

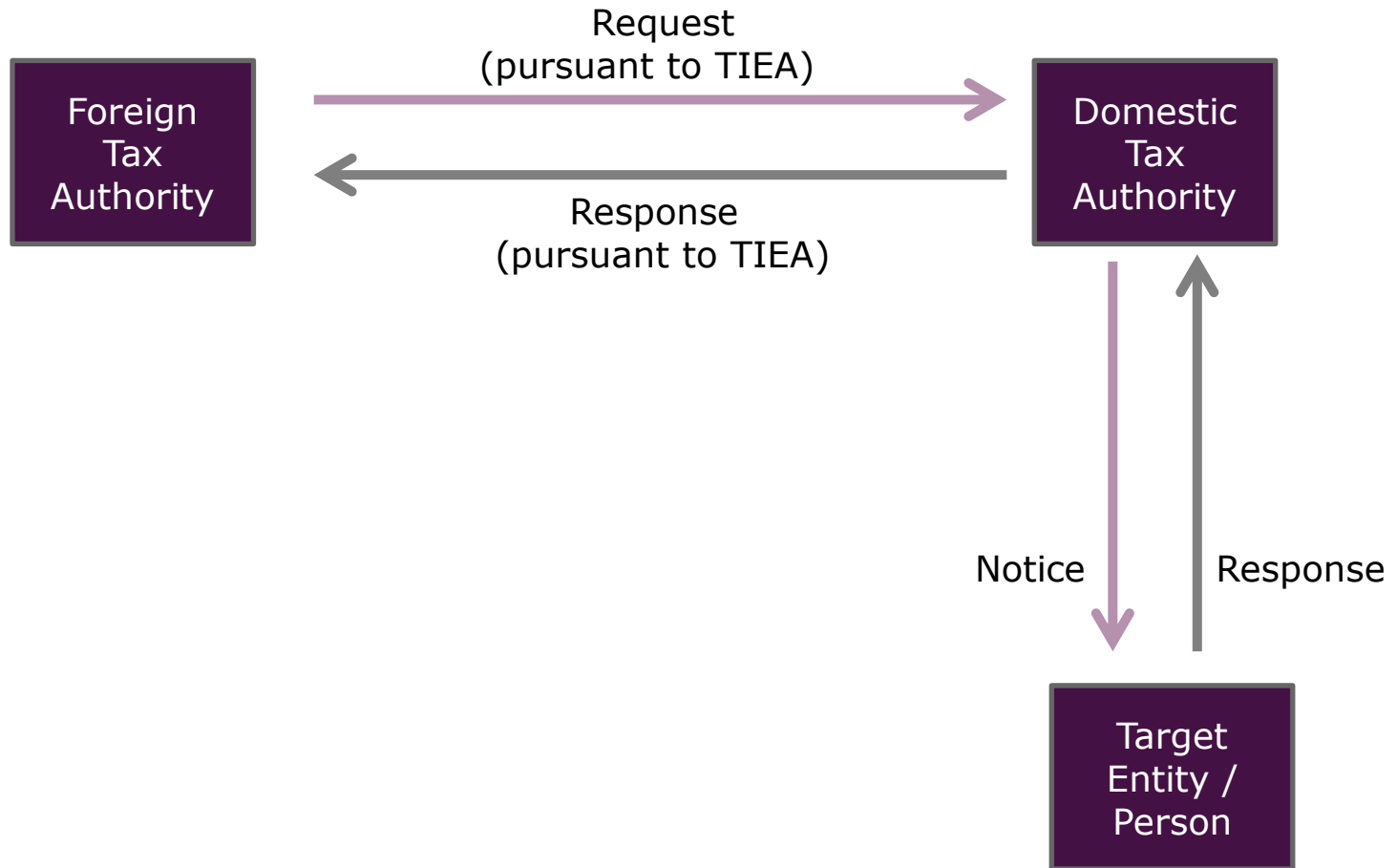
BVI Litigation: Tax Information Exchange Agreements (TIEA)

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What is a TIEA?

- Origins in work undertaken by the Organisation for Economic Co-operation and Development (OECD) to address *harmful tax practices*
- Agreement between two or more countries (usually through their domestic taxation authorities)
- Provide for the exchange of information
- Do not facilitate *fishing expeditions*

How Does a TIEA Work?



BVI Process

- BVI has entered into 21 TIEAs, including with China, USA and UK
- *Mutual Legal Assistance (Tax Matters) Act, 2003* provides the statutory framework for the implementation of TIEAs
- BVI International Tax Authority – receives Requests and issues Notices
- Notices must be limited in scope

BVI Process (Cont.)

- Section 5 of the *Mutual Legal Assistance (Tax Matters) Act* provides that the information requested must be limited to
 - (i) information held by a bank or other financial institution, or any person acting in an agency or fiduciary capacity, including a nominee or trustee, or any other person or entity, or
 - (ii) information regarding the beneficial ownership of a company, partnership or other person or entity.

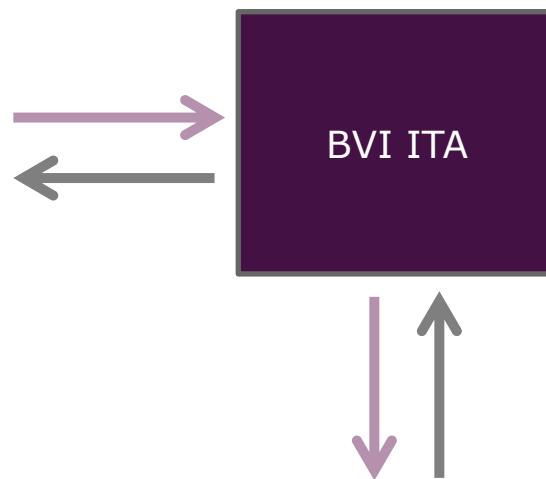
Penalties for failure to comply

- Under section 5(6) of the Act, a person who fails to comply with a Notice or request for information commits an offence and is liable:
 - on summary conviction to a maximum fine of US\$5,000 or 2 years imprisonment or both
 - on conviction on indictment to a maximum fine of US\$100,000 or 5 years imprisonment or both
- Authority also has power to apply to a Magistrate for a search warrant under section 6 of the Act

Challenging a Notice

- No right of appeal / avenue to oppose Notice provided for in legislation
- However, the BVI ITA is a statutory body exercising powers and discretions afforded to it under legislation
- General principles applicable to judicial review proceedings apply

Judicial Review



- Grounds on which to seek judicial review
 1. Notice falls outside scope of section 5, or
 2. BVI ITA inappropriately exercised its discretion in issuing the Notice

Importance of Urgent Advice

- Strict time limits within which to reply to a Notice
- Risk of waiving rights to commence judicial review proceedings
- Prospects of judicial review proceedings may not be immediately clear: detailed consideration of the decision making process required
- Confidentiality: a recipient of a Notice must not disclose the fact that a Notice has been issued
- Contractual obligations to third parties v statutory obligations to BVI ITA
- Statutory reporting obligations: Notice may prompt the need for a Suspicious Activity Report
- Inadvertent admissions as to failure to meet statutory obligations as to holding required information in BVI

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