



International Fiscal Association

IFA Initiative on the Enhanced Relationship

Key Issues Report

For discussion purposes only

This report is solely intended for purposes of facilitating further discussions within IFA and is in no way intended to express the position of IFA or any of its committees. It is not intended for publication at this stage outside the IFA membership.

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Note: all internet links in this version have been checked and were accurate as per December 2011.

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INTRODUCTION

1.1 *Introductory remarks by IFA's President*¹

IFA is in a unique position because our members include representatives of all sectors involved in international taxation: public officers (tax authorities), tax judges, tax professors and researchers, corporate tax officers and independent tax practitioners, all of them from many countries in the world. In addition, IFA has the benefit of a close relationship and exchange of knowledge and views with international organizations such as the OECD and the United Nations Committee of Tax Experts, both of which are represented at the IFA Permanent Scientific Committee as *ex-officio* members together with the IBFD, the “sister institution” of IFA. IFA also has established relationships with the Intra-European Organization of Tax Administrators (IOTA) and the Conference of Inter-American Tax Administrators (CIAT).

Because of its composition and links, IFA works under two basic assumptions: (i) maximum scientific quality of its work, and (ii) neutrality. In other words, at IFA we want to do things in the best possible way and we will not (institutionally) take sides in the discussions.

A different question would be: why is a discussion on the Enhanced Relationship relevant today? The world has seen a series of the most devastating economic, financial and institutional trust crises of modern times; governments around the world are struggling to make ends meet and survive one tax year after the other. This status quo has put a particular strain in many areas, one being undoubtedly the tax revenue and the ability of the authorities to actually collect it.

In 2006, just before the eruption of the series of crises, the Forum on Tax Administration (FTA) of the OECD issued the so-called “Seoul Declaration” in which “abusive” tax planning and the role of “tax intermediaries” were addressed, and strong actions against both of them were called for. Following the Seoul Declaration, the OECD issued various statements and reports dealing with the identified subjects, voicing the concerns, analysis and recommendations of the tax administrations represented within the OECD, including but not limited to:

- The Cape Town Communiqué (January 2008);
- Study into the Role of Tax Intermediaries (2008);
- Building Transparent Tax Compliance by Banks (2009);
- Engaging with High Net Worth Individuals on Tax Compliance (2009);
- The Istanbul Communiqué (September 2010);
- Understanding and Influencing Taxpayers' Compliance Behaviour (November 2010);

¹ This introduction is partially a summary of a previously published article by M. Tron, President of IFA, in the IBFD Bulletin for International Taxation, 2010 (volume 64), 8/9, June 2010

- Tackling Aggressive Tax Planning through Improved Transparency and Disclosure (February 2011); and
- Guidelines for Multinational Enterprises - Taxation section (May 2011).

Besides the wars on terror, drugs and more recently on undeclared funds held by private individuals, governments around the world have united in demanding transparency in each and every financial transaction and share a new attitude towards tax disclosure and compliance. A previously unseen level of exchange of information for tax and financial purposes has been achieved in only a few months (which otherwise had not been possible after years of work in the past). Tax havens are an endangered species and countries traditionally known for their financial and tax secrecy have signed numerous exchange of information agreements.

This is good news - we cannot live in a world of hideouts and abuses - but as in every other aspect in life, coins have two sides; so far we have heard a clear and strong voice carrying the tax administrations' ideas and concerns, but there are others that need (and would like) to be heard. At the time of the Seoul Declaration, IFA decided that it should consider the implication of that development. Taxpayers, academics, corporate tax officers, independent tax practitioners - all of them have a voice and the right and need to express it. Because of its unique features, IFA is the most appropriate forum in which to conduct an open and constructive discussion about the "Enhanced Relationship" program in chapter 8 of the OECD Report "Study into the Role of Tax Intermediaries"². An earlier, and more extensive draft, can be found in Working Paper 6³ of the OECD Tax Intermediaries Study.

In almost all cases the topics examined by IFA deal with substantive tax liability. Only occasionally has IFA considered procedural aspects. The Enhanced Relationship topic has considerably more sensitivity than those dealing with substantive tax liability because it impacts on the relationship between the various groups of participants in the administration of taxation, including those identified in the groups that participated in the discussions held in Rome and Paris. These relationships deal with issues that go beyond the tax system in isolation, and may touch upon areas such as the relationship between the state and the citizen as well as between the executive, judicial and legislative arms of government. They are thus not the usual subject matters of typical IFA examination. IFA membership comprises both individuals and institutions from all of these groups and it is essential to IFA that frank and harmonious discussions take place in relation to subjects that are studied. A topic that could, by its nature, interfere with the essential balance within IFA should be dealt with delicately and without haste.

² <http://www.oecd.org/dataoecd/28/34/39882938.pdf> hereinafter *OECD Tax Intermediary Study* (2008)

³ <http://www.oecd.org/dataoecd/59/61/39003880.pdf> hereinafter *WP6 OECD Tax Intermediary Study* (July 2007)

Because of the special character of this subject, it was decided not to treat it as a typical subject for scientific examination under the umbrella of the PSC; instead, this project is a direct initiative of our Executive Committee, led by an ad hoc committee reporting to the Executive Committee, comprising of individuals coming from all interest groups and with a broad geographical spread. Also our YIN constituency is providing valuable input.

It is my belief that, in view of these circumstances, IFA needs to address these issues in the careful, balanced and neutral ways that are natural to our organization. It has a responsibility towards all of its members, no matter on which side they stand. IFA can promote and take responsibility for providing the forum for the parties to interact. Given its neutrality, IFA cannot and will not take an institutional position in any of these matters. What IFA can and should do is drive an “enhanced discussion”, in which it will invite the parties to discuss in an open and respectful way.

In short, it is my belief that with IFA’s 2010 Rome Congress as a point of departure, we have started raising the bar of the discussion on the Enhanced Relationship; let’s search for international principles to rule the field.

1.2 *Rome & Paris discussions*

Separate fact-finding discussions in Rome with each of the groups identified were intended to allow the topic to be carefully explored to determine whether this is a topic suitable for a general open seminar at a congress, and what the specific interests of the various groups identified might be.

At the Rome Congress in 2010, four sessions took place, on an invitation only basis, led by a moderator of the ad hoc committee with groups of:

- (a) Corporate tax officers
- (b) Tax practitioners
- (c) Government officers
- (d) Academics & Judges

The choice of invitees was based on a review of the attendee list of the Congress, geographical spread, personal knowledge of ad hoc committee members and to some extent also random selection. In total approximately 80 persons participated in a private capacity. The discussion was generally lively and the general impression was that it was felt to be very useful by most participants. There was clear appetite by most participants to continue the discussion. The discussions focussed on a number of issues for discussion that were formulated in advance by the ad hoc committee by reference to the OECD Tax Intermediaries Study documents. Participants were requested to read some materials on the subject in advance of the debate. In most sessions a free discussion took place between participants, where most of the issues on the issue list were touched upon in the discussion.

As a result of the Rome discussions a Key Issues Report was prepared, containing summaries of the key issues that were initially raised in the respective discussion sessions. The summaries were prepared by the moderators to the sessions. The participants of the Rome discussion were requested to comment on a draft version of this report. Their comments, where appropriate, were included in this report.

This report was subsequently used to facilitate further discussions that were held at IFA's 2011 Paris Congress by focussing the debate around the identified key issues. The participants to the Paris' sessions were requested to focus on the key points raised by the other interest groups, with the purpose of identifying common points and clear differences of opinion. The discussions led also to a more focussed and/or balanced view of the own key issues raised by each interest group. In Paris 65 persons participated in four discussions group, again in a private capacity.

1.3 *Further discussions*

It is currently intended that the subject of the Enhanced Relationship will be put on the agenda of the 2012 Boston Congress for a joint and public discussion comprising representatives of all interest groups. The Rome and Paris discussions and this further iteration of the key issues report will serve as preparatory work.

IFA would very much welcome similar discussions between all interest groups on the local IFA branch level.

1.4 *Status of this report*

Version 1 of this report, in its various iterations, was solely intended to record key issues raised for purposes of facilitating further discussions.

Version 2 of this report is an attempt by IFA's ad hoc committee on the Enhanced Relationship to summarise the common understanding of what the Enhanced Relationship might comprise, what the requirements might be for Enhanced Relationship projects to be successful for TAs and TPs, limitations of the Enhanced Relationship, and common or specific concerns expressed by various interest groups. Annex 1 comprises the key issues raised by the individual interest groups in the Rome and Paris discussions, where Annex 1 A is an attempt to compare similar key issues raised by the various interest groups following the subjects discussed in this key issues report. Annex 1 B is a record of the issues raised during the Rome and Paris discussions.

Annex 2 includes the results of a questionnaire that was sent out to all IFA branches in January 2012; it includes a status overview of ER projects and related subjects in the various IFA branches. Annex 3 includes a table of abbreviations used.

IFA's ad hoc committee on the Enhanced Relationship does not take sides or positions; it intends to objectively record views expressed by the participants in the discussions. This report therefore in no way intends to express the position of IFA, any of its committees or any individual members of IFA's ad hoc committee on the Enhanced Relationship.

It is probably fair to say that the vast majority of people would favour a better or improved relationship and believe that it would be an aid to effective tax administration. The underlying question seems to be whether the “Enhanced Relationship” as described by the OECD is, or may in fact lead to, a better approach to tax administration and the issues it raises.

This report is intended to facilitate further discussions within IFA and comments from other organisations. All comments, criticism and suggestions are more than welcome. Please address those to cr.gensecr@ifa.nl for the attention of IFA’s ad hoc committee on the Enhanced Relationship

2. A COMMON UNDERSTANDING OF THE ENHANCED RELATIONSHIP?

2.1 Introductory remarks⁴

The Enhanced Relationship differs from simply a better or improved relationship between TA and TP. In our discussions, and in this report, the term Enhanced Relationship (*ER*) refers to the specific concept developed by the OECD in Working Paper 6 in preparation for the OECD Study into the Role of Tax Intermediaries.

An ER entails a specific concept of working together for the mutual benefit of TAs and TPs. On the other hand, an important part of the ER concept is that it is available to certain TPs only, namely those that are considered sufficiently “low risk” to allow them to join an ER program. That automatically means that there are TPs that are not allowed into the ER program and by consequence do not benefit from the advantages thereof. An effect of having an ER program is that TAs are able to focus their scarce resources to those TPs that are not considered “low risk”. In that way TAs increase the chance to spot and act against non-compliance. The end result of the successful introduction of an ER program is that there are TPs with ER benefits and TPs without ER benefits, subject to more stringent checks. This is also referred to as the “carrot and stick” approach to tax administration.

While all (or at least almost all) participants in our discussions favoured general improvements of relationships between all parties involved in the administration of taxes, that cannot be said about the introduction of the Enhanced Relationship (the carrot) and the non-availability of its advantages to – and increased focus on - non-ER TPs (the stick). Entering into an ER is not just about better relationships; it also entails in fact strong commitments on the side of the TP. Non-compliance may lead to the TP being thrown back into the non-ER world, losing the benefits previously enjoyed and becoming the focus of attention by TA in audits.

There appears to be no agreed definition of the Enhanced Relationship concept, although various descriptions of it can be found. During the discussions within IFA with the interest groups it became apparent that the lack of an agreed definition caused confusion and was a source of misunderstanding and even sometimes mistrust

⁴ Please refer to Annex 3 for an overview of specific abbreviations used.

in the motives of other parties. This report therefore attempts to summarise the various descriptions given by governments, place them in the context of cultural differences between various jurisdictions, identify common factors and on that basis build a definition that could be used in any further discussions.

2.2 Governments descriptions

(a) Key quotes from OECD reports

“It’s starting point is a mutual understanding of each party’s needs and aspirations, the development of the tools and techniques most appropriate to achieve these, and a path to implementing what needs to be done. Fundamental to the long-term success of the enhanced relationship is the establishment and maintenance of trust (described in a footnote as “situations in which each party to a relationship interacts on the basis of mutual confidence and respect”) amongst all parties.

The move away from the basic relationship has been driven by the recognition that tax compliance can be improved by blending incentives to full compliance with the traditional penalties for non-compliance. We colloquially describe this as the “carrot and stick” approach to tax compliance and it is driven by the recognition that revenue bodies should bring balance to their service and policing roles.”⁵

Key notions (summarised and paraphrased) that WP6 contain about ERs are:

- (i) voluntary and accurate disclosure of significant tax risks in a timely manner by TPs so that the TAs can undertake a fully informed risk assessment; in fact a TP’s self-risk assessment and full transparency in that respect towards the TAs. This would involve disclosure of fundamental and essential transactional facts and how tax conclusions were reached; it is not about waiver of privilege or disclosure of accountants work papers re uncertain tax positions. It is about TPs making choices regarding information that they believe will support their tax positions, adopt the spirit of the ER and enable them to present low-risks profiles to the TAs.
- (ii) TPs, so WP6, want to have their tax matters resolved quickly, quietly, fairly and with finality. TPs have a legitimate expectation that TAs act towards them in the resolution of their tax matters with (a) commercial awareness, i.e. taking into account the peculiarities of the relevant industry/business and the risk-profile of the relevant TP, (b)&(c) an impartial approach (establishing the ‘right’ amount of tax acting fairly and proportionally, with a high level of independence and revenue detachment); the proportionality requirement means in

⁵ WP6 OECD Tax Intermediary Study, paras. 10 and 11.

fact reduced compliance costs for TAs and TPs as only relevant questions need to be asked and answered; this also means less (protracted) audits, (d) reciprocal disclosure and transparency by TAs towards TPs in terms of the underlying reasons for qualifying particular behaviour or tax positions as a risk and a willingness to discuss those reasons; and (e) responsiveness so that certainty on tax positions is achieved quickly with prompt efficient and professional responses from the TAs when queries or requests are made by TPs.

- (iii) Some of the expectations by TAs of TP behaviour will fall to be carried out by TIs, acting as facilitators of the disclosure and transparency that typifies the ER, acting within their client's best interests while respecting their client's confidences. It is expected that the adoption of the ER by corporate TPs will be likely to temper aggressive tax planning by TIs because the demand for such planning will be reduced. A client's best interest that TIs will have to take to heart is the maintenance of an ER between the TPs and the TAs.
- (iv) TIs and TAs may also benefit from their own ER between themselves, based on fostering the mutual benefits that can flow from increased dialogue, trust and openness, including resulting from collaboration on projects such as the production of early explanations of new tax laws or greater consultation in respect of law reform proposals. At the same time TIs may be better able to give accurate and informed advice as they will better predict the likely response by TAs and have easier access to TAs to obtain advance clearance on tax positions.

- (b) Key notions (summarised and paraphrased) from the Netherlands ER project

The Netherlands has established a "horizontal monitoring" program whereby TP and TA conclude a "compliance covenant". "The parties will endeavour to establish an effective and efficient approach based on transparency, understanding and trust. They will endeavour to create a sustained understanding of ongoing tax risks and rapidly establish up-to-date positions on them under the dictates of the law, regulations and case law in order to improve legal certainty". The TAs require the TP to set up a Tax Control Framework (*TCF*)⁶ that is acceptable to them. The in-house TCF effectively replaces to a large extent regular audits by the TAs. Before entering into a compliance covenant all outstanding tax issues are identified and discussed and – where possible - resolved. The TP commits to actively and timely discuss material tax issues with

⁶ An explanatory brochure in pdf format about the Tax Control Framework can be found at the following URL:
http://download.belastingdienst.nl/belastingdienst/docs/tax_control_framework_dv4011z1pleng.pdf

the TAs under full disclosure of relevant facts and circumstances, its views on the legal consequences thereof and the positions taken. The TP also agrees to direct access by TAs to employees with tax relevant information. The TAs commit to provide the TP with its views on the tax consequences of specific situations, taking into account realistic commercial deadlines; the TAs will issue final assessments as quickly as possible after receipt of the tax return and after consultation with the TP, will actively communicate with the TP on tax risks it has identified and its position thereon and on the reasons for any audits it may initiate. The covenant will be regularly evaluated and may be terminated by both parties, but only after consultation of the other party⁷. The intention is for both parties to work on identifying and resolving tax risks in real time, so that the tax return when filed can be quickly followed by the final assessments as no risks not yet identified and discussed should follow from the tax return. Access to the ER project is available directly for medium sized and large enterprises. Smaller enterprises have access to ER through TIs that have concluded an ER with the TA, essentially focussing on the quality of the tax return preparation process and the pro-active disclosure of tax risks.

(c) Key notions (summarised and paraphrased) from the UK ER project⁸

The UK ER project is not the conclusion of comprehensive ER arrangements with individual TPs like in The Netherlands, but consists of a number of policy intentions and related measures that, taken together, aim to achieve the key goals of the OECD ER objectives and that, partially, are only available to low risk TPs. The key items are (i) providing greater certainty (through the organisation of an advance agreements unit issuing rulings and streamlining of statutory and other clearances), (ii) a more efficient risk based approach (including on transfer pricing) whereby TA resources are deployed to high risk TPs, (iii) speedier resolution of tax issues, (iv) providing more clarity (through more guidance) and (v) engaging in more consultation with the tax and business community, supported by shared appreciation of the business tax environment, enhanced professional skills and competences of GOs, strengthening commercial understanding at the side of the TAs and soliciting performance feedback from TPs.

(d) Key notions in some other jurisdictions

⁷ Enclosure to the letter from the Secretary of Finance to the chairperson of the Senate, dated 9 June 2006, nr. DGB 2006-3312; KST 2005/2006, nr. 30306-74-b1 (in Dutch).

⁸ Review of Links with Large Business, November 2006 (<http://www.hmrc.gov.uk/large-business/review-report.pdf>) and The Framework for a better relationship (<http://www.hmrc.gov.uk/budget2008/framework-better-relations.pdf>). The latter document contains in Annex A a long list of supporting and implementation documents, as well as action plans.

The Irish Revenue launched its voluntary Co-Operative Compliance program for large businesses⁹ focussed on TAs and TPs working together to achieve the highest possible level of tax compliance, based on mutually expressed intentions and a high degree of trust, mutual understanding, openness and transparency. Upon entry in the program joint discussions and reviews of tax risks should lead towards agreed “*compliance action plans*”, dealing with the identified tax risks and establishing an annual risk management plan, whereby a mix of self-audit and TA audits will be conducted regularly, driven by the risk profile. TPs will be able to make unprompted disclosures of tax issues and the TAs will respond to requests for interpretation and to well founded complaints from TPs about potentially unfair tax-based competitive advantages allegedly being enjoyed by competitors. Ongoing interaction between TPs and TAs is intended allowing for constructive dialogue on issues with the tax laws or the way those are administered.

In the USA, the Internal Revenue Service announced on March 31, 2011 that the since 6 years existing Compliance Assurance Process (CAP) pilot would become permanent as per that date. The program provides for three parts: a Pre-Cap program, the CAP itself and the CAP maintenance program¹⁰. Under the CAP program, which is voluntary, TPs work collaboratively with a team from the TAs to identify and resolve potential tax issues before the tax return is filed, leading to shorter and narrower post-filing audits; this requires the TP to pro-actively present relevant facts and transparently work together with the TAs to identify material issues. The Pre-CAP program provides interested TPs with a road-map into CAP, essentially intending to close unresolved tax issues in previous years. The CAP maintenance program is for TPs that have been in CAP, have fewer complex issues and have established a track record of working cooperatively and transparently with the TAs; in essence this involves TPs that can be qualified as low risk and therefore warrant less examination/audit resources. Entering into this program requires the execution of a Memorandum of Understanding, setting out roles, responsibilities and communication procedures, setting materiality thresholds and review procedures, dispute and claims resolution mechanisms and termination provisions¹¹.

Similar (pilot) programs exist inter alia in Australia (Annual Compliance Arrangements¹²) and South Korea (Horizontal Compliance Program).

⁹ <http://www.revenue.ie/en/business/running/large-businesses.html>

¹⁰ <http://www.irs.gov/businesses/corporations/article/0,,id=237774,00.html>

¹¹ A template of such a MoU can be found following the appropriate links in the URL mentioned in the previous footnote.

¹² <http://www.ato.gov.au/businesses/content.aspx?doc=/content/00167346.htm>

[Output of questionnaire may lead to expansion of this paragraph]

2.3 Cultural differences

In reading available materials and from our discussions within IFA, it became very clear that, while the stated policy intentions and aims of TAs and TPs are often generally similar in various jurisdictions, the format of the program (if any), views on viability or even legality of an ER program (if not yet existing), enthusiasm for/scepticism of TPs to enter into an ER, the details of such a program and the way it is administered are very culturally dependent.

This relates to the legal culture: constitutional rules about the administration of the tax system: does a very legalistic culture exist with detailed rules set out in the law versus general principles set out in legislation and pragmatism in applying procedural rules. There are differences in focus between equality principles or detailed equality treatment rights. Also the general societal and political culture towards businesses appears important: promoting a business environment and attracting new business versus societal/political pressure to ensure maximum proceeds from levying business taxes. Existing working relationships between TAs and TPs are clearly essential for the viability of an ER program: general professional relationships with confirmatory audits versus very adversarial relationships based on legal obligations and with strict and constant enforcement by TAs to administer and collect taxes are different climates to start a discussion on the introduction of ERs. Also trust in the competency, independency and reliability of GOs is crucial in the political acceptance of ER projects.

As most ER projects initially start with the larger businesses, there is the risk of the perception with politicians, the press and/or the general public that ERs are meant to treat such businesses more favourably than other TPs. In certain jurisdictions, also the perception of corruption risk may be relevant and create an obstacle in introducing ERs.

From our discussions it is clear that these cultural factors must be carefully considered in the discussions around the introduction of an ER project.

2.4 Common factors

Common factors to be found in ER projects are:

- (a) Voluntary;
- (b) Institutional relationship (rather than personal working relationships between individual GOs and representatives of the TPs);
- (c) Not rule based (at least not in details) but based on some form of generally softer agreement (formal or informal) setting out joint expectations and intentions of the relationship;
- (d) Trust, mutual understanding, transparency, and this all with full reciprocity;

- (e) Timing factors. Preferably real time, at least timely with commercially acceptable deadlines and in any case leading to closing of a tax year as soon as possible after the filing of the tax return. This implies active disclosure and prompt responses and should lead to legal certainty for TPs, either in advance before entering into a transaction, or in any case at the latest when the tax return is filed.
- (f) Not about the level of tax, but about the practical ways in which it is established what the correct amount of tax is that is due. This implies not paying more, but also not less than non-ER TPs.
- (g) Mutually acceptable risk identification and disclosure mechanisms. In essence, this implies TPs showing to be low risk TPs.
- (h) Willingness of TAs to provide their views on tax issues upon request and some form of (legally or otherwise) binding effect thereof.
- (i) Existing basic rights and obligations remain unaffected but in a well working ER there should not be a need to invoke those.
- (j) All compliance checks (investigations, examinations, audits) should be focussed on the agreed risk identification system, should be confirmatory in nature (confirming the disclosures made are correct and complete) or should be on very focussed items rather than becoming unfocussed and protracted investigations. Hence, resources/compliance costs should materially decrease for both TAs and TPs.

2.5 An attempt at formulating a definition

The following definition is proposed for further discussion:

The Enhanced Relationship concerns a specifically defined institutional relationship, based on mutually expressed intentions and not on detailed rules, that TPs and TAs voluntarily enter into above and beyond their basic legal obligations, which relationship is based on mutual understanding, respect and true co-operation, and has as aim the administration of tax laws to the TP's business in the most efficient and timely matter, assuming full, timely and reciprocal disclosure of relevant tax related information (including positions taken) and leading to the assessment of the correct amount of tax taking into account the spirit and purpose of the tax law (rather than merely the letter of the law) while respecting each parties' rights and obligations under procedural laws in case of disagreement on what constitutes the correct amount of tax.

2.6 Differences in practical effect – by project and over time

It should be noted that while most ER projects we are aware of fall within this definition, the practical impact may be quite different. This may range from merely pre-filing discussions discussing the positions taken in the tax return about to be

formally filed, so that closing the tax year after filing in effect is a rubber-stamping exercise, to full fledged ERs where TAs and TPs discuss on-going business transactions on a regular basis and where TAs clear specific transactions in advance. These differences are also visible in the area of compliance checks. In some projects, compliance checks by the TAs are merely to confirm that the risk identification and reporting mechanism agreed upon works in practice (i.e. a system confirmatory check) while in other projects normal tax audits, but generally more focussed, take place.

Also within an ER project, the practical impact may evolve, as parties become more knowledgeable about the other party's interests and therefore more comfortable about the risk identification process being effective. An ER project generally may also evolve, for instance caused by resource constraints at the TAs side, as a result of which less GOs are available to respond within the intended timeframe to requests for clearances or to perform confirmatory audits.

Finally, changes in the political or societal climate, or the results of independent evaluation or review, may force TAs to retract on their originally expressed intentions as those may be considered for instance too liberal or too TP friendly.

3. POTENTIAL BENEFITS OF THE ENHANCED RELATIONSHIP

3.1 The following benefits are among the most often quoted in our discussions (noting that in some cases a benefit for one party may be a disadvantage for another party):

- (a) Earlier resolution of issues – including pre-closing – transactions (clearing issues before the transaction takes place)
 - (i) For the TPs this means less tax risks, a more stable tax position, tax provisions are more solid, less surprises after closing of the tax year.
 - (ii) For the TAs there is the expectation that this leads to less tax avoidance/evasion; less aggressive tax planning; this all should allow a more focussed use of TA resources.
- (b) Full disclosure and transparency means less compliance checks and the nature of these checks changes – audits can be performed quicker/more focussed (in any case no hide and seek games on the facts) and become more system oriented. This leads to lower compliance costs for TAs and TPs, although it may require TPs to set up stricter internal compliance controls at its own cost. However, this may be required anyway under external stricter (non-tax) accounting rules (e.g. Sarbanes Oxley rules).

- (c) More knowledge about the TPs business and a higher degree of commercial awareness leads to more efficient assessment of tax positions by the TAs.
- (d) More insight in the TA's views leads to TP/TIs considering less aggressive tax planning positions.
- (e) Open discussion on tax positions means less risk of incorrect tax assessments and less need to use legal remedies. This is generally more efficient and leads to quicker legal certainty.
- (f) Disagreements on the correct amount of tax payable focus on points of law rather than on facts. This should lead to quicker settlements of disputes.
- (g) Successful ERs lead to less bureaucratic requirements for ER participants, reducing compliance costs.

4. REQUIREMENTS FOR SUCCESSFUL ENHANCED RELATIONSHIP PROJECTS

4.1 Critical assumptions

Explicit or implicit critical assumptions for an ER project to be able to work identified, comprise:

- (a) The existence of a basic system of tax administration with rights and obligations for TAs and TPs that are accepted in practice by the vast majority of parties involved, without the need for constant and strict enforcement or litigation to obtain those rights.
- (b) Basic willingness by all parties to accept (application of) the material tax laws as they stand:
 - (i) TAs are tasked with the correct application of the tax law leading to the assessment of the correct amount of tax and not to revenue maximisation or their views of what is a "fair share".
 - (ii) TAs accepting that TPs have the right to minimise their tax within the rule and spirit of the tax law.
 - (iii) TPs willing to operate within the spirit of the tax laws in all respect (i.e. not focussed on tax evasion or tax avoidance).
- (c) Key attitude changing where this is not yet the case:
 - (i) General willingness to develop trust, mutual understanding with all GOs and all TPs engaged in ER.

- (ii) TAs and GOs accepting that providing advance certainty is also in their interest.
 - (iii) TPs not playing hide and seek games as a method of tax minimisation and willing to take balanced and reasonable tax positions rather than extreme positions.
 - (iv) Willingness in principle to grow into a situation of full transparency and disclosure.
- (d) Some basic agreement in society and between TPs and TAs on what is acceptable tax planning vs. unacceptable tax evasion/avoidance. ER may be much more difficult or simply not work if there are hugely differing views on this.
- (e) Basic agreement on the legitimate role of TIs: compliance facilitation, advising clients on points of law, representing clients' interests, translating facts into legal points, sparring partner for TPs, equally levelled expert spokesperson of TP in discussions with TAs.
- (f) Basic agreement that disagreement on points of law does not harm the ER: within an ER it should be possible to agree to disagree and put a case before (tax) court or seek other ways of dispute resolution if a difference of opinion on a point of law cannot be resolved within the ER.
- (g) A jurisdiction's legal culture allows a less than fully detailed rule based approach to the administration of tax law.

4.2 Legal basis, restrictions and legal concerns

- (a) The legal system should allow an ER project. In many systems, this should not be an issue, as the procedural tax laws remain in force, but may simply not be needed to be applied as TPs voluntarily disclose information in time. Discussions on tax positions will ultimately be formalised in accordance with procedural tax rules. In jurisdictions with stringent rule based procedural tax systems, ERs may be more difficult to set up without a change of law being required. As the nature of an ER is voluntary compliance above and beyond the existing legal obligations, it should be avoided that ER projects are set out in details in statutes, as then ER becomes part of the existing rules and regulations and this may hinder the development of the relationship between TAs and TPs in the true sense of an ER.
- (b) Binding agreement vs. expression of intention: although in many cases it would be good to formalise the entry of a TP into an ER program and it is generally beneficial to all parties concerned to have the same expectations about an ER, care should be taken to avoid that the ER is formalised in too great a detail, for the reasons set out in the previous point.

- (c) Principle of equality: In most jurisdictions there are constitutional rules about the equal treatment of TPs and about tax being levied on the basis of the law. Concerns have been expressed that ERs may violate such equality principles. Clearly, these are legitimate concerns that require careful consideration and from our discussions it is clear that this is one of the more important issues that have not yet received the full attention it deserves. It goes to the “carrot and stick” model that is associated with ERs. As the principle of equality is in many jurisdictions regarded as of paramount importance, pragmatism may not be the correct answer to respond to concerns expressed in this area.

In broad outlines, we have noted three types of concerns in this area:

- (i) ERs leading to actual tax benefits for TPs in terms of paying lower taxes. This should not be the nature of an ER and is not intended, as ERs should focus solely on more efficient ways in establishing the correct amount of tax within the rules of the tax law, regulations, policies and case law applicable to all TPs. It may well be that there is a perception that the practical effect of an ER is that parties become closer to each other and this may lead to less aggressive positions. This should, however, work both ways: also TPs may be psychologically less inclined to engage in more aggressive tax positions. Nevertheless, it seems a valid concern in terms of the risk that an ER may lead in practice to the unintended effect that less or more than the correct amount of tax is paid. Professional education of all concerned, effective conflict of interest rules, including GOs seeking approval of specific high value clearances and settlements outside the specific ER team and regular evaluation of specific ERs (and even confirmatory audits) may be necessary to ensure that ERs remain on course in terms of their aims and effects and to avoid the perception that ERs lead to material tax benefits for TPs.
- (ii) Access to ERs being available only to some TPs. Apart from pilot projects, which are by definition restricted to a subset of relevant TPs, TPs that otherwise are in the same or similar circumstances should have the same rights of access to ERs. As a key element in ERs is the development of an environment of mutual trust, the perception of the risk level of a TP requesting entry may be a relevant entry condition. This may lead to a condition of entry into an ER relating to the low risk level of a TP or at least the willingness of a TP to develop in that direction.
- (iii) Service levels by TAs are higher for TPs in an ER than for others (more certainty in advance, higher responsiveness) and compliance requirements are lower (less general audits). This difference is also perceived by most participants in our

discussions as a legitimate concern in terms of the equality principle. In terms of minimum service levels and compliance requirements, those should remain as they are from a legal perspective, irrespective of whether a TP is in an ER. However, in an ER there will likely be less needs for the TAs to strictly enforce compliance requirements, as the TP already voluntarily provides the information the requirements oblige him to provide. In terms of responsiveness and advance clearance: if TPs have shown to be reliable in disclosing relevant information and are not engaging in aggressive tax planning and the TAs as a result are legitimately comfortable with and have faith in the bona fides of a TP as well as a good understanding of a TP's business, then it is objectively easier for them to provide timely and quicker clearance of tax issues. In other words, there may be benefits resulting from ERs that can objectively not be made available in the same manner for non-ER TPs. The existence of ERs should not, however, take away the TAs' obligation to improve their service levels to TPs generally if there is a legitimate demand for better service. There is, however, a potential conflict in terms of resources being available for the latter and policy makers should address an equitable availability of TA resources to ER and non-ER TPs. If the correct balance is not found, and the carrot is handed to ER TPs, without any checks and balances, while the full force of the stick is felt by non-ER TPs, there may well be a legitimate complaint about inequality between TPs; this is clearly an area where more in-depth discussions, including between academics and before courts, seems warranted.

4.3 Practical requirements:

- (a) A key requirement for ERs to successfully develop is mutual trust. Given the often adversarial climate in many jurisdictions, this is a process of time. It is important that the leadership both at the side of the TAs and at the side of the TPs express the importance of ERs and their willingness to change behaviour, where appropriate, so as to ensure that at the working level GOs and CTOs, where need be, feel empowered to change the way they are interacting.
- (b) At the personal level, the key GOs and CTOs responsible for the day-to-day relationship, as well as TIs acting for the TP, will need to embrace the softer behavioural aspects of ER and advocate that others in their teams change their attitudes, where necessary. This will likely take time, education and regular feedback/evaluation.
- (c) A key concern expressed by CTOs and TIs was a lack of suitable resources at the TAs side, both in terms of numbers of people, but especially in terms of the level of staff (education, experience, commercial awareness, responsiveness). In the current budget cutting

climate, TAs may have to cut back materially on staff levels. Furthermore, the fear is that, for instance, audit staff that has been trained and operating in a strictly adversarial environment may have practical problems converting in service oriented officers that make well balanced risk assessments and respond timely to pre-transaction clearance requests. They may have to convert from a professional attitude from confrontation to cooperation.

- (d) Professionalism and pragmatism need to exist at both sides: trying to come to reasonable solutions may require an attitude change. “Winning” should not be the driver of each party’s behaviour.
- (e) Entering into an ER may require a more balanced approach to tax planning and attacking tax schemes (mutual trust may – at least psychologically - result in the expectation of a form of self-restriction compared to current practices).
- (f) Decisions by TAs within an ER should be legally binding or at least practically be honoured by the tax administration irrespective of the exact legal form. If GOs require internal permissions, it should be their responsibility to obtain those – within the agreed time limits.
- (g) All parties should take care to actually live up to their promises (their actual behaviour should conform to their expressed intent) – this is a key element for developing trust.

4.4 Helpful factors (but not a hard requirement) for ER projects to be successful:

- (a) Stable and clear tax legislation; clear criteria in law, absence of full discretionary powers for TAs in matters of law: the more unclear, the more room for discussion and disagreement.
- (b) Clear policy statements from TAs on areas not covered by the law/case law and quick development and publication of new policies (as much as possible after consultation with the relevant TP group) after issues in practice have arisen.
- (c) Willingness by TAs to come to ERs with TAs in other jurisdictions: a clear concern expressed by MNCs was that in their business an ER with one jurisdiction would not be enough, especially in areas of transfer pricing and avoidance of double taxation more generally. They also expressed the concern that information voluntarily provided in one (ER) jurisdiction would be provided under existing arrangements for the exchange of information to TAs of jurisdictions without an ER environment, and this could harm the MNCs negotiation position in case of double taxation arising. MNCs would therefore seem to favour the development of (relevant) multi-jurisdictional ERs.

5. LIMITATIONS OF THE ENHANCED RELATIONSHIP

What should it not entail?

- (a) The ER should not have any material impact on the amount of tax payable; a TP may not be advantaged or disadvantaged as a result of participating in an ER program. Tax planning should still be allowed to happen in an ER. Tax avoidance/evasion should still not be allowed.
- (b) The ER should not go hand in hand with increased legal requirements for greater transparency with additional bureaucratic obligations and sanctions. This would potentially discredit the TAs intentions for starting an ER project as it is contrary to the core nature of the ER (voluntary disclosure and co-operation).
- (c) The ER should not automatically be treated as an alternative dispute resolution mechanism. The existence of an ER may avoid in practice that parties will want to litigate on issues that could be resolved otherwise amicably (specifically in relation to fact based litigation), but principle matters of legal interpretation should continue to be dealt with by the courts. This would not only be in line with the nature of ER, but would also avoid the perception of beneficial settlements being concluded, and would generally be beneficial for the development of new case law, which would be for the benefit of all TPs and the TA generally.

6. PRACTICAL CONCERNS ABOUT THE ENHANCED RELATIONSHIP

Key practical concerns expressed during discussions:

- (a) The ER may be perceived to be a tactic of TAs to differentiate TPs for purposes of saving on compliance check (audit) budgets only. This would not work long term if TAs would not deliver on their commitments. This also goes back to the carrot and stick approach and the possible consequences for the principle of equality, discussed above in paragraph 4.2(c).
- (b) Expectation of a more balanced approach means higher ETR for TPs. This is a legitimate concern if the effect of ERs is that TAs no longer practically allow tax planning to take place. This hinges on the need for basic agreement on what is tax planning/tax evasion/avoidance. There will always be a grey area; in reality TPs may psychologically be forced in the upper ETR corner within that grey zone. There is of course also a risk for TAs that they will then loose the ER if this happens too often and that is not in their interest.
- (c) TAs and/or TPs will pick and choose rather than embrace the whole of the concept. For instance they may in practice not be fully transparent.

TPs may fully disclose strong positions, but will carefully consider to disclose weaker positions, especially if they are not clearly visible from accounts and returns or containing very tax sensitive information. TPs will frequently request clearances for border line cases in terms of tax planning/tax evasion. TAs will not disclose as yet unpublished case law or upcoming changed policy/regulations, arguing confidentiality, in cases where that suits their position. One or both parties may approach ER opportunistically, to take their own benefits from ER but hold back on their promises to the other side. We view this essentially as a start-up issue, as part of the trust building phase. This situation, if at all appearing, should not remain longer term. If that would happen, then it is unlikely that ERs will be successful. One of the parties may decide to terminate the ER, for instance after an incident where the other party did not live up to legitimate expectations.

- (d) Full transparency on the basis of an ER with one jurisdiction may lead to conflicts with international exchange of information obligations of that jurisdiction towards other jurisdictions where no ER exists. A similar issue may arise if within one jurisdiction there exist various levels of taxation, where an ER does not exist on all levels. This would need a non-legalistic balanced approach of the TA engaged in an ER; otherwise these types of situations would risk being a real show stopper for MNCs entering into ERs.
- (e) Less case law and therefore less publicly available guidance on the interpretation of the tax law. TPs becoming more dependent on the TAs to provide such guidance. This concern should be alleviated (but perhaps not completely disappear) if the agreement to disagree approach in practice is applied and TPs go to court to resolve disagreements on points of law. TAs could also, in consultation with relevant parties, produce more mutually agreed guidance.

7. INTRODUCING THE ENHANCED RELATIONSHIP: A STEP-BY-STEP PROCESS

The ER in essence is about a change in attitude of people and developing from an adversarial atmosphere on the one extreme end to an atmosphere of mutual understanding, trust and true co-operation on the other end. Depending on where a jurisdiction currently stands in terms of the atmosphere between relevant parties, its legal culture, the professional level of GOs and TPs/CTOs/TIs, formalistic or pragmatic attitude, political and societal context, it may take substantial time from growing the tax administration culture from where it currently stands to a full ER culture. Working step-by-step through the hard and softer requirements, slowly changing the relevant culture in the desired direction, educating relevant people, being transparent about legitimate concerns and deal with them, learning from experiences in other countries, are all necessary elements in building an environment in which ERs may be successful.

8. CONCLUDING REMARKS

The OECD has taken an important step in attempting to change the traditional nature of tax administration. ERs can by their nature not be forced upon TPs and ultimately need the full co-operation and support of all parties involved in the administration of taxation. This includes the TIs and the courts. Legitimate legal concerns, such as related to unequal treatment of categories of TPs need to be addressed. ERs need to be accepted as well by politicians and finally, of course, by the societies in which we all live. As ERs all involve changing cultures and attitudes, this requires open, balanced and careful discussions with all concerned. IFA wholeheartedly supports further discussions about the Enhanced Relationship initiative by providing the platform for those discussions amongst all interest groups in our international tax community.

This report is intended to facilitate further discussions within IFA and to solicit comments from other organisations. All comments, criticism and suggestions are more than welcome. Please address those to cr.gensecr@ifa.nl for the attention of IFA's ad hoc committee on the Enhanced Relationship.

Annex 1 A: Topic based comparison of key issues raised by the interest groups¹³

Status of this annex 1

From the discussions in Paris and Rome it is clear that all interest groups have great sympathy for building better relationships between the relevant parties. The focus of the issues raised is on concerns or even fears about the consequences of ERs that the participants in the discussions feel should be addressed in more depth for (or perhaps before) ERs can be successfully rolled out. A number of key issues were flagged by more than one interest group. These are nevertheless reported for each interest group as the emphasis or level of concern may be different. This duplication is therefore intended. Annex 1 A is an attempt to compare similar key issues raised by the various interest groups following the subjects discussed in this key issues report. Annex 1 B is merely the clean record of key issues raised during the Rome and Paris discussions organised by interest group.

1. COMMON UNDERSTANDING - DEFINITION OF ER

Tax Officers	Tax Practitioners	Government	Academics/Judges
1.22 There must be more clarity around the expectations on each side. One should first define more clearly what an ER is – what are the commitments and what are the benefits? This is very essential before going forward. One must have a direct dialogue in which one exchanges views about the terminology.		3.33 There is some confusion related to the implications of ER and its definition. There is a need to clarify whether there is a common view amongst the governments of various jurisdictions.	
1.19 Multinational corporations face cultural issues and different level of ER in various countries.		3.29 Government must take the first step, an initiative towards TPs. Some TAs reported that TPs had turned down such initiative. Cultural differences and various experiences amongst jurisdictions could be observed.	

2. BENEFITS OF THE ENHANCED RELATIONSHIP

(a) Early resolution of issues – including pre-closing transactions

¹³ All numerical references relate to the paragraph numbers in Annex 1 B.

Tax Officers	Tax Practitioners	Government	Academics/Judges
<p>1.1 The benefits of ERs for businesses are very clear: issues will have to be solved in any event. It is clearly beneficial to address those points as early as possible, creating certainty for TPs as soon as possible; preferably in “real time” during the tax year.</p>	<p>2.1 Efficiency in the assessment process and better understanding between TPs and TAs generally are considered laudable objectives.</p>	<p>3.1 Specific problems have to be dealt with at some point in time; it seems to be time-saving, easier and cost-saving to solve problems immediately when they turn up.</p>	

(b) **TP: Means less tax risks**

Tax Officers	Tax Practitioners	Government	Academics/Judges
<p>1.17 TPs are willing to pay a little extra for certainty, which is of great value.</p>	<p>2.19 It must be considered very valuable for the TP to be able to close accounts and being able to avoid having unsettled issues at year-end. TP needs and wants security.</p>	<p>3.2 GOs believe that TPs primarily aim at receiving certainty with regard to their tax affairs. Therefore, TPs seem to be willing to a certain extent to “invest” in a relationship through very close cooperation in order to receive certainty.</p>	
		<p>3.23 The advantage for TPs is that tax risk decreases. TPs would know the final outcome of any tax issue. It should also be great advantage for TPs to have a good public reputation which would follow from less disputes with tax authorities.</p>	

(c) **TA: less tax avoidance/evasion**

Tax Officers	Tax Practitioners	Government	Academics/Judges
		<p>3.22 The advantages are mutual understanding,</p>	

		working in real time and mutual trust. The closer the TA is to the TP, the lower the risk of tax avoidance. This is a big advantage!	
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(d) **Less audits and nature of audits changes**

Tax Officers	Tax Practitioners	Government	Academics/Judges
1.7 It should result in less burdensome administrative requirements, less irrelevant (follow up) questions asked by TAs and fewer audits .		3.4 It seems to be hard for some jurisdictions to monitor TPs compliance in an ER. At least some resources have to be allocated to this task even in an ER environment. ER therefore should not mean no tax audits at all.	4.5 It is questionable whether the final tax liability for a TP can be established solely on the basis of ER or for TPs with a good record, without any audit/verification .
		3.30 TAs must still have audits in order to check whether things are being done in the way the TP reported.	

(e) **Quicker resolution/real time**

Tax Officers	Tax Practitioners	Government	Academics/Judges
1.1 The benefits of ERs for businesses are very clear: issues will have to be solved in any event. It is clearly beneficial to address those points as early as possible , creating certainty for TPs as soon as possible; preferably in “real time” during the tax year.	2.1 Efficiency in the assessment process and better understanding between TPs and TAs generally are considered laudable objectives.	3.1 One of the great advantages of ERs for GOs lies in the opportunity to solve current issues in real time . This avoids parties to reconstruct historic situations.	
		3.7 Receiving information in real time also means that it is dealt with in real time. The result is that right from the	

		beginning a sufficient number of staff need to be dedicated to this task, as otherwise the TAs cannot live up to their promises.	
		3.17 TAs should embrace the view that the TPs are “clients” receiving a “service” . This is still not fully conceptualised in all jurisdictions. A consequence of a “service-mentality” would be increased responsiveness. The timely conclusion of tax audits gives the TPs predictability and certainty regarding their tax positions.	

(f) **No fighting on facts, only discussion on points of law**

Tax Officers	Tax Practitioners	Government	Academics/Judges
1.6 A better mutual understanding between TPs and TA (and a better (commercial) understanding by the TA of the business of the TP as a result of which the TAs can respond quicker and more focussed on specific issues) is a soft benefit of an ER.	2.15 One has to distinguish between dispute resolution and fact finding . An ER has to do with the latter – to ensure that facts are provided timely and in full, so that no audits are required.	3.1 Within an on-going ER all parties benefit from an easy way to find out about facts and circumstances of a case instead of a burdensome reconstruction of the past (“hide and seek”).	
1.10 The transparency that exists within ERs will then mean that the debate will be focussed on material legal issues rather than on fact-finding. Within an ER, parties can agree to limit litigation to specific points of law . It is likely that the more mature the relationship becomes, the fewer disputes will			

require a court to decide.			
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(g) **Less bureaucracy in practice**

Tax Officers	Tax Practitioners	Government	Academics/Judges
1.7 It should result in less burdensome administrative requirements , less questions asked by TAs and fewer audits.		3.6 In an ER consideration should be given to reducing the number of TPs’ formal compliance obligations as part of the benefit to the extent the result thereof is ensured by the ER process.	

3. REQUIREMENTS FOR SUCCESSFUL ENHANCED RELATIONSHIP PROJECTS

3.1 Critical assumptions

(a) **Basic willingness by all parties to accept (application of) tax law**

Tax Officers	Tax Practitioners	Government	Academics/Judges
1.6 Participation in any ER program needs to be truly voluntary ; there should not be any negative consequences if an invitation to join is not accepted.	2.10 An ER is not about pick and choose. TPs should proactively report anything when in doubt. There must be open disclosure.	3.9 TAs should not focus on “winning”, if necessary by fighting “dirty wars” in court cases, but should take a balanced view and if necessary, should remain open to change their minds if TPs’ arguments deserve this. Sticking to one’s opinion under all circumstances does not help to improve cooperation.	
1.9 Taxpayers should continue to be allowed to explore all corners of the law and pay the minimum amount of tax that is legally allowed. This also ensures a level playing field between ER and non-ER TPs. This does not imply that tax			

<p>authorities should cooperate in clearing tax planning considered abusive by them; it should also not become a tool to kill all tax planning opportunities. Entering into an ER should not be seen to imply that an ER is only available if the TP is submissive to the TAs, does not take risk and does not resort to the courts.</p>			
<p>1.11 ERs should include all tax issues relevant to TPs (including, for example, transfer pricing issues) and not only some of them (such as indirect tax and collection of taxes).</p>			

(b) **Key attitude changing where this is not yet the case:**

- (i) TAs accepting that providing advance certainty is also in their interest.
- (ii) TPs not playing hide and seek games

Tax Officers	Tax Practitioners	Government	Academics/Judges
<p>1.1 The benefits of ERs for businesses are very clear: issues will have to be solved in any event. It is clearly beneficial to address those points as early as possible, creating certainty for TPs as soon as possible; preferably in “real time” during the tax year.</p>	<p>2.13 Transparency should go both ways: If the TP discloses everything, the TA should also disclose their reasons for their position. Often TAs only state their position and not the basis for their position.</p>	<p>3.1 Furthermore, a close relationship encourages openness and frankness from both TP’s and TA’s side.</p>	

(c) **Some basic agreement between TPs and TAs on what is acceptable tax planning vs. unacceptable tax evasion/avoidance.**

Tax Officers	Tax Practitioners	Government	Academics/Judges
<p>1.9 Taxpayers should continue to be allowed to explore all corners of the law and pay the minimum amount of tax that is legally allowed. This also ensures a level playing field between ER and non-ER TPs. This does not imply that tax authorities should co-operate in clearing tax planning considered abusive by them; it should also not become a tool to kill all tax planning opportunities. Entering into an ER should not be seen to imply that an ER is only available if the TP is submissive to the TAs, does not take risk and does not resort to the courts.</p>	<p>2.5 Risk-based enforcement is acceptable, but “demonisation” of tax planning generally (tax planning is treated as tax evasion) is not. There are concerns that some TAs use ER mainly for the latter purpose and treat tax planning as tax avoidance or evasion.</p>		
	<p>2.12 The expectation of the TAs is that the TPs should not engage in tax planning unless it is clear that it is allowed. By ER the TAs mean that TPs should ask in advance if what they intend to do is ok. This would lead to a higher threshold for engaging in tax planning.</p>		

(d) Basic agreement on the legitimate role of tax practitioners

Tax Officers	Tax Practitioners	Government	Academics/Judges
<p>1.21 Legal advisors could get in the way of the relationship between TAs and TPs as tax lawyers are</p>	<p>2.9 The position of tax practitioners in an ER is not clear. Tax practitioners are also essential in ensuring</p>		

<p>generally more sceptical and paid not to trust the TA.</p>	<p>proper application and administration of tax rules. Their role is undervalued as mere “compliance enhancers” or they are viewed as tax planners eroding the tax base. If tax practitioners engage in an ER themselves, TA should accept that they are serving their clients, not the TAs. ERs between TAs and tax practitioners other than for pure compliance services are difficult to imagine in that context.</p>		
	<p>2.14 There will still be a need for tax practitioners as there will be a need for equality of positions: TPs need advisors to discuss complex issues and to translate the facts into legal terms. Tax practitioners have seen more different cases than in-house lawyers and have different kinds of experience. Tax practitioners will also be required if disputes should follow an ER. However, obviously ERs encourage increased direct contact between the TA and TP.</p>		

(e) **Basic agreement that disagreement on points of law does not harm the ER**

Tax Officers	Tax Practitioners	Government	Academics/Judges
<p>1.10 ERs are not ADR. Agreement to disagree should remain possible. TPs should be allowed without any - legal or factual (i.e. psychological) - restrictions to use</p>	<p>2.10 There is a preference to place trust in the judiciary rather than in ER as a means to resolve technical conflicts. Even in ERs the courts will have to continue to</p>	<p>3.18 If necessary, TPs and TAs should “agree to disagree”. In some cases, it is simply unavoidable and necessary to go to court. No party should feel offended in case of</p>	<p>4.7 Courts ultimately interpret the law; published case law also helps build the practice of levying taxes. Access to the courts should therefore remain unchanged in</p>

<p>regular legal remedies. In a professional relationship, using legal remedies cannot lead to a negative impact on that relationship.</p>	<p>provide a safety net to protect TPs against TAs effectively forcing positions on them; no matter how well intentioned TAs are, changes in the political climate may lead to policy changes and/or pressures on the TAs which TPs may consider contrary to their understanding of the tax law. ADR within ER as an efficient manner to resolve disputes within ER should not prevent TPs from ultimately going to court.</p>	<p>disagreement. This requires mutual respect and understanding and should be entirely acceptable in a professional relationship.</p>	<p>an ER environment.</p>
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(f) **Legal culture allows a less than fully rule based approach to the administration of tax law**

Tax Officers	Tax Practitioners	Government	Academics/Judges
<p>1.18 One can see from time to time that some of the rules should be more flexible. Do we talk about clearer law provisions or simpler law provisions? For example, with regard to allocation issues one sometimes experiences that TAs want to agree upon a solution, but the law is too clear. TAs are not allowed to agree although they understand the TP.</p>			<p>4.12 Different cultures in different jurisdictions are a real problem: In some countries there are not as many discretionary powers to the TAs. More stringent law set by government.</p>

3.2 **Legal basis and restrictions**

(a) **Does the law allow ER/is there a need for legal basis?**

Tax Officers	Tax Practitioners	Government	Academics/Judges
<p>1.3 ERs are more difficult to achieve in jurisdictions (a) with</p>			<p>4.15 ER is only relevant if parliamentary law is</p>

<p>stringent rule-based systems without the spirit of the law being relevant and/or (b) that have (and apply) formalised rules on relations between TPs and TAs.</p>			<p>not clear on tax matters – procedural rules are something else. The point of ER is to avoid problems during the process of the tax case. The case matter (legal issues) is to be solved by the courts.</p>
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(b) **Binding agreement vs. expression of intention**

Tax Officers	Tax Practitioners	Government	Academics/Judges
<p>1.16 An important part of the ER process is to meet face-to-face in order to make TAs live up to their promises.</p>			<p>4.5 It is questionable whether the final tax liability for a TP can be established solely on the basis of ER or for TPs with a good record, without any audit/verification.</p>

(c) **Principle of equality**

- (i) Equal access to ER
- (ii) No tax base benefits/disadvantages
- (iii) Equal application of the law

Bureaucratic benefits caused by TAs able to respond quicker because of transparency/voluntary information ok, formal benefits caused by ER doubtful (i.e. reduction of formal obligations should perhaps not be a legal reduction, but a practical reduction – obligations remain, but no need to invoke?).

Tax Officers	Tax Practitioners	Government	Academics/Judges
<p>1.6 There is a potential conflict with the principle of equality if specific “hard” benefits are given to businesses engaging in ERs.</p>	<p>2.7 It is viewed as questionable under legal principles (equality between TPs) whether advantages can be granted to TPs that have entered into an ER.</p>	<p>3.11 ERs should also ultimately be combined with clearer tax law provisions. The clearer the rules the easier they can be applied. Clear rules also result in more equal treatment of TPs. Moreover, clear tax laws lead to higher predictability</p>	<p>4.4 The ER program should be available to everyone. The suggestion that entitlement to ER be limited to low risk TPs identified as such was questioned. Equal treatment between TPs would then be difficult to achieve. Impartiality and</p>

		for TPs.	proportionality are principles of public law that should underpin the behaviour of TAs in relation to all TPs.
1.12 ER opens up for a more tolerant understanding of legislation which would only be available for those TPs that enter into an ER. Could be an issue in regard of equal treatment of TPs.	2.8 TAs will have resource issues to roll out ER to all TPs and deliver as promised. This is unfair to TPs for which ERs are not available (yet). If TAs would spread out their available resources to service all TPs, then they cannot deliver as promised and ER then no longer leads to benefits to TPs. This is a difficult issue to be solved in the current climate of budget cuts.	3.12 The basis for the treatment of all TPs should be the respective tax laws. Treating TPs participating in an ER and others not participating differently is not only unfair but also might result in constitutional issues .	4.11 ER does not resolve disputes in an objective way. Even if the question of trust could be solved, there is still an equality issue due to the fact that resources make ER available only to a few. And although ER should not give a favourable position to the TPs, the underlying element is psychology which could imply desire not to go to court. Idealistically ER should work fairly, however may not always work that way.
		3.25 ER should only apply to large businesses. Equal treatment is important, however an ER is about the process and not the content. The tax result must be within the law.	

3.3 Practical requirements

- (a) **Mutual trust** – willingness to ER at the top level, then actual behaviour starts at personal level, should be **institutionalised**

Tax Officers	Tax Practitioners	Government	Academics/Judges
1.2 Mutual trust and mutual delivery are required. This requires an educational process for both sides given the history of relations between TAs and TPs.	2.3 For an ER to work, mutual trust between TAs, TPs and tax practitioners is essential. This cannot be established by speeches and statements, but needs to develop based on everyday experience , essentially on the basis of individuals from both	3.3 “ From confrontation to cooperation ” is a trend that GOs favour.	4.1 A tax culture of co-operation should be encouraged. Trust-capacity building is then required. Broad trust in the tax system requires transparency by both parties. These underlying principles are accepted as a good development.

	sides dealing with each other. The challenge is how to achieve that mutual trust on an institutional level between <u>all</u> relevant parties (including tax practitioners).		
1.2 TAs Management should also be willing to listen to input from TPs if tax inspectors are not yet behaving in conformity with ERs culture.	2.13 Transparency should go both ways: If the TP discloses everything, the TA should also disclose their reasons for their position. Often TAs only state their position and not the basis for their position.	3.15 A basis for ER is trust at all levels. Thereby, trust shall not be on a mere “personal” level, whereby specific people know and trust each other, but should be institutionalised . This also goes hand in hand with a jurisdiction’s TA that trusts its own staff.	4.8 The question of trust must be looked at from an analytical point of view and from a constitutional point of view. International tax systems are based on trust (Vienna Convention). EU court practices the principle of good faith within the EU. Should also be based on trust within the jurisdictions. However there is distrust at the starting point as TAs and TPs have conflicting interests. Therefore, trust must be a result of a process.
1.7 ERs are really about institutional relationships between TPs and TAs; it requires full transparency as a way to achieve a more efficient manner of applying tax rules for both sides. Full transparency within ERs means voluntary transparency of relevant facts, circumstances, views, intentions, policies, etc. from both sides.	2.18 ERs must go through all levels of the TA , and sometimes only the local inspectors understand the facts. Dialogue may be disrupted by senior within the TA.	3.27 Within ER, the TAs should be able to trust that the low risk TP identifies all relevant issues and makes its own risk assessments.	
		3.29 Mutual trust must be developed on everyday experiences, it takes time and cannot be forced.	
		3.31 There is a need for institutionalization of ER for large	

		companies: One cannot depend on specific persons.	
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(b) **Resources** (numbers of people, level of people (education, experience, commercial awareness), availability to respond

Tax Officers	Tax Practitioners	Government	Academics/Judges
1.2 Embarking on the ERs route implies obligations for both sides to achieve a change in culture and acquire relevant skills . The management of TAs will need to lead by example and ensure that this culture actually is adopted by local inspectors .	2.8 TAs will have resource issues to roll out ER to all TPs and deliver as promised. This is unfair to TPs for which ERs are not available (yet). If TAs would spread out their available resources to service all TPs, then they cannot deliver as promised and ER then no longer leads to benefits to TPs. This is a difficult issue to be solved in the current climate of budget cuts.	3.5 A hurdle for all TAs at the table was the question of resources. In times when public service employment is reduced it seems difficult to load extra work on a shrinking number of staff . On the other hand, the reduction of future work during later tax audits needs to be taken into account as well. Whether the reduced future work equalises the increased work in an ER environment remains questionable .	
1.4 ERs will only really work if tax inspectors truly aim to achieve commercial awareness , understanding the business and business processes and specifically the commercial needs of the businesses in terms of taking away uncertainty and delivering timely responses.		3.16 Although the level of technology and technical abilities resulting in technical assistance in the tax assessment process seems to differ among countries, there has been agreement that technical assistance enabling swift and easy communication and tax assessment between TAs and TPs supports an ER .	
1.5 There is wide-spread concern that tax authorities will not have sufficient resources to deliver , especially in times of budget cuts. TPs would run the risk of walking into a “trap” in terms of putting all their			

cards on the table, without the certainty that the promised benefits can be delivered.			
1.15 TAs should use less resources as a result of ER by working more efficiently. ER enables TAs to concentrate on the higher risk TPs, not the compliant TPs. TAs have knowledge about their own resources and should consider that issue before contacting TPs.			

(c) **Professionalism and pragmatism. Legal remedies should remain available**

Tax Officers	Tax Practitioners	Government	Academics/Judges
1.10 Agreement to disagree should remain possible. TPs should be allowed without any - legal or factual (i.e. psychological) - restrictions to use regular legal remedies.	2.17 An ER should not exclude traditional measures. TPs rights must be ensured.	3.9 TAs should not focus on “winning”, if necessary by fighting “dirty wars” in court cases, but should take a balanced view and if necessary, should remain open to change their minds if TPs’ arguments deserve this. Sticking to one’s opinion under all circumstances does not help to improve cooperation.	4.7 Courts ultimately interpret the law; published case law also helps build the practice of levying taxes. Access to the courts should therefore remain unchanged in an ER environment.

(d) **Balanced approach to tax planning - TP will not propose some aggressive scheme in the hope it gets through**

Tax Officers	Tax Practitioners	Government	Academics/Judges
1.8 ERs imply an expectation of a reasonable discussion ; this means an expectation of a reasonable position taken by both sides. ERs therefore should normally mean that	2.10 An ER is not about pick and choose. TPs should proactively report anything when in doubt. There must be open disclosure.		

parties do not take extreme positions that they know are difficult to defend or are completely unreasonable.			
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(e) **Decisions by TAs should be legally binding**

Tax Officers	Tax Practitioners	Government	Academics/Judges
			4.5 It is questionable whether the final tax liability for a TP can be established solely on the basis of ER or for TPs with a good record, without any audit/verification .

(f) **Living up to promises**

Tax Officers	Tax Practitioners	Government	Academics/Judges
1.16 An important part of the ER process is to meet face-to-face in order to make TAs live up to their promises .	2.8 TAs will have resource issues to roll out ER to all TPs and deliver as promised .	3.7 Receiving information in real time also means that it is dealt with in real time. The result is that right from the beginning a sufficient number of staff needs to be dedicated to this task, as otherwise the TAs cannot live up to their promises.	

3.4 **Helpful factors (but not a hard requirement)**

(a) **Stable and clear tax legislation**

Tax Officers	Tax Practitioners	Government	Academics/Judges
		3.11 ERs should also ultimately be combined with clearer tax law provisions . The clearer the rules the easier they can be applied. Clear rules also result in	

		more equal treatment of TPs. Moreover, clear tax laws lead to higher predictability for TPs.	
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(b) **Clear criteria in law**

Tax Officers	Tax Practitioners	Government	Academics/Judges
		3.32 Every country needs a framework of law setting out obligations and rights. When apply ER, can make reference to such statutory framework and sometimes it will make sense to go beyond that framework.	4.3 However, the basis for ER should be sanctioned by law reflecting a balance between TPs and TAs. The approach should not be too legalistic as this would conflict with the underlying building of relationship point. ER programs may require revisiting existing charters of TP's rights and codes of conduct.
			4.9 ER should only be available to those willing to use a certain framework . Both TAs and TPs should act within that framework.

Comment [C1]: Zin lijkt niet helemaal te lopen

(c) **Absence of full discretionary powers for TAs in matters of law**

Tax Officers	Tax Practitioners	Government	Academics/Judges

(d) **Clear policy statements from TAs on areas not covered by the law/case law.**

Tax Officers	Tax Practitioners	Government	Academics/Judges

(e) **Willingness TAs to come to ER with TAs in other jurisdictions (easier MAPs)**

Tax Officers	Tax Practitioners	Government	Academics/Judges
<p>1.12 There are concerns that full transparency in one country that is further advanced on the ER path will be used against subsidiaries in non-ER (or lesser advanced) countries (through exchange of information mechanisms). It is in the interest of the more advanced ER countries to diligently deal with this.</p>	<p>2.23 A part of the ER for multinational corporations should be that the TAs agree to defend the case against different countries. Although ER is a matter on domestic level, the TA must also take on the obligation to defend the case against other countries. As a consequence of the ER, local TAs should actively ensure that there will be no double taxation. TAs should have a moral obligation to contact the tax authorities of the other country and make a committed effort to come to a solution.</p>		
<p>1.14 MNCs have a clear interest that ERs expand among revenue authorities also (avoiding bureaucratic competent authorities procedures/arbitration) in solving cross border issues; this should include joint assessment/joint audits and pragmatic resolution of tax treaty interpretation issues.</p>			

4. LIMITATIONS OF THE ENHANCED RELATIONSHIP

What does it not entail?

- (a) **No legal requirement for greater transparency with additional bureaucratic obligations and sanctions.**

Tax Officers	Tax Practitioners	Government	Academics/Judges
<p>1.7 Imposing a substantial increase in administrative requirements as a way to enforce fuller transparency to provide data is inherently not compatible with ERs.</p>	<p>2.15 An ER is favourable and more neutral than disclosure requirements because disclosure requirements presume that there is tax planning going on.</p>	<p>3.26 ER can never be an obligation – the legal framework still exists.</p>	<p>4.2 ER should be about the culture in which TPs and TAs approach each other. This requires a change of culture and this takes time; it cannot be prescribed in rules or regulations.</p>
			<p>4.3 However, the basis for ER should be sanctioned by law reflecting a balance between TPs and TAs. The approach should not be too legalistic as this would conflict with the underlying building of relationship point. ER programs may require revisiting existing charters of TP’s rights and codes of conduct.</p>

(b) **No impact on tax basis**

Tax Officers	Tax Practitioners	Government	Academics/Judges
<p>1.9 However, ERs should not in any way affect the basis for taxation. I.e. the rule of material tax law should not be replaced by a “fair share” notion.</p>	<p>2.21 TAs must always follow the law. However sometimes facts are not clear, and an ER could then improve the case for a TP and influence the amount of tax payable. However, some TPs are afraid that if they put all facts on the table, they will pay more tax. Getting a good deal must not be the goal of the ER. Rather that aim must be responsiveness and better understanding. The tax result is never known: may lose either way, or may even be</p>	<p>3.13 ER at the end of the day should not mean that TPs in an ER pay less. They should pay the “right amount of taxes” while requiring as little resources as possible at both sides.</p>	<p>4.2 However, ER should be about behaviour and procedures, not about the level of tax liability. ER programs should clearly distinguish between ways of managing the relationship and TP’s obligations and rights.</p>

	worse off.		
		3.14 On the other hand, ERs by no means should factually result in a situation where TPs not participating in an ER program pay more taxes. ERs should not result in a bargaining between TP and TA about the final amount of taxes to be payable.	
		3.24 The ER process should not change the tax result, however one can never be absolutely sure. In pre-transaction situations an ER could lead to TPs paying more tax because this would avoid tax planning that could otherwise be pursued, or TPs could end up paying less tax due to special concessions provided they are allowed within the relevant tax legislation. A post-transaction ER could lead to more favourable treatment in those cases where the application of the law is unclear to a specific situation.	

(c) **No alternative dispute resolution mechanism.**

Tax Officers	Tax Practitioners	Government	Academics/Judges
1. 10 ERs are not ADR. Agreement to disagree should remain possible	2.11 A more efficient dispute resolution system in tax matters may be a better solution. TPs currently appear to favour ER because of its promise of delivering certainty in a timely manner. If courts or ADR could	3.19 Further work and consideration should be dedicated to alternative dispute resolution, arbitration and mediation. Alternative dispute resolution and mediation should be preferred over going to	4.6 Mediation supported by the courts on issues such as valuation would be acceptable, but ADR on legal issues which excludes the courts is not.

	<p>be able to deliver that result, then that would be preferable. Substantial improvement would be needed as current ADR methods are time-consuming, lacking openness and predictability.</p>	<p>court, since in most cases it is much cheaper. According to some GOs, TPs should be able to appeal in alternative dispute resolution cases.</p>	
	<p>2.15 One has to distinguish between dispute resolution and fact finding. An ER has to do with the latter – to ensure that facts do not come out too late.</p>		
	<p>2.17 An ER should not exclude traditional measures. TPs rights must be ensured.</p>		

5. CONCERNS ABOUT THE ENHANCED RELATIONSHIP

Key concerns/suspicious that remain.

(a) **Method of TAs to differentiate TPs for purposes of saving on audit budgets.**

Tax Officers	Tax Practitioners	Government	Academics/Judges
		<p>3.21 A smaller number of GOs proposed to set up a risk rating of people’s behaviour. This may include the tax advisers’ behaviours, in a sense that they are categorised as “aggressive”, “proactive”, “honest”, etc. But the same rating could also be given to tax auditors and TPs. Such rating might also be addressed to a supervisory organisation.</p>	<p>4.5 It is questionable whether the final tax liability for a TP can be established solely on the basis of ER or for TPs with a good record, without any audit/verification</p>

(b) **Expectation of more balanced approach means higher ETR.** TPs may psychologically be forced in the upper ETR corner within that grey zone.

Tax Officers	Tax Practitioners	Government	Academics/Judges
<p>1.9 However, ERs should not in any way affect the basis for taxation. I.e. the rule of material tax law should not be replaced by a “fair share” notion. There is widespread concern that TAs say this is not intended, but in practice act differently (arguing that a reasonable discussion means a willingness to pay a reasonable amount of tax).</p>	<p>2.4 The relationship is not balanced. The TAs are generally the stronger party and can enforce their views, perhaps except in relation to MNCs. Risk for TP, no risk for TA.</p>		
<p>1.17 Quicker audits have value, but should not result in TAs maximize tax. TPs are willing to pay a little extra for certainty, but should pay the right amount of tax and not more in order to please TA.</p>	<p>2.6 There is general concern that entering into an ER will mean more tax liability than without an ER. TAs are in practice seen to be trying to win arguments to raise more tax, rather than to objectively apply the tax laws. If they enter into an ER with that attitude, then ER will never be successful.</p>		
	<p>2.22 One should distinguish between the situations where there is a tax assessment and where there is no tax assessment: If there is a tax assessment, one knows the worst case scenario in regard of tax payable. If there is no tax assessment, one does not know what could happen if one discloses everything. Could be a higher tax amount than one could ever imagine.</p>		

(c) **TPs not fully transparent.** TPs approach ER opportunistically.

Tax Officers	Tax Practitioners	Government	Academics/Judges
	2.10 An ER is not about pick and choose. TPs should proactively report anything when in doubt. There must be open disclosure.		

(d) **Tax sensitive info:** TAs will want to see that also, TPs will be reluctant to provide. Matter of stage of ER and long term trust.

Tax Officers	Tax Practitioners	Government	Academics/Judges
	2.2 There is a substantial level of scepticism and perhaps even distrust in terms of what the ulterior motives are for TAs in engaging in ERs. It requires a risky full transparency by TPs without certainty on the actual benefits. Is it not an easy way to reduce resource levels at the TAs and generally to raise revenue? Or an informal way to pressure TPs to refrain from certain transactions that are viewed as potentially abusive by TAs?	3.27 Within ER, the TAs should be able to trust that the low risk TP identifies all relevant issues and makes its own risk assessments. However TAs must expect that TPs are more willing to provide tax neutral information than tax sensitive information.	
		3.28 Further, TPs are often willing to provide all information in pre transaction situations as TPs want security and prefer to have an advance tax ruling. ERs could be especially useful in the event of pre company restructurings which would provide TAs with better understanding of different positions and	

		TPs could make better risk assessments. Post transaction information is usually much more challenging.	
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(e) **Full transparency and international exchange of information**

Tax Officers	Tax Practitioners	Government	Academics/Judges
1.12 There are concerns that full transparency in one country that is further advanced on the ER path will be used against subsidiaries in non-ER (or lesser advanced) countries (through exchange of information mechanisms). It is in the interest of the more advanced ER countries to diligently deal with this.	2.23 TAs must fulfil their treaty obligations. If TA and TP enter into an ER, it is not possible to avoid the exchange of information obligation of the TA. However TPs must know in advance what is going to happen with that information and must be sure that such information is not distributed all over the world. As a consequence, must have an international approach to ER.		4.16 Although a TP has entered into ER within only one country, it cannot oblige a TA to not to share information pursuant to tax treaty regulations. It is a treaty obligation to provide information, a matter between State A and B which a TP has no influence over.
1.13 MNCs favour some form of status overview on the level of ER achieved per country. This is seen as a good instrument to promote ERs internationally and bring ER regimes more together. It is specifically important to reduce the gap between OECD and non-OECD countries. Preparation of a status overview on a country-by-country basis by IFA would be viewed as a good initiative.			

(f) **Less transparency on settlements, less case law, ER may create a perception of a risk for corruption in some jurisdictions**

Tax Officers	Tax Practitioners	Government	Academics/Judges
	<p>2.16 There is a danger related to ERs that settlements will be entered into behind closed doors and that there will not be sufficient transparency. In that way ERs could be harmful for tax practices in the future.</p>		<p>4.7 Transparency between TPs and TAs is fine, but that same transparency is undermined by unpublished decisions and results coming out of the ER process. Courts ultimately interpret the law; published case law also helps build the practice of levying taxes. Access to the courts should therefore remain unchanged in an ER environment.</p>
			<p>4.14 In some jurisdictions there would be a risk of corruption.</p>

6. INTRODUCING THE ENHANCED RELATIONSHIP: A STEP-BY-STEP PROCESS

Tax Officers	Tax Practitioners	Government	Academics/Judges
<p>1.2 Mutual trust and mutual delivery are required. This requires an educational process for both sides given the history of relations between TAs and TPs.</p>	<p>2.3 For an ER to work, mutual trust between TAs, TPs and tax practitioners is essential. This cannot be established by speeches and statements, but needs to develop based on everyday experience, essentially on the basis of individuals from both sides dealing with each other.</p>	<p>3.29 Mutual trust must be developed on everyday experiences, it takes time and cannot be forced. Government must take the first step, an initiative towards TPs.</p>	<p>4.8 However there is distrust at the starting point as TAs and TPs have conflicting interests. Therefore, trust must be a result of a process.</p>

Annex 1 B: Record of key issues raised by the interest groups

1. KEY ISSUES RAISED BY CORPORATE TAX OFFICERS

- 1.1 The benefits of ERs for businesses are very clear: issues will have to be solved in any event. It is clearly beneficial to address those points as early as possible, creating certainty for TPs as soon as possible; preferably in “real time” during the tax year.
- 1.2 Mutual trust and mutual delivery are required. This requires an educational process for both sides given the history of relations between TAs and TPs. Embarking on the ERs route implies obligations for both sides to achieve a change in culture and acquire relevant skills. The management of TAs will need to lead by example and ensure that this culture actually is adopted by local inspectors. TAs Management should also be willing to listen to input from TPs if tax inspectors are not yet behaving in conformity with ERs culture (i.e. ERs should include accountability and transparency on behaviour of both parties).
- 1.3 ERs are more difficult to achieve in jurisdictions (a) with stringent rule-based systems without the spirit of the law being relevant and/or (b) that have (and apply) formalised rules on relations between TPs and TAs.
- 1.4 ERs will only really work if tax inspectors truly aim to achieve commercial awareness, understanding the business and business processes and specifically the commercial needs of the businesses in terms of taking away uncertainty and delivering timely responses.
- 1.5 There is wide-spread concern that tax authorities will not have sufficient resources to deliver, especially in times of budget cuts. TPs would run the risk of walking into a “trap” in terms of putting all their cards on the table, without the certainty that the promised benefits can be delivered.
- 1.6 Participation in any ER program needs to be truly voluntary; there should not be any negative consequences if an invitation to join is not accepted. There is a potential conflict with the principle of equality if specific “hard” benefits are given to businesses engaging in ERs. A better mutual understanding between TPs and TA (and a better (commercial) understanding by the TA of the business of the TP as a result of which the TAs can respond quicker and more focussed on specific issues) is a soft benefit of an ER.
- 1.7 ERs are really about institutional relationships between TPs and TAs; it requires full transparency as a way to achieve a more efficient manner of applying tax rules for both sides. Full transparency within ERs means voluntary transparency of relevant facts, circumstances, views, intentions, policies, etc. from both sides. It should result in less burdensome administrative requirements, less irrelevant (follow up) questions asked by TAs and fewer audits. Imposing a substantial increase in administrative requirements as a way to enforce fuller transparency to provide data is inherently not compatible with ERs.
- 1.8 ERs imply an expectation of a reasonable discussion; this means an expectation of a reasonable position taken by both sides. ERs therefore should normally mean that parties do not take extreme positions that they know are difficult to defend or completely unreasonable.
- 1.9 However, ERs should not in any way affect the basis for taxation. I.e. the rule of material tax law should not be replaced by a “fair share” notion. There is widespread concern that TAs say this is not intended, but in practice act differently (arguing that a reasonable discussion means a willingness to pay a reasonable amount of tax). Taxpayers should continue to be allowed to explore all corners of the law and pay the minimum amount of tax that is legally allowed. This also ensures a level playing field between ER and non-ER TPs. This does not imply that tax authorities should co-operate in clearing tax planning considered abusive by them; it should also not become a tool to kill all tax planning opportunities. Entering into an ER should not be

seen to imply that an ER is only available if the TP is submissive to the TAs, does not take risk and does not resort to the courts.

- 1.10 ERs are not ADR. Agreement to disagree should remain possible. TPs should be allowed without any - legal or factual (i.e. psychological) - restrictions to use regular legal remedies. In a professional relationship, using legal remedies cannot lead to a negative impact on that relationship. The transparency that exists within ERs will then mean that the debate will be focussed on material legal issues rather than on fact-finding. Within an ER, parties can agree to limit litigation to specific points of law. It is likely that the more mature the relationship becomes, the fewer disputes will require a court to decide. However, it is always possible that parties remain divided on legal issues or points of principle. Within an ER parties can agree to ADR rather than litigation.
- 1.11 ERs should include all tax issues relevant to TPs (including, for example, transfer pricing issues) and not only some of them (such as indirect tax and collection of taxes).
- 1.12 There are concerns that full transparency in one country that is further advanced on the ER path will be used against subsidiaries in non-ER (or lesser advanced) countries (through exchange of information mechanisms). It is in the interest of the more advanced ER countries to diligently deal with this.
- 1.13 MNCs favour some form of status overview on the level of ER achieved per country. This is seen as a good instrument to promote ERs internationally and bring ER regimes more together. It is specifically important to reduce the gap between OECD and non-OECD countries. Preparation of a status overview on a country-by-country basis by IFA would be viewed as a good initiative.
- 1.14 MNCs have a clear interest that ERs expand among revenue authorities also (avoiding bureaucratic competent authorities procedures/arbitration) in solving cross border issues; this should include joint assessment/joint audits and pragmatic resolution of tax treaty interpretation issues.
- 1.15 TAs should use less resources as a result of ER by working more efficiently. ER enables TAs to concentrate on the higher risk TPs, not the compliant TPs. TAs have knowledge about their own resources and should consider that issue before contacting TPs.
- 1.16 An important part of the ER process is to meet face-to-face in order to make TAs live up to their promises.
- 1.17 Quicker audits have value, but should not result in TAs maximize tax. TPs are willing to pay a little extra for certainty, which is of great value. However, TPs should nevertheless pay the right amount of tax and not more in order to please TAs.
- 1.18 One can see from time to time that some of the rules should be more flexible. Do we talk about clearer law provisions or simpler law provisions? For example, with regard to allocation issues one sometimes experiences that TAs want to agree upon a solution, but the law is too clear. TAs are then not allowed to agree although they understand the TP.
- 1.19 Multinational corporations face cultural issues and different levels of ER in various countries.
- 1.20 ER opens up a more tolerant understanding of legislation which would only be available for those TPs that enter into an ER. Could be an issue in regard of equal treatment of TPs.
- 1.21 Legal advisors could get in the way of the relationship between TAs and TPs as tax lawyers are generally more sceptical and paid not to trust the TA.

- 1.22 There must be more clarity around the expectations on each side. One should first define more clearly what an ER is – what are the commitments and what are the benefits? This is very essential before going forward. One must have a direct dialogue in which one exchanges views about the terminology.

2. KEY ISSUES RAISED BY TAX PRACTITIONERS

- 2.1 Efficiency in the assessment process and better understanding between TPs and TAs generally are considered laudable objectives.
- 2.2 However, there is a substantial level of scepticism and perhaps even distrust in terms of what the ulterior motives are for TAs in engaging in ERs. It requires a risky full transparency by TPs without certainty on the actual benefits. Is it not an easy way to reduce resource levels at the TAs and generally to raise revenue? Or an informal way to pressure TPs to refrain from certain transactions that are viewed as potentially abusive by TAs?
- 2.3 For an ER to work, mutual trust between TAs, TPs and tax practitioners is essential. This cannot be established by speeches and statements, but needs to develop based on everyday experience, essentially on the basis of individuals from both sides dealing with each other. The challenge is how to achieve that mutual trust on an institutional level between all relevant parties (including tax practitioners).
- 2.4 The relationship is not balanced. The TAs are generally the stronger party and can enforce their views, perhaps except in relation to MNCs. Risk for TP, no risk for TA.
- 2.5 Risk-based enforcement is acceptable, but “demonisation” of tax planning generally (tax planning is treated as tax evasion) is not. There are concerns that some TAs use ER mainly for the latter purpose and treat tax planning as tax avoidance or evasion.
- 2.6 There is general concern that entering into an ER will mean more tax liability than without an ER. TAs are in practice seen to be trying to win arguments to raise more tax, rather than to objectively apply the tax laws. If they enter into an ER with that attitude, then ER will never be successful.
- 2.7 It is viewed as questionable under legal principles (equality between TPs) whether advantages can be granted to TPs that have entered into an ER.
- 2.8 TAs will have resource issues to roll out ER to all TPs and deliver as promised. This is unfair to TPs for which ERs are not available (yet). If TAs would spread out their available resources to service all TPs, then they cannot deliver as promised and ER then no longer leads to benefits to TPs. This is a difficult issue to be solved in the current climate of budget cuts.
- 2.9 The position of tax practitioners in an ER is not clear. Tax practitioners are also essential in ensuring proper application and administration of tax rules. Their role is undervalued as mere “compliance enhancers” or they are viewed as tax planners eroding the tax base. If tax practitioners engage in an ER themselves, TA should accept that they are serving their clients, not the TAs. ERs between TAs and tax practitioners other than for pure compliance services are difficult to imagine in that context.
- 2.10 There is a preference to place trust in the judiciary rather than in ER as a means to resolve technical conflicts. Even in ERs the courts will have to continue to provide a safety net to protect TPs against TAs effectively forcing positions on them; no matter how well intentioned TAs are, changes in the political climate may lead to policy changes and/or pressures on the TAs which TPs may consider contrary to their understanding of the tax law. ADR within ER

as an efficient manner to resolve disputes within ER should not prevent TPs from ultimately going to court.

- 2.11 A more efficient dispute resolution system in tax matters may be a better solution. TPs currently appear to favour ER because of its promise of delivering certainty in a timely manner. If courts or ADR could be able to deliver that result, then that would be preferable. Substantial improvement would be needed as current ADR methods are time-consuming, lacking openness and predictability.
- 2.12 The expectation of the TAs is that the TPs should not engage in tax planning unless it is clear that it is allowed. By ER the TAs mean that TPs should ask in advance if what they intend to do is ok. This would lead to a higher threshold for engaging in tax planning.
- 2.13 Transparency should go both ways: If the TP discloses everything, the TA should also disclose their reasons for their position. Often TAs only state their position and not the basis for their position.
- 2.14 There will still be a need for tax practitioners as there will be a need for equality of positions: TPs need advisors to discuss complex issues and to translate the facts into legal terms. Tax practitioners have seen more different cases than in-house lawyers and have different kinds of experience. Tax practitioners will also be required if disputes should follow an ER. However, obviously ERs encourage increased direct contact between the TA and TP.
- 2.15 One has to distinguish between dispute resolution and fact finding. An ER has to do with the latter – to ensure that facts are provided timely and in full, so that no audits are required. An ER is favourable and more neutral than disclosure requirements because disclosure requirements presume that there is tax planning going on.
- 2.16 There is a danger related to ERs that settlements will be entered into behind closed doors and that there will not be sufficient transparency. In that way ERs could be harmful for tax practices in the future.
- 2.17 An ER should not exclude traditional measures. TPs rights must be ensured.
- 2.18 ERs must go through all levels of the TA, and sometimes only the local inspectors understand the facts. Dialogue may be disrupted by senior within the TA.
- 2.19 It must be considered very valuable for the TP to be able to close accounts and being able to avoid having unsettled issues at year-end. TP needs and wants security.
- 2.20 An ER is not about pick and choose. TPs should proactively report anything when in doubt. There must be full and honest disclosure.
- 2.21 TAs must always follow the law. However sometimes facts are not clear, and an ER could then improve the case for a TP and influence the amount of tax payable. However, some TPs are afraid that if they put all facts on the table, they will pay more tax. Getting a good deal must not be the goal of the ER. The aim must be responsiveness and better understanding.
- 2.22 One should distinguish between the situations where there is a tax assessment and where there is no tax assessment: If there is a tax assessment, one knows the worst case scenario in regard of tax payable. If there is no tax assessment, one does not know what could happen if one discloses everything. Could be a higher tax amount than one could ever imagine.
- 2.23 TAs must fulfil their treaty obligations. If TA and TP enter into an ER, it is not possible to avoid the exchange of information obligation of the TA. However TPs must know in advance

what is going to happen with that information and must be sure that such information is not distributed all over the world. As a consequence, must have an international approach to ER.

- 2.24 A part of the ER for MNCs should be that the TAs agree to defend the case against different countries. Although ERs is a matter on domestic level, the TA must also take on the obligation to defend the case against other countries. As a consequence of the ER, local TAs should actively ensure that there will be no double taxation. TAs should have a moral obligation to contact the tax authorities of the other country and make a committed effort to come to a solution.

3. KEY ISSUES RAISED BY GOVERNMENT OFFICERS

- 3.1 One of the great advantages of ERs for GOs lies in the opportunity to solve current issues in real time. This avoids that parties need to reconstruct historic situations. Within an on-going ER all parties benefit from an easy way to find out about facts and circumstances of a case instead of a burdensome reconstruction of the past (“hide and seek”). Specific problems have to be dealt with at some point in time; it seems to be time-saving, easier and cost-saving to solve problems immediately when they turn up. Furthermore, a close relationship encourages openness and frankness from both TP’s and TA’ side.
- 3.2 GOs believe that TPs primarily aim at receiving certainty with regard to their tax affairs. Therefore, TPs seem to be willing to a certain extent to “invest” in a relationship through very close cooperation in order to receive certainty.
- 3.3 “From confrontation to cooperation” is a trend that GOs favour.
- 3.4 It seems to be hard for some jurisdictions to monitor TPs compliance in an ER. At least some resources have to be allocated to this task even in an ER environment. ER therefore should not mean no tax audits at all.
- 3.5 A hurdle for all TAs at the table was the question of resources. In times when public service employment is reduced it seems difficult to load extra work on a shrinking number of staff. On the other hand, the reduction of future work during later tax audits need to be taken into account as well. Whether the reduced future work equalises the increased work in an ER environment remains questionable.
- 3.6 In an ER consideration should be given to reducing the number of TPs’ formal compliance obligations as part of the benefit to the extent the result thereof is ensured by the ER process.
- 3.7 Receiving information in real time also means that it is dealt with in real time. The result is that right from the beginning a sufficient number of staff needs to be dedicated to this task, as otherwise the TAs cannot live up to their promises.
- 3.8 Some of the GOs had the feeling that TPs - as a result of general dissatisfaction with the level and quality of public services - are not willing to pay taxes. They believe that they do not get something in return. Therefore it seems helpful to improve TPs’ general contentment with their governments and public services in general.
- 3.9 TAs should not focus on “winning”, if necessary by fighting “dirty wars” in court cases, but should take a balanced view and if necessary, should remain open to change their minds if TPs’ arguments deserve this. Sticking to one’s opinion under all circumstances does not help to improve cooperation.

- 3.10 “Emotions”: A factor that should be taken into account is the climate during a tax audit. Both parties to a tax audit should work with each other in a respectful way. From TA’s side the focus should be shifted also to the social skills/soft skills of its staff.
- 3.11 ERs should also ultimately be combined with clearer tax law provisions. The clearer the rules the easier they can be applied. Clear rules also result in more equal treatment of TPs. Moreover, clear tax laws lead to higher predictability for TPs.
- 3.12 The basis for the treatment of all TPs should be the respective tax laws. Treating TPs participating in an ER and others not participating differently is not only unfair but also might result in constitutional issues.
- 3.13 ER at the end of the day should not mean that TPs in an ER pay less. They should pay the “right amount of taxes” while requiring as little resources as possible at both sides.
- 3.14 On the other hand, ERs by no means should factually result in a situation where TPs not participating in an ER program pay more taxes. ERs should not result in a bargaining between TP and TA about the final amount of taxes to be payable.
- 3.15 A basis for ER is trust at all levels. Thereby, trust shall not be on a mere “personal” level, whereby specific people know and trust each other, but should be institutionalised. This also goes hand in hand with a jurisdiction’s TA that trusts its own staff.
- 3.16 Although the level of technology and technical abilities resulting in technical assistance in the tax assessment process seemed to differ among countries, there has been agreement that technical assistance enabling swift and easy communication and tax assessment between TAs and TPs supports an ER.
- 3.17 TAs should embrace the view that the TPs are “clients” receiving a “service”. This is still not fully conceptualised in all jurisdictions. A consequence of a “service-mentality” would be increased responsiveness. The timely conclusion of tax audits gives the TPs predictability and certainty regarding their tax positions.
- 3.18 If necessary, TPs and TAs should “agree to disagree”. In some cases, it is simply unavoidable and necessary to go to court. No party should feel offended in case of disagreement. This requires mutual respect and understanding and should be entirely acceptable in a professional relationship.
- 3.19 Further work and consideration should be dedicated to alternative dispute resolution, arbitration and mediation. Alternative dispute resolution and mediation should be preferred over going to court, since in most cases it is much cheaper. According to some GOs, TPs should be able to appeal in alternative dispute resolution cases.
- 3.20 ERs should be introduced within the internal structure of a jurisdiction as well. For example in federal states, such structure ideally should also be introduced on all relevant levels of taxing jurisdiction.
- 3.21 A smaller number of GOs proposed to set up a risk rating of people’s behaviour. This may include the tax advisers’ behaviours, in a sense that they are categorised as “aggressive”, “proactive”, “honest”, etc. But the same rating could also be given to tax auditors and TPs. Such rating might also be addressed to a supervisory organisation.
- 3.22 The advantages are mutual understanding, working in real time and mutual trust. The closer the TA is to the TP, the lower the risk of tax avoidance. This is a big advantage!

- 3.23 The advantage for TPs is that tax risk decreases. TPs would know the final outcome of any tax issue. It should also be a great advantage for TPs to have a good public reputation which would follow from less disputes with tax authorities.
- 3.24 The ER process should not change the tax result, however one can never be absolutely sure. In pre-transaction situations an ER could lead to TPs paying more tax because this would avoid tax planning that could otherwise be pursued, or TPs could end up paying less tax due to special concessions provided they are allowed within the relevant tax legislation. A post-transaction ER could lead to more favourable treatment in those cases where the application of the law is unclear to a specific situation.
- 3.25 ER should only apply to large businesses. Equal treatment is important, however an ER is about the process and not the content. The tax result must be within the law.
- 3.26 ER can never be an obligation – the legal framework still exists.
- 3.27 Within ER, the TAs should be able to trust that the low risk TP identifies all relevant issues and makes its own risk assessments. However TAs must expect that TPs are more willing to provide tax neutral information than tax sensitive information.
- 3.28 Further, TPs are often willing to provide all information in pre transaction situations as TPs want security and prefer to have an advance tax ruling. ERs could be especially useful in the event of pre company restructurings which would provide TAs with better understanding of different positions and TPs could make better risk assessments. Post transaction information is usually much more challenging.
- 3.29 Mutual trust must be developed on everyday experiences, it takes time and cannot be forced. Government must take the first step, an initiative towards TPs. Some TAs reported that TPs had turned down such initiative. Cultural differences and various experiences amongst jurisdictions could be observed.
- 3.30 TAs must still have audits in order to check whether things are being done in the way the TP reported.
- 3.31 There is a need for institutionalization of ER for large companies: One cannot depend on specific persons.
- 3.32 Every country needs a framework of law setting out obligations and rights. When apply ER, can make reference to such statutory framework and sometimes it will make sense to go beyond that framework.
- 3.33 There is some confusion related to the implications of ER and its definition. There is a need to clarify whether there is a common view amongst the governments of various jurisdictions.

4. KEY ISSUES RAISED BY ACADEMICS & JUDGES

- 4.1 A tax culture of co-operation should be encouraged. Trust-capacity building is then required. Broad trust in the tax system requires transparency by both parties. These underlying principles are accepted as a good development.
- 4.2 However, ER should be about behaviour and procedures, not about the level of tax liability. ER programs should clearly distinguish between ways of managing the relationship and TP's obligations and rights. It should be about the culture in which TPs and TAs approach each

other. This requires a change of culture and this takes time; it cannot be prescribed in rules or regulations.

- 4.3 However, the basis for ER should be sanctioned by law reflecting a balance between TPs and TAs. The approach should not be too legalistic as this would conflict with the underlying building of relationship point. ER programs may require revisiting existing charters of TP's rights and codes of conduct.
- 4.4 The ER program should be available to everyone. The suggestion that entitlement to ER be limited to low risk TPs identified as such was questioned. Equal treatment between TPs would then be difficult to achieve. Impartiality and proportionality are principles of public law that should underpin the behaviour of TAs in relation to all TPs.
- 4.5 It is questionable whether the final tax liability for a TP can be established solely on the basis of ER or for TPs with a good record, without any audit/verification.
- 4.6 Mediation supported by the courts on issues such as valuation would be acceptable, but ADR on legal issues which excludes the courts is not.
- 4.7 Transparency between TPs and TAs is fine, but that same transparency is undermined by unpublished decisions and results coming out of the ER process. Courts ultimately interpret the law; published case law also helps build the practice of levying taxes. Access to the courts should therefore remain unchanged in an ER environment.
- 4.8 The question of trust must be looked at from an analytical point of view and from a constitutional point of view. International tax systems are based on trust (Vienna Convention). EU court practices the principle of good faith within the EU. Should also be based on trust within the jurisdictions. However there is distrust at the starting point as TAs and TPs have conflicting interests. Therefore, trust must be a result of a process.
- 4.9 ER should only be available to those willing to use a certain framework. Both TAs and TPs should act within that framework.
- 4.10 What does it mean that the TAs should not take any extreme positions? How far is it expected that the government must go into discussions and accept the other party's view?
- 4.11 ER does not resolve disputes in an objective way. Even if the question of trust could be solved, there is still an equality issue due to the fact that resources make ER available only to a few. And although ER should not give a favourable position to the TPs, the underlying element is psychology which could imply desire not to go to court. Idealistically ER should work fairly, however may not always work that way.
- 4.12 Different cultures in different jurisdictions are a real problem: In some countries there are not as many discretionary powers to the TAs. More stringent law set by government.
- 4.13 In some jurisdictions there would be a risk of the perception of corruption if TAs make "deals" with TPs.
- 4.14 ER is only relevant if parliamentary law is not clear on tax matters – procedural rules are something else. The point of ER is to avoid problems during the process of the tax case. The case matter (legal issues) is to be solved by the courts.
- 4.15 Although a TP has entered into ER within only one country, it cannot oblige a TA to not to share information pursuant to tax treaty regulations. It is a treaty obligation to provide information, a matter between State A and B which a TP has no influence over.

Annex 2 Status in IFA branches

This status overview is based on a web based questionnaire that was sent to all IFA branches in January 2012. The questionnaire was completed under the responsibility of the relevant boards of IFA branches. Responses received up to [date] have been recorded.

[Table included shows all current IFA branches]

IFA BRANCHES	(ANSWERS TO A SMALL NUMBER OF KEY QUESTIONS TO BE INCLUDED IN THIS TABLE)
ARGENTINA	
AUSTRALIA	
AUSTRIA	
BELGIUM	
BOLIVIA	
BRAZIL	
CANADA	
CHILE	
CHINA, PRC	
CHINESE TAIPEI	
COLOMBIA	
COSTA RICA	
CROATIA	
CURAÇAO+ARUBA	
CYPRUS	
CZECH REPUBLIC	
DENMARK	
DOMINICAN REPUBLIC	
EGYPT	
ESTONIA	
FINLAND	
FRANCE	
GERMANY	
GREECE	
HONG KONG	
HUNGARY	
INDIA	
INDONESIA	
IRELAND	
ISRAEL	
ITALY	
JAPAN	
KOREA, REP. OF	

LIECHTENSTEIN	
LUXEMBOURG	
MALAYSIA	
MALTA	
MAURITIUS	
MEXICO	
MOROCCO	
NETHERLANDS	
NEW ZEALAND	
NORWAY	
PERU	
POLAND	
PORTUGAL	
ROMANIA	
RUSSIA	
SERBIA	
SINGAPORE	
SLOVAK REPUBLIC	
SOUTH AFRICA	
SPAIN	
SRI LANKA	
SWEDEN	
SWITZERLAND	
UKRAINE	
UNITED ARAB EMIRATES	
UNITED KINGDOM	
URUGUAY	
USA	
VENEZUELA	

INTERNATIONAL FISCAL ASSOCIATION

QUESTIONNAIRE ON THE ENHANCED RELATIONSHIP

Following please find a series of questions regarding the **IFA Initiative on the Enhanced Relationship**, about the Enhanced Relationship concept, its understanding and application in each jurisdiction.

Please note that these questions refer to the term “ **Enhanced Relationship**” or “**ER**” having the meaning indicated in the **Key Issues Report** (circulated together with this questionnaire) and originally in the **Chapter 8 of the OECD study into the role of tax intermediaries**¹⁴.

The questions are not about a generally better relationship between taxpayers and tax administrations, except if so expressly indicated.

The questions will be answered through a dedicated webpage; the following are the actual questions and the alternative answers that will be included. When responding to these questions please observe the following:

1. The answers shall be given in the **format established** for each question by using the alternatives provided and adding, as necessary, the comments that the Branch deems appropriate but always within the fields provided.
2. Please prepare **only one answer per Branch**; the intention is that each Branch will have analyzed and discussed the issues among the interested groups in their jurisdiction before answering the questionnaire. If not possible, please try that the answers reflect as objectively as possible the views of all interested groups.
3. Please make sure that the formal answer of the questionnaire contains final conclusions as reached by the Branch; **once the answers have been submitted, no changes are possible**.
4. Once the Branch is ready to provide **final answers**, please send an email to the following address to receive the link to the questionnaire dedicated webpage, in which the answers have to be formally expressed: **cr.gensecr@ifa.nl**
5. Please refer and doubts or questions to the following email address: **cr.gensecr@ifa.nl**

¹⁴ For the meaning of the term ENHANCED RELATIONSHIP or ER please refer to chapter 8 of the OECD Report "Study into the Role of Tax Intermediaries" (<http://www.oecd.org/dataoecd/28/34/39882938.pdf>). An early, and more extensive draft, can be found in Working Paper 6 of the OECD working group (<http://www.oecd.org/dataoecd/59/61/39003880.pdf>). For people who really want to understand what ER means, it is good to read both documents in addition to the Key Issues Report

QUESTIONNAIRE

(all questions obligatory except the additional comments which are optional)

1. Please indicate on behalf of which branch this questionnaire is being responded:

A list of branches will be included to be selected and processed accordingly

2. Please indicated the date in which this questionnaire is being submitted by the Branch:

Day/Month/Year

3. Please indicate if the Key Issues Report and the link to Chapter 8 of the Study into the Role of Tax Intermediaries were distributed together with the Questionnaire to the members of the Branch:

Yes/No

4. Please indicate if the branch held meetings within the different groups of interest to discuss the matters and to decide on the answers to the questionnaire:

Yes/No

5. If the answer to the previous questions was yes, were those meetings held:

Separately by group of interest/Mixing persons belonging to differents interest groups/ A combination of the above

6. Please indicate which groups of interest within the branch participated in the discussions (one or more):

Tax authorities/Corporate Tax Officers/Tax Judges and Academics/ Tax Practitioners

7. Has the government in your jurisdiction introduced a formalized Enhanced Relationship initiative or program?

Yes/No - Brief headline comments

If the answer to this question is Yes, please go to question 12

8. If no formal Enhanced Relationship program has been launched, has an attempt been made in your jurisdiction to do so?

Yes/No - Brief headline comments

9. If so, please briefly describe the process

Brief headline comments (obligatory)

10. If not, is there a public discussion on-going in your jurisdiction on introducing an Enhanced Relationship Program?

Yes/No - Brief headline comments

11. If there is no formal Enhanced Relationship program, are there practices whereby (perhaps larger) taxpayers and tax authorities work together in a non-adversarial manner that resembles Enhanced Relationship?

Yes/No - Brief headline comments

12. Is it possible for taxpayers to obtain legally binding advance tax rulings or pre-transaction approvals from the Tax Authorities?

Yes/No - Brief headline comments

13. Is there in your jurisdiction a legal difference (either statutory or through case law) between legitimate tax planning and tax evasion/avoidance?

Yes/No - Brief headline comments

If your answer to question 7 was NO, there is no need to answer the rest of the Questionnaire

14. If an Enhanced Relationship Program exists in your jurisdiction, is it available to all taxpayers?

Yes/No

If no: please specify to whom it is available – brief headline comments

15. If there is an Enhanced Relationship Program in your jurisdiction, is it understood and applied by all levels of tax authorities or only at the higher levels?

At all levels/At medium management and higher levels/ Only at the higher levels/ Only at the highest level

Brief headline comments

16. If an Enhanced Relationship Program exists in your jurisdiction, are there any conditions, qualifications or other requisites to be complied with by interested taxpayers in order to participate?

Yes/No

17. If the answer to the previous questions is yes, what are the qualifications or requisites?

About size of taxpayers/About type of activity/About origin of equity/Internal Tax Control Framework or similar/Other

Brief headline comments

18. If there is an Enhanced Relationship Program in your jurisdiction, are there any negative consequences for eligible taxpayers that decide not to participate in it?

Yes/No

19. If the answer to the previous questions is yes, please elaborate:

Brief headline comments (obligatory)

Annex 3 Abbreviations used

ADR	Alternative Dispute Resolution
CTO	Corporate Tax Officer (inhouse tax counsel)
ER	Enhanced Relationship
ETR	Effective Tax Rate
GO	Government Officer (working generally for a TA)
MAP	Mutual Agreement Procedure
MNC	Multinational Company
MoU	Memorandum of Understanding
PSC	Permanent Scientific Committee (of IFA)
TA	Tax Authority
TI	Tax Intermediary (tax practitioner)
TP	Taxpayer
WP6	Working Party 6 of the OECD