceedings or in court decisions and thus rendered public, it is clear that from that moment such information can be quoted from the court files or decisions for other purposes even as possible evidence. But this disclosure to the public does not mean that the persons and authorities mentioned in paragraph 2 are allowed to provide on request additional information received.

12.2 If either or both of the Contracting States object to information obtained under Article 26 being made public by courts, or, once the information has been made public in this way, to

the information being used for other purposes, they should state this objection expressly in their Convention.

13. In general, the information received by a Contracting State may be used only for the purposes mentioned in paragraph 1. If the information appears to be of value to the receiving State for purposes other than those referred to in that paragraph, that State may not use the information for such other purposes without the authorization of the competent authority of the supplying State. That authorization should not be unreasonably withheld.

13.1 In some cases, a Contracting State may prosecute a taxpayer for tax evasion and also for an additional crime, such as money-laundering, that arises out of the same set of facts. In such circumstances, the receiving State may want to use the information provided for both purposes.

13.2 Similarly, the information received by a Contracting State may not be disclosed to a third country unless there is an express provision in the bilateral treaty between the Contracting States allowing such disclosure.

13.3 Information exchanged for tax purposes may be of value to the receiving State for purposes in addition to those referred to in the first and second sentences of paragraph 2 of Article 26. The last sentence of paragraph 2 therefore allows the Contracting States to share information received for tax purposes provided two conditions are met: first, the information may be used for other purposes under the laws of both States and, second, the competent authority of the supplying State authorizes such use. It allows the sharing of tax information by the tax authorities of the receiving State with other law enforcement agencies and judicial authorities in that State on certain high priority matters (e.g., to combat money laundering, corruption, terrorism financing). When a receiving State desires to use the information for an additional purpose (i.e. non-tax purpose), the receiving State should specify to the supplying State the other purpose for which it wishes to use the information and confirm that the receiving State can use the information for such other purpose under its laws. Where the supplying State is in a position to do so, having regard to, amongst others, international agreements or other arrangements between the Contracting States relating to mutual assistance between other law enforcement agencies and judicial authorities, the competent authority of the supplying State would generally be expected to authorize such use for other purposes if the information can be used for similar purposes in the supplying State. Law enforcement agencies and judicial authorities receiving information under the last sentence of paragraph 2 must treat that information as confidential consistent with the principles of paragraph 2. Contracting States wishing to broaden the purposes for which they may use

16. Paragraph 3 (a), subject to the limitations provided in paragraphs 4 and 5, contains the clarification that a Contracting State is not bound to go beyond its own internal laws and administrative practice in putting information at the disposal of the other Contracting State. For example, if a requested State is not permitted under its laws or administrative practice to seize private papers from a taxpayer without court authorization, it is not required to make such a seizure without court authorization on behalf of a requesting State even if the requesting State could make such a seizure without court authorization under its own laws or administrative practice. The purpose of this rule is to prevent Article 26 from creating an unintentional conflict between a Contracting State's obligation under Article 26 and its obligations under domestic law.

16.1 Domestic provisions requiring that information obtained by the tax authorities be kept secret should not be interpreted as constituting an obstacle to the exchange of information under paragraph 3 (a) because the tax authorities of the requesting State are obligated under paragraph 2 to observe secrecy with regard to informat 8t0rd

16.4 A Contracting State that changes its laws or administrative practice after entering into a convention containing paragraph 3 (a) must disclose that change to the other Contracting State in timely fashion. Depending on the facts and circumstances of the case, such a change may constitute a material breach of the convention. In any event, a failure to provide timely notice of such a change may eliminate the right of a Contracting State to invoke paragraph 3 (a) to avoid its obligations arising under paragraph 1.

16.5 A Contracting State that wishes to expand the scope of the limitation currently provided in paragraph 3 (a) might modify that paragraph as follows:

- (a) To carry out administrative measures at variance with the laws and administrative practice of that Contracting State or of the other Contracting State even

the administrative measures of the requested State to avoid limitations imposed on the requesting State by its own government.

18.1 Different countries will necessarily have different mechanisms for obtaining and providing information. Variations in laws and administrative practice may not be used as a basis for the requested State to deny a request for information unless the effect of these variations would be to limit in a significant way the requesting State's legal authority to obtain and provide the information if the requesting State itself received a legitimate request from the requested State. It is worth noting that if a Contracting State applies, under paragraph 5, measures not normally foreseen in its domestic law or practice, such as to access and exchange bank information, that State is equally entitled to request similar information from the other Contracting State³.

18.2 The general rule of paragraph 18 has no application when the legal system or administrative practice of only one country provides for a specific procedure. For instance, a Contracting State requested to provide information about an administrative ruling or advance pricing agreement (APA) it has granted cannot point to the absence of a ruling or APA regime in the requesting State to avoid its obligation under paragraph 1 to provide such information.

19. Most countries recognize under their domestic laws that information cannot be obtained from a person to the extent that such person can claim the privilege against self-incrimination. A requested State, therefore, may decline to provide information if its self-incrimination rules preclude it from obtaining that information or if the self-incrimination rules of the requesting State would preclude it from obtaining such information under similar circumstances. In practice, however, the privilege against self-incrimination should have

other party to a contract, and not from the individual under investigation. Furthermore, the privilege against self-incrimination generally does not attach to persons other than natural persons.

20. Paragraph 3 (b) allows a requested State to avoid an obligation otherwise imposed by paragraph 1 when it cannot obtain the requested items of information in the normal course of its administration or when the other Contracting State could not have obtained that information in the normal course of its administration. The purpose of this rule is to prevent the requesting State from imposing unreasonable burdens on the requested State.

20.1 Information is deemed to be obtainable in the normal course of administration if the information is in the possession of the tax authorities or can be obtained by them in the normal procedure of tax determination, which may include special investigations or special examination of the business accounts kept by the taxpayer or other persons. For instance, if the requested State, as part of its audit policies, obtains information about the appropriateness of the transfer prices used by its taxpayers in dealings with associated companies, it is deemed to be able to obtain similar information about its taxpayers and associated companies on behalf of a requesting State. The paragraph assumes, of course, that tax authorities have the powers and resources necessary to facilitate effective information exchange. For instance, assume that a Contracting State requests information in connection with an investigation into the tax affairs of a particular taxpayer and specifies in the request that the information might be held by one of a few service providers identified in the request and established in the other Contracting State. In this case, the requested State would be expected to be able to obtain and provide such information to the extent that such information is held by one of the service providers identified in the request. In responding to a request the requested State should be guided by the overarching purpose of Article 26 which is to permit information exchange "to the widest possible extent" and may consider the importance of the requested information to the requesting State in relation to the administrative burden of the requested State.

20.2 Unless otherwise agreed to by the Contracting States, it should be assumed that the information requested by a Contracting State could be obtained by that State in a similar situation unless that State has informed the other Contracting State to the contrary.

20.3 It is often presumed, when a convention is entered into between a developed country and a developing country, that the developed country will have a greater administrative capacity than the developing country. Such a difference in administrative capacity does not provide a basis under paragraph 3 (b) for either Contracting State to avoid an obligation to supply information under paragraph 1. That is, paragraph 3 does not require that each of the Contracting States receive reciprocal benefits under Article 26. In freely adopting a convention, the Contracting States presumably have concluded that the convention, viewed as

a whole, provides each of them with reciprocal benefits. There is no necessary presumption that each of the articles, or each paragraph of each article, provides a reciprocal benefit. On the contrary, it is commonplace for a Contracting State to give up some benefit in one article in order to obtain a benefit in another article.

20.4 Although paragraphs 3 (a) and 3 (b) do not explicitly provide for reciprocity in benefits, the OECD Commentary to Article 26 has taken the position that a reciprocity requirement can be inferred from the language of paragraphs **3 (a) and**

22.1 A trade or business secret or trade process is generally understood to mean

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information could still be gathered or used for domestic tax purposes in the requested Contracting State. Thus, for instance, any restrictions on the ability of a requested Contracting State to obtain information from a person for domestic tax purposes at the time

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