

ANNEX 1 : INCREASING TAX TRANSPARENCY PAPER

Increasing Tax Transparency

DRAFT PAPER BY THE INCREASING TAX
TRANSPARENCY SUBCOMMITTEE

Table of Contents

PART 1: INTRODUCTION TO TAX TRANSPARENCY	4
1.1. Importance & Potential Benefits of Increased Tax Transparency	4
1.2. Ongoing Work by Various Organizations on Increasing Tax Transparency	5
1.2.1. United Nations (UN)	5
1.2.1.1. Fighting Illicit Financial Flows.....	5
1.2.1.2. Addis Ababa Action Agenda	9
1.2.1.3. The UN Committee of Experts on International Cooperation in Tax Matters (UN Tax Committee).....	10
1.2.2. Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum).....	11
1.2.3. The Inter-American Center of Tax Administrations (CIAT)	13
1.2.4. The Asian Development Bank (ADB).....	15
1.2.5. African Tax Administration Forum (ATAF).....	17
1.2.6. The World Bank (WBG)	18
1.2.7. Other Organizations	18
PART 2: LIMITATIONS AND CHALLENGES FACED BY JURISDICTIONS IN EFFORTS TO INCREASE TAX TRANSPARENCY	20
CHAPTER 2: GENERAL LIMITATIONS AND CHALLENGES	20
2.1 Legal and Regulatory Barriers:	20
2.2 Global Cooperation:.....	20
2.3 Complex Corporate Structures:	21
2.4 Tax Haven Practices.....	22
2.5 Lack of Capacity and Resources	22
2.6 Resistance from taxpayers.....	23
2.7 Public perception and political will.....	24
2.8 Unintended Consequences.....	25
CHAPTER 3: LIMITATIONS AND CHALLENGES IDENTIFIED BY JURISDICTIONS 27	
3.1 Gaps Existing In The Current Standards On Exchange Of Information (EOI) and Measures On Tax Transparency	27
3.2 Gaps in the currently available guidance for exchange on information	28
3.3 Challenges faced in the implementation of international standards in exchange of information	28
PART 3: SUGGESTED SOLUTIONS TO IDENTIFIED LIMITATIONS AND CHALLENGES	30
CHAPTER 4: GENERAL SOLUTIONS	31
Objectives of exchange of information for tax purposes	32

CHAPTER 5: SOLUTIONS TO LIMITATIONS AND CHALLENGES IDENTIFIED BY JURISDICTIONS	50
5.1 Cross-Border Assistance in the Recovery of Tax Claims.	50
a. Legal framework challenges	58
b. Administrative challenges.....	60
a.) Global Forum on Transparency and Exchange of Information for Tax Purposes.....	61
b.) OECD Forum on Tax Administration	63
5.2 The Crypto-Asset Reporting Framework.....	63
5.3 Use Of Treaty Exchanged Information For Non-Tax Purposes	63
5.4 Monitoring and evaluating the impact of exchange of information	72
5.5 Peer Review Process	73
PART 4: PRACTICAL GUIDANCE FOR JURISDICTIONS NEW TO EXCHANGE OF INFORMATION FOR TAX PURPOSES	76
6.1 Raising Awareness On Exchange Of Information Within The Tax Authority	76
6.2 Reforming the legal and regulatory frameworks for exchange of information	76
6.2.1. Establishing an enabling domestic legal framework.....	77
6.2.2. Establishing international legal framework for exchanging information with other jurisdictions	78
6.3 Institutional Readiness and Capacity Building.....	80
6.4 Operationalising EOI Mechanisms.....	84
6.5 Stakeholder engagement and information gathering	85
6.6 Participating in the work of international bodies engaged in exchange of information	
86	

PART 1: INTRODUCTION TO TAX TRANSPARENCY

Taxation is vital for any nation as it provides the necessary funds for public services and infrastructure. However, due to the complex nature of tax systems and the growing influence of global financial transactions, concerns have arisen about tax avoidance, evasion, and the erosion of public trust. Tax transparency is a fundamental element of a fair and effective tax system. It enhances accountability, facilitates combatting tax evasion and avoidance, builds public trust and confidence, and promotes global cooperation and development. By implementing transparent tax policies, governments can foster a culture of compliance, ensure the equitable distribution of resources, and strengthen the overall integrity of the tax system. In a world that increasingly demands accountability and fairness, tax transparency stands as a vital tool to promote the public interest and achieve sustainable development.

This guide focuses on tax transparency in the context of addressing the asymmetry of information between taxpayers and tax authorities through exchange of information.

1.1. Importance & Potential Benefits of Increased Tax Transparency

a) Enhancing Accountability and Fairness

Tax transparency is a critical aspect of a well-functioning tax system, offering numerous benefits to both governments and taxpayers. Among these benefits, enhancing accountability and fairness stand out as pivotal elements in fostering trust and cooperation within a society. Moreover, transparency helps identify and rectify unfair practices such as loopholes and preferential treatment, ensuring that all individuals and businesses contribute their fair share.

b) Combating Tax Evasion and Avoidance

Tax evasion and avoidance pose significant challenges to governments worldwide. They undermine the fairness and integrity of the tax system, depriving governments of much-needed revenue and eroding public trust in the tax system. In response to these challenges, exchange of information has emerged as a powerful tool for combating tax evasion and avoidance, enabling governments to detect and deter tax evasion and avoidance more effectively. When tax authorities share information and collaborate internationally, it becomes more difficult for individuals and corporations to hide assets and income in offshore tax havens or engage in complex tax schemes. By increasing the visibility and accessibility of tax information, transparency helps level the playing field for honest taxpayers and ensures that everyone contributes their fair share.

As governments continue to confront the challenges of tax evasion and avoidance in an increasingly globalized world, exchange of information remains a crucial tool for promoting tax compliance and upholding the principles of fairness and equity.

c) Building Public Trust and Confidence

Tax transparency is essential for building and maintaining public trust and confidence in the tax system. A lack of tax transparency erodes public trust and confidence in the tax system. When citizens perceive that the tax system is opaque and secretive, they may develop negative attitudes towards paying taxes, leading to a decline in voluntary compliance. However by participating in international frameworks that facilitate the exchange of information for tax purposes, governments can demonstrate their commitment to openness and accountability. By providing clear and accessible information about tax policies, rates, and revenues, transparency fosters a better understanding of the tax system and promotes accountability and fairness.

Transparent tax systems generate public trust by providing clarity, consistency, and fairness, fostering a sense of civic duty and promoting a culture of compliance. Moreover, exchange of information helps identify and rectify unfair practices, ensuring that the tax burden is distributed equitably among taxpayers. As governments strive to strengthen public trust and confidence in the tax system, tax transparency emerges as a crucial tool for promoting compliance, accountability, and fairness.

d) Advancing Global Cooperation and Development

Tax transparency is also crucial for promoting global cooperation and development. In an interconnected world, cross-border financial flows and tax planning strategies can significantly impact the revenues of both developed and developing countries. By embracing tax transparency, nations can exchange information and collaborate to combat tax abuse effectively. Increased transparency and cooperation enhance the ability of governments to enforce tax laws, close loopholes, and prevent illicit financial flows. This, in turn, ensures a more equitable distribution of resources and contributes to sustainable development goals. Moreover, tax transparency contributes to a more transparent and predictable investment environment, which is essential for attracting foreign investment and promoting sustainable development. As countries continue to grapple with the challenges of tax evasion and illicit financial flows, tax transparency remains a critical tool for promoting transparency, fairness, and accountability in the global tax system.

1.2. Ongoing Work by Various Organizations on Increasing Tax Transparency

1.2.1. United Nations (UN)

1.2.1.1. Fighting Illicit Financial Flows

The UN's work in this area stems from the decision by Member States to combat illicit financial flows, as they recognize that illicit financial flows exacerbate the sustainable development

financing gap, both by reducing revenue and by misdirecting expenditure. In the 2030 Agenda for Sustainable Development and the Addis Ababa Action Agenda, Member States committed to eliminating illicit financial flows. Goal sixteen of the 2030 Agenda includes a target on significantly reducing illicit financial flows.

In the General Assembly resolution 76/196¹, Member States recognized that combating illicit financial flows was an essential development challenge and laid out a set of commitments to combat them and strengthen good practices on assets return to foster sustainable development. These included efforts to stem tax evasion, tax avoidance, tax base erosion and profit shifting; combat corruption and transnational organized crime; and strengthen the recovery and return of stolen assets in support of sustainable development. The Assembly also expressed its commitment to financial integrity for sustainable development. This was further buttressed by General Assembly resolutions 77/154² and 78/140³ which further amplified the resolution on promotion of international cooperation to combat illicit financial flows and strengthen good practices on assets return to foster sustainable development. These resolutions have identified combating tax related illicit financial flows as a key issue.

Resolution 78/140 recognized the need to increase capacity-building and prompted efforts to strengthen and better measure the funding for domestic resource mobilization. In 2024, the United Nations Department of Economic and Social Affairs has initiated a four-year project on “Identifying and Addressing Vulnerabilities to Aggressive Tax Avoidance in Developing Countries”. This project, complementing with recent UN projects that have focused on various aspects of IFFs, including measurement, reporting, data and statistical capacity, will contribute to strengthened capacity of developing countries to identify and address the vulnerabilities to aggressive tax avoidance that produce the greatest risks based on the country’s economic circumstances, assist each country in developing a customized action plan to address those risks, and provide technical assistance to each target country to support implementation of the action plan.

The United Nations Office on Drugs and Crime (UNODC) first defined “illicit financial flows” as “all cross-border financial transfers, which contravene national or international laws” in its 2016 document. In 2020, the United Nations Conference on Trade and Development (UNCTAD) and United Nations Office on Drugs and Crime defined “illicit financial flows” as “Financial flows that are illicit in origin, transfer or use, that reflect an exchange of value and

¹ <https://documents.un.org/doc/undoc/gen/n21/409/49/pdf/n2140949.pdf>

² <https://documents.un.org/doc/undoc/gen/n22/755/54/pdf/n2275554.pdf>

³ <https://documents.un.org/doc/undoc/gen/n23/419/75/pdf/n2341975.pdf>

that cross country borders”, which is widely accepted by countries. The conceptual framework⁴ identifies four main types of activities that can generate illicit financial flows:

- Tax and commercial activities;
- Illegal markets;
- Corruption;
- Exploitation-type activities and financing of crime and terrorism.

Measuring and tracking tax related illicit financial flows is a fundamental and yet challenging issue because of the nature of the underlying activities and the lack of consensus on a single definition of illicit financial flows. In December 2020, UNCTAD and UNODC jointly published the Conceptual Framework for the Statistical Measurement of Illicit Financial Flows (‘the Conceptual Framework’)⁵. Based on the conceptual framework, UNCTAD published the Statistical Measurement of Tax and Commercial Illicit Financial Flows, which provides the concept of tax and commercial illicit financial flows for measurement purpose, and the suggested methodologies of measurement for pilot testing. The first tax and commercial illicit financial flow estimates were released in UNCTAD’s SDG Pulse in 2023⁶.

Strengthening international tax cooperation is essential in combating tax-related illicit financial flows. The General Assembly adopted resolution 78/230 on the promotion of inclusive and effective international tax cooperation at the United Nations, which identified illicit financial flows as one of the topics that could be addressed through an early protocol to the United Nations Framework Convention on International Tax Cooperation.

The Secretary General’s report of the Seventy-Eighth Session⁷ recognized that ongoing changes to the global economy were creating pressure on tax systems amid a rise in expectations for provision of public goods and services to deliver the Sustainable Development Goals. It also noted that concerns had been growing for many years that the globalization of economic activity has opened up opportunities for tax-related illicit financial flows, including tax base erosion and profit shifting by large multinational enterprises and hiding of untaxed income and assets by wealthy individuals, resulting in unfair tax burdens, reduced incentive for other taxpayers to pay their taxes, lower investment and reduced progress on reducing poverty and inequality. Further, it lowered tax morale, namely, the willingness of others to pay their taxes. It observed that strengthening international tax cooperation and national tax

⁴ UNCTAD and UNODC, Conceptual Framework for the Statistical Measurement of Illicit Financial Flows (Vienna, 2020). https://www.unodc.org/documents/data-and-analysis/statistics/IFF/IFF_Conceptual_Framework_for_publication_FINAL_16Oct_print.pdf

⁵ UNCTAD and UNODC, Conceptual Framework for the Statistical Measurement of Illicit Financial Flows (Vienna, 2020). https://www.unodc.org/documents/data-and-analysis/statistics/IFF/IFF_Conceptual_Framework_for_publication_FINAL_16Oct_print.pdf

⁶ https://unctad.org/system/files/official-document/stat2023d3_en.pdf

⁷ <https://documents.un.org/doc/undoc/gen/n23/217/98/pdf/n2321798.pdf>

administration and enforcement are complementary actions that can contribute to domestic resource mobilization and the achievement of other goals and targets in the 2030 Agenda.

The Secretary General's report of the Seventy-Eighth Session further observed that tax evasion and tax avoidance can give rise to illicit financial flows when the resulting resources flow across borders. Given that secrecy allows perpetrators of illicit financial flows to avoid accountability for their actions, boosting tax transparency is a vital component of the responses needed to eliminate such flows. Increasing tax transparency and promoting exchange of information is crucial for combating tax related illicit financial flows.

Aside from directly exposing illicit financial flows and allowing enforcement of sanctions to violations of tax laws, government can incentivize taxpayers to voluntarily declare previously undeclared assets and deter future efforts at tax avoidance and evasion. This guidance calls for more inclusive information-sharing systems to be combined with effective use of information for enforcement. The Secretary General's report of the Seventy-Eighth Session acknowledges that political will is needed to invest in the capacity and follow-through on enforcement, including of taxpayers with political connections.

The increasing use of digital technologies and the emergence of new business models increase the possibilities for taxpayers to conduct tax avoidance and tax evasion, generating tax related illicit financial flows. The United Nations Committee of Experts on International Cooperation in Tax Matters ('the UN Tax Committee') has been working to address the challenges resulting from globalization and digitalization. In 2021, the UN Tax Committee added Article 12B to the United Nations Model Tax Convention, which provides a bilateral solution on the taxation of automatic digital services without a permanent establishment in the sourcing state. At its twenty-sixth session, held in March 2023, the United Nations Tax Committee gave final approval to including a general subject-to-tax rule (STTR) in the next version of the United Nations Model Tax Convention, which allows the source state to level a tax on payments between related or unrelated parties, when such payments are subject to tax below an agreed-upon rate. The UN Tax Committee has been also working on a fast-track instrument to facilitate the multilateral implementation of specific provisions of the Model Convention, including provisions such as Articles 12A, 12B and the one to establish the STTR.

The growth of crypto assets has also given rise to risks of tax related illicit financial flows. To combat such risks, the UN Tax Committee set up an ad hoc group on the taxation of crypto assets, which has been working on developing a toolkit for evaluating tax risks from crypto assets.

1.2.1.2. Addis Ababa Action Agenda

The Third International Conference on Financing for Development was held in 2015 in Addis Ababa, Ethiopia giving rise to “*The Addis Ababa Action Agenda*”⁸, which was adopted by heads of state and government on 15 July 2015. It is a global framework that seeks to align financing flows and policies with economic, social, and environmental priorities. Expanding on the previous Financing for Development outcomes, the document includes seven Action Areas:

- Domestic public resources
- Domestic and international private business and finance
- International development cooperation
- International trade as an engine for development
- Debt and debt sustainability
- Addressing systemic issues
- Science, technology, innovation, and capacity building

As part of the outcome, governments committed to redoubling their efforts to substantially reduce illicit financial flows by 2030, with a view to eventually eliminating them, including by combating tax evasion and corruption through strengthened national regulation and increased international cooperation. They also committed to reduce opportunities for tax avoidance and consider inserting anti-abuse clauses in all tax treaties and to enhance disclosure practices and transparency in both source and destination countries, including by seeking to ensure transparency in all financial transactions between Governments and companies to relevant tax authorities. Further, they decided to make sure that all companies, including multinationals, pay taxes to the Governments of countries where economic activity occurs and value is created, in accordance with national and international laws and policies.

The governments also took note of the report of the High-level Panel on Illicit Financial Flows from Africa⁹, inviting regions to carry out similar exercises and also invited the International Monetary Fund (IMF), the World Bank and the United Nations to assist both source and destination countries to help combat illicit flows.

A commitment was also made to scale up international tax cooperation, encouraging countries in accordance with their national capacities and circumstances, to work together to strengthen transparency and adopt appropriate policies, including multinational enterprises reporting country-by-country information to tax authorities where they operate; access to beneficial ownership information for competent authorities; and progressively advancing towards

⁸ https://www.un.org/esa/ffd/wp-content/uploads/2015/08/AAAA_Outcome.pdf

⁹ https://au.int/sites/default/files/documents/40545-doc-IFFs_REPORT.pdf

automatic exchange of tax information among tax authorities as appropriate, with assistance provided to developing countries, especially the least developed, as needed. They stressed the need for efforts in international tax cooperation to be universal in approach and scope and to fully take into account the different needs and capacities of all countries, in particular least developed countries, landlocked developing countries, small island developing States and African countries.

The importance of inclusive cooperation and dialogue among national tax authorities on international tax matters was emphasised and, in this regard, the work of the UN Tax Committee, was highlighted with an enhancement to its resources in order to strengthen its effectiveness and operational capacity.

1.2.1.3. The UN Committee of Experts on International Cooperation in Tax Matters (UN Tax Committee)

The UNTC agreed in 2009 to a code of conduct on cooperation in combating international tax evasion¹⁰ that sets minimum standards of conduct required of Member States regarding the exchange of information in efforts to combat international tax evasion, with the following goals:

- a) To ensure that all States following the present code of conduct, in an effort to combat international tax evasion and avoidance, and to protect their tax bases from non-compliance with their tax laws, provide that high levels of transparency and exchange of information in tax matters are adhered to, in particular, automatic exchange of information;
- b) To assist in the development of international norms, practical steps and capacity building programmes that those States may follow, with a view to preventing and combating international tax evasion and protecting their tax bases from non-compliance with their tax laws.

In 2021, the UN Tax Committee formed a subcommittee, mandated to identify gaps in existing work on information exchange in developing countries; identify challenges faced in the implementation of international standards in exchange of information; propose solutions to address the identified gaps and challenges; and advising on ways to provide technical support to developing countries to address those challenges. This Subcommittee worked out a questionnaire aimed at identifying challenges faced by developing countries in the exchange of information and any gaps in existing guidance and standards and is now presenting this draft guidance on increasing tax transparency.

¹⁰ <https://digitallibrary.un.org/record/671895?ln=en>

1.2.2. Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum)

Since 2009, the Global Forum¹¹ has been promoting, monitoring, reviewing and supporting the implementation of the international standards on transparency and exchange of information for tax purposes. The Global Forum brings together 171 jurisdictions and the European Union¹² committed to implementing these standards. Developing countries represent over 55% of the membership. The Global Forum also counts 23 international organisations as observers to ensure coherence in the international community's approach to tackling offshore tax evasion. It works very closely with many of them on a day-to-day basis to coordinate the provision of support to developing countries.

Member jurisdictions of the Global Forum all operate on an equal footing in setting the Global Forum's priorities and devising and implementing its work plan. It is supported by a self-standing Secretariat hosted at the Organisation for Economic Co-operation and Development (OECD.)

The core mission of the Global Forum is to ensure an effective implementation of two international standards which are critical in combating cross-border tax evasion and other illicit financial flows:

- The Standard of Transparency and Exchange of Information on Request (EOIR)¹³ allows tax authorities to request from each other relevant information to advance their tax investigations and audits, thus ensuring tax compliance in a cross-border context.
- The Standard on Automatic Exchange of Financial Account Information (AEOI)¹⁴ mandates the automatic exchange between tax authorities of pre-defined financial account information relating to their tax residents or to entities controlled by their tax residents. This exchange is carried automatically on an annual basis providing tax authorities with relevant information for their risk analysis and tax compliance activities. This exchange is underpinned by ensuring that the information is kept confidential and properly safeguarded and particular requirements are placed on jurisdictions to ensure this.

All Global Forum members are committed to implement these standards. However, regarding the AEOI Standard, developing countries that do not host a financial centre, given their capacity constraints and lower risk to the level playing field, do not have to start their first exchange by a specific date. Instead, they benefit from the technical support of the Global

¹¹ <https://www.oecd.org/tax/transparency/>

¹² <https://www.oecd.org/tax/transparency/who-we-are/members/>

¹³ <https://web.archive.oecd.org/temp/2024-04-13/556831-exchange-of-information-on-request-peer-review-process.htm>

¹⁴ OECD (2017), *Standard for Automatic Exchange of Financial Account Information in Tax Matters, Second Edition*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264267992-en>.

Forum Secretariat to define a practical timeline for the implementation of AEOI. The substantial efforts in establishing the EOIR and AEOI frameworks are showing positive outcomes, with these tools increasingly aiding tax administrations in enhancing tax compliance and domestic resource mobilisation.¹⁵

At its core the Global Forum is a peer review body whereby members review the effectiveness of each other's implementation of the international standards on transparency and the exchange of information for tax purposes. Where issues are identified, recommendations are made to address them. Two rounds of EOIR peer reviews have been conducted by the Global Forum. The first round took place from 2010 to 2016, covering 125 jurisdictions. In 2015, the EOIR Standard was strengthened, most notably to ensure that beneficial ownership information is available. This enhanced standard, together with other adjustments, formed the basis of the second round of EOIR reviews, which commenced in 2016. As of 2023, 125 jurisdictions have been assessed in the second round of EOIR peer reviews¹⁶. There are over 40 jurisdictions that are yet to be fully reviewed in the second round.

The Global Forum has also put in place frameworks to peer review the quality of the implementation of the AEOI Standard from the start. This included reviewing the completeness of the legal frameworks implementing the AEOI Standard once they were enacted and carrying out reviews of the effectiveness of the implementation of the AEOI Standard in practice once there was sufficient experience to do so. The results of the legal assessments were first published in 2020 and have been updated each year thereafter to reflect the jurisdictions that commence exchanges after 2018 and to reflect the results of reassessments where jurisdictions have made amendments to their legal frameworks to address recommendations made. The vast majority (94%) of the 109 jurisdictions assessed so far have been found to satisfy the requirements: either having incorporated all of the requirements in their legal frameworks (resulting in an overall determination of "In Place") or having been found to have one or more gaps, which are not judged to have a fundamental impact on the operation of the AEOI Standard (resulting in a determination of "In Place But Needs Improvement")

The Global Forum also provides a platform for members to discuss relevant issues and offers capacity-building, including bilateral technical assistance, to support the implementation process as well as the use of these standards to tackle tax evasion and other illicit financial flows and thus mobilise domestic revenue.¹⁷ A regional capacity-building approach has proven

¹⁵ OECD (2023), *Pioneering Global Progress in Tax Transparency: A Journey of Transformation and Development, 2023 Global Forum Annual Report*, <https://www.oecd.org/tax/transparency/documents/global-forum-annual-report-2023.pdf>.

¹⁶ https://www.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-peer-reviews_2219469x

¹⁷ <https://www.oecd.org/tax/transparency/what-we-do/>

to be an invaluable tool for exchanging experiences and extending the benefits of implementing the Exchange of Information (EOI) standards. Through regional initiatives in Africa¹⁸, Asia¹⁹, Latin America²⁰ and the Pacific²¹, the specific needs of these regions can be better addressed.

Finally, the Global Forum Secretariat is developing knowledge tools aimed at developing knowledge and supporting the technical assistance program. To date, the Global Forum has released 10 toolkits²², 20 guidance, templates and other tools²³, and 9 e-learning courses²⁴.

1.2.3. The Inter-American Center of Tax Administrations (CIAT)

CIAT is a public non-profit international organization, created in 1967, with the purpose of offering an integral service for the modernization and strengthening of the Tax Administrations of its member countries; forty-two countries in four continents (thirty-two American countries, five European countries, four African countries, and one Asian country). CIAT's mission is to promote international cooperation through the exchange of experiences and information, as well as providing technical assistance, studies, and training, thus contributing to the strengthening of tax administrations, and promoting development in its member countries.

In the tax transparency and exchange of information for tax purposes field, CIAT has been working for decades. The first experience was in 1990 when CIAT issued the first version of its Tax Information Exchange Agreement (TIEA) Model. This Model was the first regional instrument on this matter, and despite its age, it is still in line with the current international standards, considering additionally the possibility to share information to carry out simultaneous audits, audits abroad and other cooperation ways agreed by the signatory countries. This model was generated in the framework of the Working Group on Exchange of Information (WG-EOI) and updated several times. The last version was published in 1999. In 2006 the CIAT WG-EOI issued the Manual for Implementing and Carrying Out Information Exchange.

CIAT has been organizing several workshops, seminars, and training activities with partners (i.e.: OECD, Global Forum, IDB, WB, TJN, Latindadd, IMF, GIZ, AECID, tax administrations from member countries, among others) where the tax transparency and exchange of information was the main topic. It is relevant to stress that in the framework of the 56th General Assembly, the CIAT member countries issued a Resolution on the current challenges of international taxation: exchange of information as a tool to combat tax evasion and

¹⁸ <https://web-archiver.oecd.org/temp/2024-06-06/556736-africa-initiative.htm>

¹⁹ <https://web-archiver.oecd.org/temp/2024-06-29/617892-asia-initiative.htm>

²⁰ <https://web-archiver.oecd.org/temp/2024-06-01/558001-punta-del-este-declaration.htm>

²¹ <https://web-archiver.oecd.org/temp/2024-03-18/617886-pacific-initiative.htm>

²² <https://www.oecd.org/tax/transparency/documents/key-publications-and-documents.htm>

²³ <https://www.oecd.org/tax/transparency/documents/documents-available-to-tax-authorities-upon-request.htm>

²⁴ <https://www.oecd.org/tax/transparency/resources/global-forum-e-learning.htm>

international tax avoidance, 2022. From 2010 CIAT gave technical assistance to nine Latin America & Caribbean (LAC) countries to implement issues related to the international standard on tax transparency and exchange of information. Through the CIAT virtual course on EOI, between 2013 and 2023, CIAT has trained 276 tax officials. This course is available in English and Spanish. For more information see the CIAT website.

When tax administrations need urgent support to make decisions on specific issues in the short term, the Directorate of International Cooperation and Taxation offers two options for obtaining support: The CIAT Tax Inquiry Service and/or the CIAT Tax Help Desk. In the first one a country sends questions that are answered in writing by CIAT, other tax administrations, and/or organizations that are part of the CIAT network. In the second one, the topics are discussed in more detail through a videocall. From 2017 to December 2023 CIAT attended 16 requests through both services. CIAT is an observer organization of the Global Forum on Tax Transparency and Exchange of Information and its Punta del Este Declaration, that mainly promotes the effective use of the EOI tools and the exchanged information, as well as the use of the information exchanged for non-tax purposes when tax administrations identify potential financial risks.

CIAT has also developed tools that facilitate the tax cooperation process, some of these are further outlined below.

- i. With the support of the German Cooperation (GIZ) and the *Secretaria da Receita Federal do Brasil*, CIAT developed in 2015 a tool (DIP) to support tax compliance by providing links to sources of public information that are relevant to the tax administration. Among other uses, it helps to comply with the principle of subsidiarity which necessarily proceeds the request of information via international instruments, and to improve the quality of these requests. Additionally, through this initiative, CIAT has been motivating the exchange of public information not available on the internet among tax administrations. For more information on this initiative see the CIAT website.
- ii. Another relevant tool that CIAT has been developing since 2017, with the support of GIZ, Maastricht University, and other partners, is the Database of Transnational Cases Involving the Erosion of the Tax Base. This service includes transnational cases of intentional tax base erosion, based on real cases, and prepared according to a standard that facilitates their analysis. It includes general information on the taxation systems of some CIAT member countries from the Americas, Europe, and Africa, which is necessary to analyze, compare and interpret the cases reported by 18 countries which involve aggressive behaviours. Its objective is to provide the tax administrations information for identifying aggressive behaviours by businesses and/or individuals who

carry out international transactions and their respective characteristics, for the ultimate purpose of generating cooperation that may result in coordinated actions (i.e.: exchange of information under different methodologies, joint audits, etc.). For more information see the [CIAT website](#).

Overall, CIAT has had extensive experience in the field of tax transparency and EOI, and it is available to attend country demands and provide support through its different channels, in coordination with its partners and its network of experts.

1.2.4. The Asian Development Bank (ADB)

ADB is committed to achieving a prosperous, inclusive, resilient, and sustainable Asia and the Pacific while sustaining its efforts to eradicate extreme poverty. It assists its members and partners by providing loans, technical assistance, grants, and equity investments to promote social and economic development. ADB maximizes the development impact of its assistance by facilitating policy dialogues, providing advisory services, and mobilizing financial resources through co-financing operations that tap official, commercial, and export credit sources. As an international financial institution with a mandate to pursue sustainable development, ADB promotes tax transparency standards through its roles as a financier, a provider of knowledge, and a convener of partnerships. Tax evasion and aggressive forms of tax planning are global concerns and ADB recognizes that the exchange of information for tax purposes is a powerful antidote to tax-related illicit financial flows.

Accordingly, in its role as a financier, ADB undertakes reasonable efforts to ensure that its financing operations do not facilitate tax secrecy, tax evasion, or tax fraud. In broad terms, ADB wants to ensure that all relevant tax administrations, which form part of the project structure, have access to cross-border tax information to be able to apply and enforce their tax laws. While performing these reviews, ADB considers the ratings of relevant jurisdictions provided by lead organizations, including the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) and the Financial Action Task Force (FATF) as an indicator for tax risks, relating to the availability and accessibility of relevant tax information.

In its role as a provider of knowledge, ADB has a long-standing, demand-driven capacity-building program on international tax matters in place. Supporting Developing Member Countries (DMCs) in adopting tax transparency and exchange of information standards of the lead organizations, such as the Global Forum, and utilizing these transparency instruments effectively constitutes a focus area in ADB's capacity building programs.

As a convener of partnerships, ADB always seeks collaboration with relevant stakeholders to bring together the right expertise, avoid duplications, pool resources, and maximize outreach. In the area of tax transparency, ADB works in close collaboration with the Global Forum, other development partners as well as regional tax organizations and is an observer to the Global Forum. All its assistance is country-focused, considering the significantly diverse needs, institutional strengths, and absorption capacities of ADB's DMCs. Accordingly, ADB tax transparency work is diverse including bilateral as well as regional support activities on inter alia:

- Joining the Global Forum on an informed basis by fostering the understanding of the benefits as well as the expectations connected to becoming a Global Forum member;
- Implementing the exchange of information standards (on request (EOIR) as well as automatic (AEOI));
- Implementing national beneficial ownership transparency frameworks, which result in the availability of adequate, accurate, and up-to-date beneficial ownership information;
- Preparing for the Global Forum's EOIR peer review processes;
- Becoming a signatory of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAAC);
- Effectively utilizing tax transparency modalities, which foster cooperation between tax administrations to fight cross-border tax evasion and aggressive tax planning strategies.

To buttress the importance ADB grants to domestic resource mobilisation, ADB launched in May 2021 the Asia Pacific Tax Hub (APTH). One of the objectives of this hub is to promote strong participation among DMCs in global tax cooperation initiatives – such as the work on tax transparency. To make meaningful, coordinated progress in this area, the hub works closely with the Global Forum as well as with regional tax administration associations and bilateral donors. The APTH is, however, broad in its nature. It is a strategic platform for policy dialogue, knowledge sharing, and development coordination: covering vast areas of domestic tax policy reform and strengthening tax administration through digitalization next to international tax cooperation.

Further, ADB regularly delivers knowledge-sharing events and develops knowledge products, in collaboration with relevant stakeholders. For instance, ADB and the Global Forum developed an e-learning module on beneficial ownership requirements under Global Forum and FATF standards. ADB has developed, in close collaboration with the Global Forum, an EOI Handbook²⁵ catered to DMCs that are not yet Global Forum members. The EOI Handbook

²⁵ <https://www.adb.org/publications/exchange-information-handbook>

aims to be a resource for DMCs to understand the benefits and fundamental concepts of EOI, and to guide their decision-making process to join the Global Forum and MAAC.

With the focus on providing customized and well-coordinated support for ADB Pacific DMCs, ADB launched the International Tax Pacific Initiative in October 2020 in collaboration with development partners. Through tailored TA support, this initiative primarily caters to the specific needs of Pacific DMCs. The Initiative supports the phased implementation of internationally agreed standards, including tax transparency, to strengthen DRM and foster partner coordination. ADB continues to support DMCs that are interested in implementing and utilizing tax transparency standards to fight cross-border tax-related illicit financial flows to increase domestic revenues for sustainable development.

1.2.5. African Tax Administration Forum (ATAF)

The African Tax Administration Forum is an African network aimed at improving African tax systems and policy through exchanges, knowledge dissemination, capacity development and active contribution to the regional and global tax agenda. Since its inception, ATAF has prioritised the Exchange of Information as a tool for domestic resource mobilisation. In 2011, ATAF established an EOI Working Group to build political and governmental support and raise awareness of the importance of EOI. The ATAF Working Group on Exchange of Information and Tax Treaties identified the need for a practical guide on EOI to assist developing countries in effectively implementing their EOI instruments. In 2013, ATAF, alongside the OECD Task Force on Tax and Development, developed "A Practical Guide on Exchange of Information for Developing Countries". This formed the first practical toolkit developed by ATAF as an offering for its members.

In 2017, the ATAF EOI Technical Committee was created to build capacity in EOI within Africa. The ATAF EOI Technical Committee has to aid the African membership of 9 ATAF member countries represented by ten members. The Committee engages in capacity-building activities for ATAF member states and has developed several guides for countries in the implementation of EOI, most notably:

- Establishing and Running an Effective Exchange of Information Function - A joint Global Forum and ATAF Toolkit
- Practical Guide on Automatic Exchange of Information for African Countries

Additionally, ATAF has prioritised its work in member countries by supporting technical intervention by setting up an EOI unit, compiling data safeguards and ensuring exchanges occur within the legal framework. Throughout this work, ATAF has also developed the African Agreement on Mutual Assistance in Tax Matters (AMATM). This agreement aims to boost intra-African exchanges of information. The agreement came into force in September 2017.

1.2.6. The World Bank (WBG)

The World Bank is an Observer of the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) since 2009 and participates as a Partner in all regional technical assistance initiatives: Africa Initiative, Punta del Este Initiative (LA) and Asia Initiative. The World Bank helps raise awareness among developing countries on the importance of increased tax transparency and provides technical assistance on a wide range of tax transparency aspects at the global level.

The Bank offers assistance to countries that are not yet members of the Global Forum, helping them understand the benefits of administrative cooperation and the responsibilities associated with the international transparency standards. The Bank also provides support in the implementation of the tax transparency standards: exchange of information on request (preliminary assessments, training, reviewing and drafting legislation and setting up functioning units to carry out exchange of information) and automatic exchange of information -CRS/FATCA (setting up strong information security management frameworks, reviewing and drafting legislation, training, effective use of information).

In addition, the Bank conducts National Risk Assessments to support countries in their efforts to identify, assess and understand their risks (threats and vulnerabilities) of tax evasion for offshore and domestic crimes, including the risk of money laundering of their proceeds, which is closely linked to the beneficial ownership requirement under the tax transparency standards. Technical assistance is often delivered jointly with other international organizations and development banks.

1.2.7. Other Organizations

Other than above mentioned organizations, there are others undertaking the work of increasing tax transparency. In 2023, The West African Tax Administration Forum (WATAF) published a report to guide the promotion of (semi) real time online interactions with various categories of stakeholders in the tax system in West Africa and beyond, to ensure greater tax awareness, literacy, and transparency.²⁶

EU passed a directive in 2021 mandating a limited form of public CbCR for large multinationals, including both EU-based multinationals that are active in more than one member state, as well as non-EU-based multinationals with substantial subsidiaries in the EU.²⁷ In 2023, European Union Finance Ministers have adopted new tax transparency rules for all

²⁶ WATAF. Digital Data Analysis: Promoting Tax Literacy And Transparency Through Online Tax Information In West Africa (Pilot Project).

²⁷ Directive (EU) 2021/2101 of the European Parliament and of the Council of 24 November 2021 amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches (Text with EEA relevance), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021L2101>

service providers facilitating transactions in crypto-assets for customers resident in the EU.²⁸ Over the years, EU has been published and updated the EU list of non-cooperative jurisdictions for tax purposes, listing out countries which are considered to have failed to fulfil their commitments to comply with tax good governance criteria within a specific timeframe, with evaluating criteria that includes tax transparency.²⁹

Global Initiative for Fiscal Transparency (GIFT), an action-network established to achieve sustained and measurable improvements in fiscal transparency and inclusive participation, led by International Budget Partnership (IBP), the World Bank, the International Monetary Fund (IMF) the International Federation of Accountants (IFAC), has been working on improving fiscal transparency and inclusive participation since 2011. In 2021, GIFT published a report, “Making Tax Work: A Framework for Enhancing Tax Transparency”, which identifies a variety of mechanisms and pathways for achieving greater transparency in the governance and management of national tax systems.³⁰

²⁸ Council Directive (EU) 2023/2226 of 17 October 2023 amending Directive 2011/16/EU on administrative cooperation in the field of taxation. https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=OJ:L_202302226

²⁹ EU list of non-cooperative jurisdictions for tax purposes. <https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/#what>

³⁰ GIFT. Making Tax Work: A Framework for Enhancing Tax Transparency. https://fiscaltransparency.net/wp-content/uploads/2021/07/Making-Tax-Work-Revised-for-June-21-comments_formatted_asof07July.pdf

PART 2: LIMITATIONS AND CHALLENGES FACED BY JURISDICTIONS IN EFFORTS TO INCREASE TAX TRANSPARENCY

Achieving tax transparency is a complex and challenging goal that involves increasing openness and disclosure in the tax practices of individuals, businesses, and governments. While progress has been made in recent years, there are still several limitations and challenges associated with achieving tax transparency.

CHAPTER 2: GENERAL LIMITATIONS AND CHALLENGES

2.1 Legal and Regulatory Barriers:

Varying legal and regulatory frameworks across different jurisdictions can create obstacles to achieving consistent and effective tax transparency, due to the different requirements for reporting as well as disclosure. Tax laws vary widely between countries, with each nation having its own tax codes, regulations, and enforcement mechanisms.

Lack of standardized international regulations creates a complex legal environment and may result in loopholes that allow taxpayers to engage in tax avoidance or evasion. Countries often have different definitions of tax avoidance and tax evasion, as well as what comprises acceptable fiscal practices. What one jurisdiction considers illegal could be legal in another and this results in inconsistent implementation and enforcement of tax transparency measures. For example, some countries have broad interpretations of tax avoidance, while others have narrow definitions that leave room for aggressive tax planning.

Lack of international consensus on tax laws and regulations may also lead to inconsistencies in transparency practices. Moreover, the enforcement of tax transparency measures often varies between jurisdictions. Some countries may prioritize the enforcement of these measures, while others may implement them in a laxer manner, leading to disparities in compliance. This inconsistency undermines global efforts to promote tax transparency, as non-compliant jurisdictions may become havens for tax evasion and illicit financial flows.

2.2 Global Cooperation:

Achieving tax transparency requires global cooperation and coordination among countries, which can be challenging due to differing national interests, priorities, and levels of development. Inconsistent commitment to tax transparency among countries and jurisdictions can lead to loopholes and opportunities for tax evasion.

Further, some countries may be less willing to cooperate in sharing tax-related information due to concerns about data protection, economic competitiveness, or sovereignty. A significant obstacle to global cooperation in tax transparency is the divergence of national interests. Countries have different economic structures, political priorities, and fiscal needs, which can

lead to conflicting approaches to taxation. For instance, some nations, particularly small, low-tax jurisdictions, rely heavily on tax competition to attract multinational companies and wealthy individuals. These countries may view stringent global tax transparency measures as detrimental to their economies, as they could reduce their attractiveness as investment destinations. On the other hand, countries with higher tax rates or larger welfare states may have strong incentives to promote tax transparency and close loopholes that allow for tax avoidance. The resulting conflict between these divergent interests makes it difficult to achieve consensus on new global transparency standards, as nations are often unwilling to compromise on policies that they believe are vital to their economic or political survival.

2.3 Complex Corporate Structures:

Complex corporate structures significantly hinder tax transparency by allowing taxpayers to obscure financial flows, shift profits, and exploit mismatches between national tax systems. Taxpayers often use complex structures and transactions to minimize tax liabilities, making it challenging for tax authorities to track and understand their activities accurately. The use of subsidiaries, shell companies, hybrid entities, and offshore financial centres, among others creates an intricate web of financial relationships that make it challenging for tax authorities to trace and understand their tax positions accurately. Taxpayers also use complex financial instruments and legal entities which can be exploited to obscure the true nature of transactions and profits. Untangling these structures and understanding the flow of funds can be intricate and time-consuming. These structures, while often legal, can be used to obscure ownership, shift profits, and reduce tax obligations through various forms of tax avoidance and evasion.

A fundamental issue with complex corporate structures is the difficulty in identifying the beneficial owners—the individuals who ultimately own, control, or benefit from a company’s activities. Many countries do not require companies to disclose this information, or they allow companies to obscure ownership through layers of entities registered in different jurisdictions. The lack of beneficial ownership transparency makes it easy for taxpayers to hide assets, income, or the identities of their true owners. This undermines tax transparency by allowing tax evasion, money laundering, and other illicit activities to go undetected. Although there are global initiatives aimed at increasing beneficial ownership disclosure, such as the Financial Action Task Force (FATF)³¹ recommendations, implementation remains inconsistent, particularly in jurisdictions that benefit economically from secrecy.

While international efforts like the OECD’s BEPS³² initiative aim to address some of these issues, the complexity and opacity of corporate structures continue to pose a formidable

³¹ <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf>

³² <https://www.oecd.org/en/topics/policy-issues/base-erosion-and-profit-shifting-beps.html>

challenge. The lack of standardized reporting practices across borders complicates efforts to untangle these complex structures to gain a comprehensive view of these corporations' global tax activities. To enhance tax transparency, stronger global cooperation, more robust regulations, and greater resources for tax authorities are needed to combat the sophisticated strategies used by taxpayers to minimize their tax obligations.

2.4 Tax Haven Practices

Tax havens and offshore jurisdictions can be used to conceal income and assets, making it difficult for tax authorities to track and tax such activities. Some jurisdictions act as tax havens, offering favourable tax regimes and financial secrecy, which can attract businesses seeking to minimize their tax burden. This can create a race to the bottom as countries compete for businesses by offering lenient tax regimes and contributes to opacity in global financial transactions. Jurisdictions may be reluctant to adopt transparency measures if they fear losing business to more secretive tax havens.

The existence of tax havens and secrecy jurisdictions represents a significant obstacle to global cooperation on tax transparency. These jurisdictions, play a central role in facilitating complex corporate structures and legal arrangements which may be used for tax evasion and avoidance. These jurisdictions typically offer low or zero tax rates, coupled with high levels of financial secrecy, attracting multinational corporations (MNCs), wealthy individuals, and other entities looking to minimize their tax liabilities. MNCs can set up holding companies, special purpose vehicles (SPVs), or other entities in these locations to funnel profits, even though they conduct little or no actual business there. The secrecy laws in these jurisdictions make it difficult for tax authorities to obtain information about the financial activities of companies registered there. Although some tax havens have faced international pressure to reform, many continue to resist full transparency, offering legal structures and confidentiality protections that facilitate tax avoidance and evasion.

2.5 Lack of Capacity and Resources

Tax authorities in some countries may lack the necessary resources, both in terms of skilled personnel and technological infrastructure, to effectively enforce and monitor tax transparency measures. Developing countries in particular face additional challenges when it comes to participating in global tax transparency efforts and often lack the capacity to invest in the necessary infrastructure and technology and may face challenges in building the capacity to handle increased transparency requirements. Setting up systems for automatic information exchange, monitoring cross-border financial flows, and auditing multinational corporations require significant investments in technology, skilled personnel, and governance frameworks, which may not be feasible for countries with limited budgets and capacities.

Moreover, developing countries often struggle to secure a meaningful role in the creation and governance of international tax standards. In many instances, developing nations feel that their particular concerns are not adequately addressed in global initiatives. This lack of inclusion can lead to lower levels of cooperation, as developing countries may perceive international tax standards as being designed for wealthier nations at their expense.

2.6 Resistance from taxpayers

Efforts to increase tax transparency face various challenges, one of which is resistance from taxpayers themselves. Certain businesses may resist efforts to enhance tax transparency, viewing such measures as burdensome and potentially detrimental to their competitive position.

One of the primary reasons taxpayers resist greater tax transparency is the concern over privacy and confidentiality. Increased transparency initiatives require financial institutions to report information about taxpayers' accounts and assets to tax authorities. While the goal of these measures is to prevent tax evasion, many taxpayers view them as an infringement on their right to privacy. High-net-worth individuals and businesses often argue that the disclosure of their financial information to tax authorities or through public registries of beneficial ownership could expose them to security risks, such as theft, fraud, or extortion. This concern is particularly strong in countries where weak governance or corruption could lead to misuse of the disclosed information. As a result, taxpayers may resist compliance with transparency initiatives or seek to minimize their exposure by moving assets to jurisdictions with stronger privacy protections.

Another cause of resistance particularly from businesses, is the perceived increase in administrative burden these measures impose. Transparency initiatives typically require detailed reporting, record-keeping, and compliance with complex regulatory frameworks. This can be time-consuming and costly, particularly for multinational corporations (MNCs) that operate in multiple jurisdictions, each with its own set of tax reporting requirements. For example, companies participating in the OECD's Base Erosion and Profit Shifting (BEPS) initiative are required to file country-by-country reports, detailing their income, profits, taxes paid, and economic activity in each jurisdiction. While this aims to prevent profit shifting and tax avoidance, many corporations argue that the additional paperwork and compliance costs place an undue burden on their operations. Smaller businesses may find these compliance costs particularly onerous, as they often lack the resources to navigate complex tax regulations. This administrative burden can lead to resistance in the form of lobbying efforts, where businesses pressure governments to relax reporting requirements or delay the implementation of transparency measures.

Further, corporations particularly multinational corporations, may resist tax transparency initiatives out of concern for losing competitive advantage. Public disclosure of financial information, such as revenues, profits, and tax payments in different jurisdictions, can give competitors insight into a company's business strategies, pricing models, and profitability. This level of transparency can be especially problematic for businesses operating in highly competitive industries, where proprietary financial information is considered a key competitive asset. For example, a company that has successfully reduced its tax liabilities through legal tax planning might fear that increased transparency will expose its strategies to competitors, customers, or activist groups. This exposure could lead to reputational damage, increased scrutiny from tax authorities, or even shareholder dissatisfaction. Consequently, businesses may resist tax transparency efforts, arguing that mandatory disclosures could harm their competitive position and overall profitability.

2.7 Public perception and political will

The success of tax transparency initiatives often depends on public perception and political will. If there is a lack of commitment from governments or if the public is not adequately informed, progress may be slow. Taxpayers may have a fear of reputational risk, particularly for high-profile individuals and corporations. Public disclosure of tax-related information can lead to reputational damage if a company or individual is perceived to be engaging in aggressive tax avoidance, even if such activities are legal. In recent years, tax avoidance practices by multinational corporations have come under increasing public scrutiny, with media outlets and activist groups highlighting the disparity between corporate profits and tax payments.

The release of documents like the Panama Papers and Paradise Papers has shown how wealthy individuals and corporations use offshore accounts and complex legal structures to minimize their tax obligations. The resulting public outcry has led to reputational damage for those involved, with calls for boycotts, regulatory investigations, and even legal action. Fearing similar exposure, companies and individuals may resist further transparency measures, opting instead to protect their reputation by opposing new reporting requirements or seeking ways to maintain confidentiality.

Political will to implement and enforce transparent tax practices may be lacking in some jurisdictions, particularly if powerful interests benefit from opacity. Public awareness and pressure for tax transparency may vary, affecting the commitment of governments to implement reforms. One of the most significant forms of resistance to tax transparency comes in the form of lobbying and political influence. Large corporations and wealthy individuals have substantial financial resources and often use their influence to shape tax policies and regulations in ways that benefit them. This can include lobbying against the introduction of

transparency measures, weakening existing regulations, or advocating for loopholes that allow for continued tax minimization strategies. The ability of taxpayers to influence tax policy through lobbying undermines efforts to increase transparency, as policymakers may be pressured to water down regulations or delay their implementation. This resistance not only hampers the effectiveness of transparency measures but also perpetuates a system in which tax avoidance strategies remain accessible to those with sufficient resources.

2.8 Unintended Consequences

While increasing tax transparency is crucial for combating tax evasion, ensuring fair taxation, and promoting accountability, it can also lead to unintended consequences. These consequences may arise from well-intentioned policies that, in practice, create new challenges for governments, businesses, and taxpayers.

One of the most significant unintended consequences of increased tax transparency is the burden it places on businesses, particularly in terms of compliance costs. Transparency measures such as the country-by-country reporting (CbCR), FATCA and the Common Reporting Standard (CRS) require companies to collect and report a large volume of financial and tax-related data to tax authorities. While these measures aim to prevent tax avoidance and profit shifting, they also impose significant administrative and financial costs, especially on multinational corporations (MNCs). These businesses must invest in new systems to track financial transactions, report profits, and ensure compliance with tax regulations across multiple jurisdictions. Smaller companies, in particular, may struggle to meet these requirements, as they often lack the resources to navigate complex tax reporting obligations. As a result, increased tax transparency can disproportionately affect smaller businesses, leading to a competitive disadvantage compared to larger corporations with more resources to dedicate to compliance.

Another unintended consequence of increased tax transparency is the potential for reputational damage and stigmatization, even when taxpayers comply with the law. Transparency measures, such as the public disclosure of tax payments or beneficial ownership information, can expose individuals and corporations to scrutiny from the public, media, and activist groups. For example, multinational corporations that legally engage in tax planning strategies to minimize their tax liabilities may find themselves the subject of negative media coverage or public criticism if their tax practices are seen as aggressive. In some cases, companies may be accused of not paying their "fair share" of taxes, leading to reputational harm, boycotts, or consumer backlash, even if they have fully complied with the law. This reputational risk can deter companies from adopting legitimate tax planning strategies, potentially affecting their profitability and market position. Similarly, high-net-worth individuals (HNWIs) may face public scrutiny or even security risks if their financial information is disclosed through

transparency initiatives. While the aim is to ensure accountability and prevent tax evasion, the unintended consequence is that some individuals may be unfairly stigmatized or targeted based on their wealth, regardless of whether they have engaged in tax avoidance.

Another unintended consequence of tax transparency is over-compliance, where businesses and individuals go beyond the required level of reporting to avoid potential penalties or scrutiny from tax authorities. Over-compliance can result in the submission of excessive or irrelevant information, overwhelming tax authorities with data and diverting their resources away from identifying and addressing genuine cases of tax evasion. For example, multinational corporations may choose to disclose more financial information than is strictly necessary to demonstrate full compliance with transparency regulations. While this may protect them from regulatory scrutiny, it can also lead to inefficiencies, as tax authorities must sift through large volumes of data to identify meaningful patterns or irregularities. Over-compliance can also strain the resources of tax authorities, particularly in developing countries with limited administrative capacity. If tax authorities are overwhelmed by the volume of data submitted through transparency measures, they may struggle to effectively audit taxpayers or enforce compliance, undermining the overall effectiveness of transparency initiatives

CHAPTER 3: LIMITATIONS AND CHALLENGES IDENTIFIED BY JURISDICTIONS

Participants in the United Nations Committee of Experts on International Cooperation in Tax Matters (UNTC) work gave feedback on the challenges they faced in the implementation of international standards in exchange of information and the gaps existing in the available guidance. In providing feedback the jurisdictions addressed the following issues focusing on their particular situations;

- (i) The gaps existing in the current standards on exchange of information (EOI) and measures on tax transparency;
- (ii) The gaps in the currently available guidance for exchange on information;
- (iii) The challenges faced in the implementation of international standards in exchange of information.

3.1 Gaps Existing In The Current Standards On Exchange Of Information (EOI) and Measures On Tax Transparency

On the gaps existing in the current standards on exchange of information and measures on tax transparency jurisdictions identified the following issues:

- The 2016 Terms of Reference require jurisdictions to make sure that adequate, accurate and up to date information is available, but the standards appear to be silent to qualify the terms adequate and up to date.
- There was no guidance on the level of hierarchy of legislation that would constitute the legal framework under the current standards.
- The digitalization of the economy necessitated an update of the current standards on exchange of information to better address the unique challenged this brought.
- Many jurisdictions lacked the proper Technology and Database Management System to implement the standards.
- A number of jurisdictions struggled with the practical aspect of fully implementing the standards.
- Assets including crypto assets are not contemplated in the standards.
- The wider use of treaty-exchanged information for non-tax purposes (fight against financial crimes such as money laundering and corruption) is not available with some jurisdictions due to their local legislation.
- Regarding requests for banking information, the rights and safeguards foreseen in the local legislation of some countries do not allow obtaining the information in a timely manner.
- Most agreements for the exchange of Customs information only enable the use of the documentation provided for Customs purposes and, therefore, it is not possible to use it for purposes related to tax transparency.

- Compliance with and enforcement of the standards. Some jurisdictions do not fully cooperate and seem to be more concerned about the interest of their residents, and in some cases, responses were faster and better as the peer review “season” approached.
- Lack of alternative sources of beneficial ownership (B.O.) information. Currently only Business Registration Service has access of the B.O information.
- Lack of funding for training and sensitization on B.O. information.
- Composition of trusts and regulations governing such arrangements need to be updated to meet the standard.
- Local guides/standards on implementation of assistance in debt collection is not yet available.

3.2 Gaps in the currently available guidance for exchange on information

On the currently available guidance for exchange on information, the following were the gaps identified:

- All countries are not at the same level of legislation and IT infrastructure, and this is not reflected in the guidance.
- Most EOI guidance is not available in other languages such as Spanish.
- A step-by-step process on how to switch from Exchange of Information on Request (EOIR) to Automatic Exchange of Information (AEOI) in a developing country was not available.

3.3 Challenges faced in the implementation of international standards in exchange of information

Jurisdictions were also required to identify the challenges faced in the implementation of international standards in exchange of information and the challenges identified include:

- Measuring of the impact.
- Availability of ownership information, accounting information and banking information pertaining to trusts/NGOs, partnership entities, may not be available in all cases.
- Recording of Beneficial Ownership information is going to be a challenging task due to lack of understanding of application of beneficial ownership concept.
- Responding to the EOIRs within the timeframe stipulated by the standards due to limited human resource available to EOI units.
- Strengthening capacity to implement the international standards appropriately and successfully, in particular to improve compliance with the foreseeable relevance of the EOIR.
- One of the challenges in connection with AEOI is the verification and control of the information reported by financial entities to the tax administrations.

- Modification of jurisdictions' internal legal framework and the application of specific actions related to control verification and application of sanctions.
- Availability of human and technological resources and technical training. There is a limited number of staff engaged in EOI.
- Lack of a specific EOI unit and investment on security safeguards.
- Availability of information within the country and challenges in obtaining it for AEOI purposes (e.g. from Financial Institutions or Multinational Enterprises Located in these Jurisdictions.)
- An absence of the required ICT infrastructure to ensure confidentiality.

PART 3: SUGGESTED SOLUTIONS TO IDENTIFIED LIMITATIONS AND CHALLENGES

Efforts to increase tax transparency face numerous challenges, ranging from resistance from taxpayers and complex corporate structures to the risk of capital flight and privacy concerns. However, these challenges can be addressed through a combination of policy reforms, technological innovations, international cooperation, and regulatory enforcement. Overcoming the challenges associated with increasing tax transparency requires a multifaceted approach that addresses the concerns of businesses, governments, and taxpayers.

Broadly, several strategies can be employed to address these challenges. Strengthening global cooperation, improving beneficial ownership transparency, balancing transparency with privacy protections, and reducing compliance burdens are all key strategies for promoting a fair and transparent tax system. This part outlines the key solutions to overcoming the barriers to enhancing tax transparency, broken down into two chapters. Chapter 4 addresses solutions to the general limitations and challenges while Chapter 5 addresses solutions to limitations and challenges identified by jurisdictions participating in the UN work.

CHAPTER 4: GENERAL SOLUTIONS

4.1 Strengthening Global Cooperation and Harmonization of Tax Rules

Lack of global cooperation is a significant barrier to tax transparency. Different jurisdictions have varying tax laws, disclosure rules, and enforcement capabilities, creating opportunities for tax avoidance through regulatory arbitrage. One of the most effective ways to address this challenge is to strengthen global cooperation through international frameworks and agreements. Globalisation has made it easier for taxpayers to operate and move their financial assets across borders with ease. However, the powers of tax authorities are limited to the borders of their respective jurisdictions. This prevents tax authorities from using their domestic laws and procedures to access information concerning assets and activities their taxpayers hold outside their jurisdiction, but which is essential for enabling a global view of the taxpayers' affairs to facilitate the effective enforcement of domestic tax laws. Therefore, globalisation may enable taxpayers to hide their affairs from their tax authorities.

As a result, international cooperation in tax matters between tax authorities has become essential for enabling the proper enforcement of domestic tax laws. International cooperation in tax matters can take many forms including the exchange of information for tax purposes (EOI), service of documents, measures of conservancy and cross-border assistance in the recovery of tax claims. To further strengthen these efforts, countries should work towards harmonizing tax rules, especially regarding taxable income, transfer pricing, and beneficial ownership disclosure.

4.1.1 Exchange of Information (EOI)

Globalisation has dramatically transformed the landscape of international business, leading to greater interconnections between economies where cross-border transactions are commonplace. This evolution, however, has also given rise to complex challenges for tax authorities, notably by creating opportunities for tax evasion. For this reason, there is a growing need for jurisdictions to cooperate with one another to enable the effective enforcement of their domestic tax laws.

EOI has emerged as a powerful tool for cooperation between tax authorities worldwide. It enables countries to access crucial tax-related information held in other jurisdictions. This flow of information is instrumental in identifying tax evasion and ensuring compliance with tax laws as well as serving as a deterrence to potential evaders. For participating jurisdictions, EOI acts as a force multiplier, providing access to data that would otherwise be unattainable as it is held outside the tax authority's jurisdiction.

EOI enables participating jurisdictions to significantly enhance their ability to track cross-border transactions, uncover hidden assets, and ultimately increase their domestic revenue

mobilisation. This not only strengthens their financial state, but also ensures a more equitable distribution of the tax burden. Therefore, actively engaging in and fostering international cooperation through EOI is an essential strategy for jurisdictions aiming to fortify their tax systems and safeguard their tax systems.

Objectives of exchange of information for tax purposes

EOI contributes for an effective and efficient tax authority, as it enables access to information outside the jurisdiction, but which is relevant for enforcing compliance with domestic tax laws.

Access to such information may enable the tax authority to:

- a. Identify taxable activities: EOI enables a tax authority to identify persons that may be earning income or holding assets in foreign jurisdictions that may be taxable in the jurisdiction seeking the information. This information is important for determining whether the activities engaged in and the income accruing from these activities are taxable, ensuring that no one escapes tax liabilities.

- b. Verify taxpayers' information: EOI can provide access to taxpayers' information held abroad, such as ownership and identity information, accounting information and banking information, that may be used by tax authorities to verify, validate and reconcile reported income and expenses or assets and liabilities with actual transactions. This may help prevent underreporting of income or overclaiming expenses with a view to reducing taxes. Box 1 illustrates the possibility of using EOI to confirm the authenticity of information submitted by taxpayers when claiming a tax refund.

Box 1. South Africa - exchange of information as a tool for detecting tax fraud in indirect taxes

The South African Revenue Service (SARS) launched a Value Added Tax (VAT) audit covering the period August 2014 to March 2016, based on the significant VAT refund claims made by a taxpayer (W). W also had a history of non-compliance and had been subject to a VAT and Income Tax audit in 2011 covering the financial years 2003 to 2009. In response to audit queries, W submitted that the refund returns were as a result zero-rated exports to foreign jurisdictions for which W had paid VAT.

The VAT Audit Team used all domestically available resources to verify that the exports by W had met all the requirements and followed requisite procedures for the exportation of goods from South Africa to foreign jurisdictions as prescribed in domestic legislation. Only a few anomalies were identified majorly relating to a limited number of older export transactions for which no export documentation could be provided. However, to confirm with certainty that all exports for which W had claimed a refund on qualified for VAT zero rate and that W was compliant and not conducting any fraudulent activities, the VAT Audit Team submitted a

request to the EOI Unit to send a request to a sample of six recipient jurisdictions that the goods had indeed been received by entities within their jurisdictions. The identified transactions related to exports via sea and no other sources were domestically available to confirm the validity of the transactions.

South Africa has EOI instruments with all the six jurisdictions from which a confirmation was required. The SARS delegated Competent Authority used the available legal instruments to request the relevant treaty partners to confirm that the importers were registered businesses within their jurisdictions and to authenticate the customs documents declared at the South African border posts. SARS attached the customs documentation for the identified transactions to each of the six requests. SARS also requested the annual financial statements of the importers for the relevant financial years to enable the VAT Audit Team to check whether the transactions were reflected.

The six treaty partners submitted partial responses with the last response received within nine months of the first request. As a result of the responses received, the VAT Audit Team issued additional assessments to taxpayer (W) to the value of ZAR 71.56 million (EUR 3.44 million) which included principal tax of ZAR 32.6 million (EUR 1.6 million) and penalties for understating tax payable of ZAR 39 million (EUR 1.9 million).

Source: South African Revenue Service in OECD, AUC and ATAF (2023), *Tax Transparency in Africa Report 2023: Africa Initiative Progress Report*, OECD, Paris - <https://www.oecd.org/tax/transparency/documents/tax-transparency-in-africa-2023.pdf>.

- c. Combat tax evasion: EOI offers both proactive and reactive strategies for combating tax evasion. Proactively, EOI allows these nations to access and analyse international financial data, enabling early detection of potential tax evasion patterns and risks. This foresight is essential for countries to implement timely preventive measures, such as adjusting tax policies or enhancing surveillance of high-risk sectors. Reactively, EOI facilitates the investigation and rectification of suspected tax evasion cases. By obtaining detailed tax-related information from other jurisdictions, tax authorities can more effectively trace and recover unpaid taxes, hold evaders accountable, and close loopholes in their tax systems (see Box 2) as well as combatting GST/VAT fraud (see Box 3).

Box 2. South Africa - exchange of information used to resolve a fraudulent value added tax refund claim

A South African entity (Z) traded in gold jewellery. Documentary proof supplied by Z during an audit revealed that it purchased gold jewellery from three South African suppliers and

exported approximately 6 300 kgs of gold jewellery to another entity (X) in jurisdiction Y between December 2016 and September 2019. Based on the VAT Act, the export of the gold is regarded as a zero-rated supply. Therefore, a taxpayer who buys gold from the domestic market and sells it outside South Africa can claim a refund from SARS for the 15% VAT paid when purchasing the gold from local suppliers (input VAT). The SARS audit team suspected that Z made false exports in order to claim VAT refunds from SARS but sold the gold to local refineries in South Africa.

In order for SARS to authenticate the transaction, confirming the existence of the customer in the partner jurisdiction was vital. The Audit Team performed a search on whether X existed in jurisdiction Y using publicly available information. However, the search revealed that there were entities with similar names, but there was no exact match. SARS sent a request to jurisdiction Y to confirm whether X was legitimate registered entity and, if so, the nature of the business it conducted and whether it traded during the period under investigation. Jurisdiction Y responded within 120 days indicating that, while the entity was registered, it did not trade during the period under investigation.

Thanks to information received, SARS auditors collected ZAR 681.8 million (EUR 32.8 million) additional assessments, which included principal tax of ZAR 272.7 million (EUR 13.1 million) and penalty for understating tax payable of ZAR 409.1 million (EUR 19.7 million).

Source: South African Revenue Service in OECD, AUC and ATAF (2023), Tax Transparency in Africa Report 2023: Africa Initiative Progress Report, OECD, Paris - <https://www.oecd.org/tax/transparency/documents/tax-transparency-in-africa-2023.pdf>.

Box 3. Singapore - Exchange information: an effective tool to combat GST/VAT fraud

Although GST/VAT is a tax on domestic private consumption, it is particularly vulnerable to cross-border fraud due to the inherent nature of the tax regime where the zero-rating of supplies would result in refund claims for input tax. GST/VAT Missing Trader Fraud (MTF) often results in huge tax losses annually for jurisdictions around the world. MTF occurs when criminals abuse the GST/ VAT refund system for fraudulent export arrangements and exploit the asymmetry of information in different jurisdictions. MTF syndicates would often use shell or fictitious entities in jurisdictions without VAT/GST regimes, or those that do not engage in VAT/GST exchanges, as counterparties for cross-border transactions so that they will not be identified or traceable. Without exchange of information (EOI) for VAT/GST purposes, tax authorities are unable effectively enforce on the perpetrators. It is thus imperative for all jurisdictions, including those which have not implemented GST/VAT, to exchange information for GST/VAT purposes through EOI on request channels to effectively deal with GST/VAT

fraud. EOI on request for GST/VAT purposes has proven to be extremely valuable in IRAS' investigation of such cases. The information received from IRAS' exchange partners has helped IRAS uncover fraudulent business arrangements for VAT/GST purposes. In one instance, IRAS' investigations showed that Singapore entities had exported goods to certain non-resident entities, but information received from an EOI partner in response to Singapore's EOI request revealed that these non-resident entities had in fact reported nil purchases in their GST/VAT returns

Source: Inland Revenue Authority of Singapore (IRAS) in OECD (2023), *Tax Transparency in Asia Report 2023: Asia Initiative Progress Report*, OECD, Paris - <https://www.oecd.org/tax/transparency/documents/tax-transparency-in-asia-2023.pdf>

- d. Fight other illicit financial flows (IFFs): Once information has been obtained for tax purposes, it is possible, under certain conditions provided for by the relevant EOI agreement, to use it for other purposes, such as combating money laundering and corruption.
- e. Apply double taxation conventions (DTCs): EOI may be used to confirm a taxpayer's tax residence for the purposes of accessing benefits under a DTC. In the absence of this verification, a taxpayer may access treaty benefits to which it is not entitled. In addition, a jurisdiction may also use EOI to access information necessary for clarifying the circumstances and facts under which the taxing rights should be allocated under a DTC.
- f. Strengthen tax audits: EOI empowers tax auditors to conduct comprehensive audits, even when taxpayers have complex international affairs. By accessing relevant foreign information, auditors can gain a more complete picture of a taxpayer's financial situation, ensuring accurate assessments and minimising tax avoidance opportunities. Box 4 illustrates how EOI may be used to supplement information available domestically to strengthen the tax audit process.

Box 4. Kenya - how exchange of information can supplement information available domestically

During the course of an audit by the Kenya Revenue Authority (KRA), the International Tax Office established that an entity C registered in Kenya had intercompany transactions with a related entity D in Country Y. The audit team found out that entity C was thinly capitalised and had an intercompany loan with the related entity D. It also established that part of entity C's capital was used to offset this loan. The audit team suspected that the arrangement was designed

to avoid paying taxes in Kenya by shifting profits out of Kenya through a fictitious loan or a loan with interest rates that was not at arm's length.

The audit team therefore approached the Competent Authority's (CA's) office with a request to obtain information, which was not available in Kenya but was critical to concluding the audit case. As a result, the CA requested from jurisdiction Y the following information:

- list of shareholders and directors of entity D
- board resolutions of entity D for the additional investments in Kenya and board minutes [of entity D] touching on the related Kenyan entity
- financial statements of entity D
- share sale agreements between affiliated entities between entity C and D
- tax returns filed by entity D in Jurisdiction Y.

This information was aimed at establishing the financing decisions that led to the loan from entity D to entity C and how the interest rate charged by entity D was arrived at. This would enable the audit team to understand why entity C did not obtain a loan from other unrelated parties and also compare the interest rate that would have been charged by unrelated parties. Jurisdiction Y provided all the information requested by Kenya.

This assisted the audit team to confirm that entity C was thinly capitalised. As a result, KRA determined that the interest payable on the loan was not deductible for tax purposes in Kenya. KRA issued an assessment of EUR 2.6 million (USD 2.7 million or KES 316 million). The information through EOI was critical for the conclusion of this case.

The key lesson Kenya learnt from this exchange is that it is important to provide as much background information as possible to the requested jurisdiction to provide the context within which the information is requested. It is also important to be specific on the information requested. This would save time taken to answer requests and obviate the need for clarifications which can delay response by the requested jurisdiction. Finally, this case showed how effective EOI is in helping auditors conclude transfer pricing cases.

Source: Kenya Revenue Authority in OECD, AUC and ATAF (2022), *Tax Transparency in Africa Report 2022: Africa Initiative Progress Report*, OECD, Paris - <https://www.oecd.org/tax/transparency/documents/tax-transparency-in-africa-2022.pdf>.

g. Support tax litigation: EOI plays a critical role in tax litigation proceedings, providing the necessary evidence to elucidate the matter. By obtaining information, which is only

available in a foreign jurisdiction, tax authorities can strengthen their arguments and defend their actions in court, increasing the likelihood of successful tax recoveries.

- h. Facilitate the recovery of tax claims in a cross-border context: EOI may be used to access information from other jurisdictions for purposes of confirming a taxpayer's address or identifying a taxpayer's assets/income held abroad that could be targeted to recover an outstanding tax claim.
- i. Enhance domestic resources mobilisation: the ultimate objective of EOI is to access information relevant for the administration and enforcement of domestic tax laws to increase the revenues collected by the tax authority.

Box 5. Mexico – EOI on request as an essential tool for increasing revenue collection

The main objectives of the Tax Administration Service (Servicio de Administración Tributaria – SAT) of Mexico are the fight against corruption, tax evasion, double non-taxation, and the increase in tax collection. To achieve these objectives, the SAT has put a special focus on EOIR and has delivered training to audit areas of the SAT on the various modalities of EOI available, as well as on their benefits. This dissemination and awareness raising has led to the EOI Unit receiving more requests for information from the audit areas. In line with the strategy, the SAT has also increased the size of the EOI Unit.

In 2022, the number of requests sent by the SAT was 148, an increase of 82.7% with respect to the previous year. Mexico reported collecting additional revenue in 2022 due to EOIR amounting to EUR 528 million. Two successful audit investigations that used EOIR are described below.

Case 1. Omission of revenue

Thanks to the information provided to the SAT by four jurisdictions, Mexico obtained results consisting of the collection of income tax, updates and surcharges for a total amount of EUR 546 million.

Entity A carried out a merger with Entity B, both resident in Mexico, creating Entity C. This latter entity then carried out an asset sale transaction with Entity D, resident in Jurisdiction X. As a result, Entity C, considered deductions for income tax purposes in the amount of EUR 1.7 billion.

The SAT requested information from the jurisdictions as follows:

- To Jurisdiction X, concerning the sale operation between Entity C and Entity D, and to:
(i) know the beneficial owner of such assets, and (ii) verify the tax residence of such beneficial owner to correctly determine the deductions on such assets.
- The information provided by Jurisdiction X confirmed the transaction between Entity C and Entity D and enabled SAT to know that these entities were not related parties and that the legal ownership of the assets sold belonged to Entity E, a resident of Jurisdiction I.
- To Jurisdiction I on the relationship between entities D and E, and to verify the final ownership of the assets. In response, Jurisdiction I informed the SAT that Entity E was its resident, but its beneficial owner was not. In addition, the SAT learned that the legal ownership of Entity E was held by two trusts located in Jurisdictions Z and W.
- To jurisdictions Z and W, to verify the transaction with Entity D and find out who the beneficial owners of the assets are:
 - The information provided by Jurisdiction Z enabled the SAT to learn that the legal ownership of the two trusts was in Jurisdiction W, and that the trust in Jurisdiction Z only administered the assets on behalf of the beneficiary.
 - Jurisdiction W confirmed the existence of the assets and disclosed the identity of their beneficial owners, who were residents in Mexico and owners of Entity C. In addition, it was learned that the assets were granted to Entity D free of charge.

The results of the audit determined that the deductions were not admissible based on the Income Tax Law provisions. The deductions were disregarded in consequence and enabled the SAT to collect a total amount of EUR 546 million

Case 2. Payments to related parties Company

A resident in Mexico carried out transactions with its related party Company B resident in Country B, for the lease of vessels. As a result of these transactions, Company A considered deductions for income tax purposes in the amount of EUR 4 million.

Mexico requested information to Country B to know the effective provision of the services received by Company A from Company B, to know who the beneficial owner of the vessels was, as well as to verify the residence and taxation of such beneficial owner to determine the correct withholding tax rate applicable to them.

From the information provided by Country B, the SAT learned that the economic activities of Company B had not been declared nor taxed, due to domestic laws, as it operated outside of Country B and thus was not required to pay tax. Country B also provided information on where the vessels were located, among other information.

With this information, the audit area determined that the deductions in the amount of EUR 4 million were not applicable, since the operations were entered into with an entity subject to a preferential tax regime in accordance with the provisions of the Income Tax Law.

As a result, Company A corrected its tax situation and eliminated from its deductions the amount corresponding to the transactions with Company B. Source: Tax Administration Service of Mexico.

Source: Tax Administration Service of Mexico in OECD (2023), *Tax Transparency in Latin America Report 2023: Punta del Este Declaration Progress Report*, OECD, Paris - <https://www.oecd.org/tax/transparency/documents/tax-transparency-in-latin-america-2023.pdf>

Box 6 illustrates how EOI may strengthen the tax authority's audit and compliance function in different scenarios.

Box 6. Case studies on the use of exchange of information

Identifying Offshore Income of a Freelancer:

The tax authority of Country A received information through EOI that a resident, Mr. X, a freelance software developer, had been receiving substantial payments from clients in Country B. Despite reporting modest income domestically, bank records from Country B showed large deposits. This EOI allowed Country A to identify taxable income earned abroad, leading to an adjustment in Mr. X's tax liabilities and ensuring compliance with domestic tax laws.

Exchanging Spontaneously Information on Capital Gains:

Country B's tax authorities spontaneously shared with Country A information about a taxpayer's sale of shares, potentially triggering unreported capital gains. This led Country A to discover the taxpayer had not filed tax returns for nine years, missing out on reporting business income, dividends, and interest. Subsequent reassessments resulted in significant tax liabilities.

Verifying a Corporation's Reported Transactions:

Country C's tax authority used EOI to access accounting records of Company Z, operating in both Country C and D. Discrepancies were found between reported earnings in Country C and the accounts held in Country D, indicating underreporting of income and overclaiming of expenses. This verification prevented tax evasion and ensured accurate tax collection based on actual transactions.

Uncovering Re-invoicing Scheme Between Companies:

Tax auditors in Country A detected a potential re-invoicing scheme involving three companies: Company X (deducting large amounts for services), Company Y (re-invoicing services), and Company Z (actual service provider). Suspecting that Company Y was inflating charges and hiding income in Country B, auditors requested information from Country B about Company Y's financial dealings, especially bank records and transactions with Company Z, to uncover the actual income flow and potentially unreported income.

Applying DTCs to Multinational Corporation:

Country G's tax authority, through EOI, confirmed the tax residency status of Company H, which claimed benefits under a DTC with Country I. This verification ensured that Company H was only accessing treaty benefits it was legitimately entitled to, preventing treaty abuse.

Recovering Outstanding Taxes from a Foreign Resident:

Country N's tax authority used EOI to locate assets held in Country O by Mr. P, who had moved abroad and left significant unpaid taxes. The information gathered helped identify foreign bank accounts and real estate, enabling Country N to recover the outstanding tax claims through cross-border assistance in tax recovery.

Source: Global Forum Secretariat.

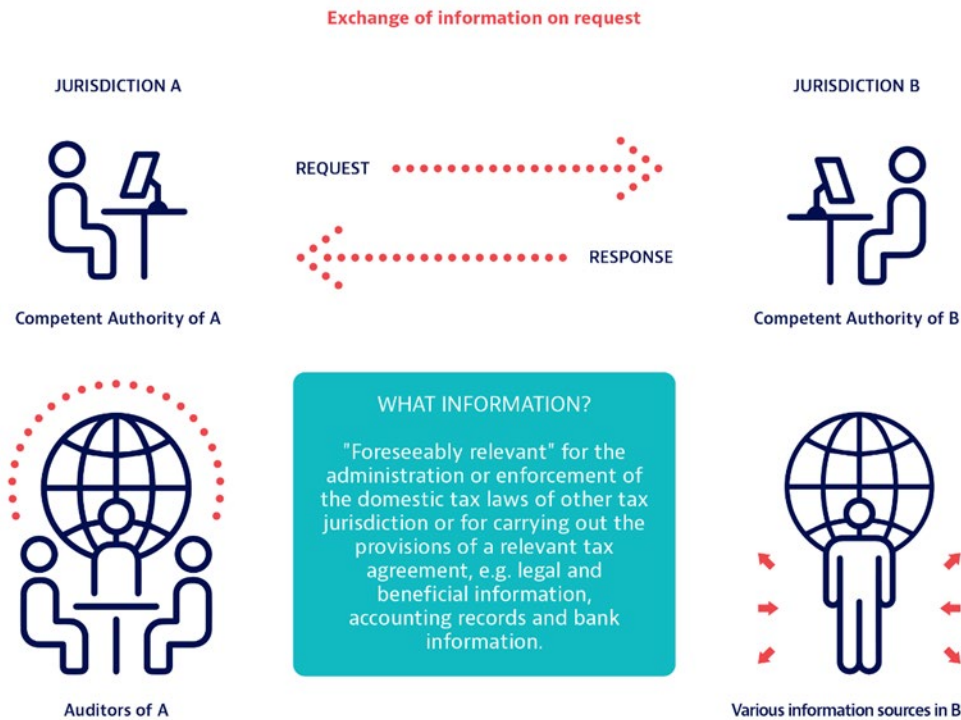
Primary Forms of Exchange of Information

The international agreements that facilitate international cooperation in tax matters may provide for different forms of EOI as outlined below. Notably, all forms of EOI are underpinned by the standard of “foreseeable relevance”. The standard of “foreseeable relevance” requires that the competent authorities (CAs) of the supplying and receiving jurisdictions exchange information that is foreseeably relevant to secure the correct application of the provisions of the international agreement between them or of their domestic laws. This standard is intended to provide for EOI in tax matters to the widest possible extent and, at the same time, to clarify that jurisdictions are not at liberty to engage in “fishing expeditions” or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer.

a) Exchange of information on request (EOIR)

EOIR refers to a situation where the competent authority (CA) of one jurisdiction asks for specific information from the CA of another jurisdiction on the basis of an international agreement in force between the two jurisdictions. It facilitates the exchange of information that is foreseeably relevant for the administration or enforcement of the domestic tax laws of the requesting jurisdiction or for administering the international agreement under which it is requested, based on a specific request made by one jurisdiction to another. Figure 1 illustrates EOIR.

Figure 1. Exchange of information on request

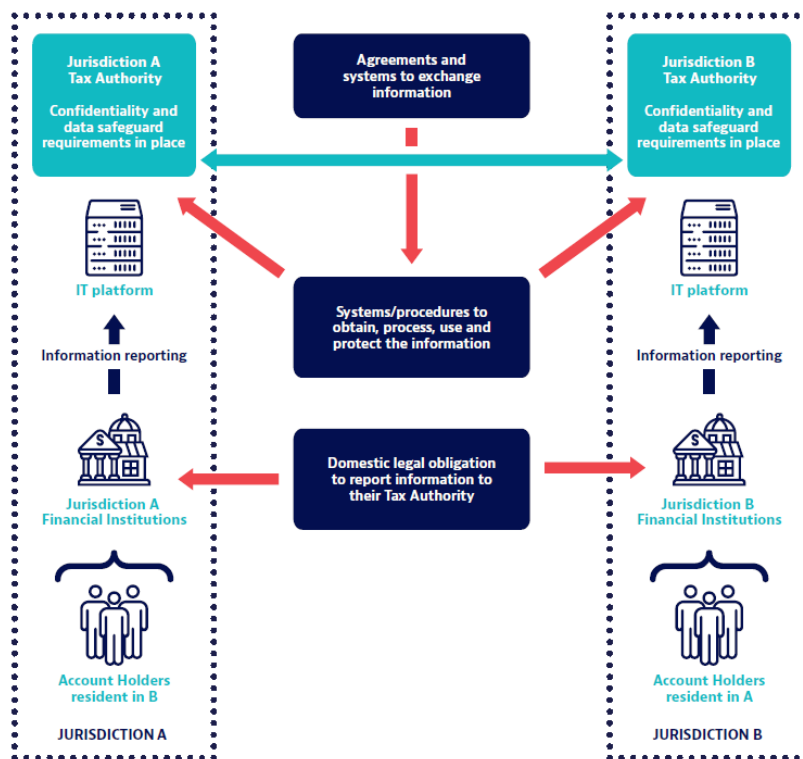


b) Automatic exchange of information under the Common Reporting Standard

AEOI occurs when CAs of two jurisdictions, without prior request and on a periodic basis, exchange predefined information in accordance with an international agreement. Information, which is exchanged automatically may consist of details of income arising in the source country (e.g. interest, dividends, royalties, pensions). This information is obtained on a routine basis (generally through reporting of the payments by the payer) by the sending jurisdiction and is thus available for transmission. CAs interested in AEOI agree in advance, as to what type of information they wish to exchange on this basis, and how and when the exchanges will happen.

There are different forms of AEOI, including through an Intergovernmental Agreement to implement the Foreign Account Tax Compliance Act,³³ Country-by-Country Reporting³⁴ and the Crypto-Asset Reporting Framework (CARF). However, this sub-section focuses on AEOI under the standard for automatic exchange of financial account information (the AEOI standard)³⁵ as illustrated by Figure 2.

Figure 2. Automatic exchange of information under the Common Reporting Standard



Source: OECD (2021), *Toolkit for the Implementation of the Standard for Automatic Exchange of Financial Account Information*, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD, Paris available at https://www.oecd.org/tax/transparency/documents/aeoi-implementation-toolkit_en.pdf

c) Automatic exchange of information under the Crypto-Asset Reporting Framework

In response to the rapid development and growth of the crypto-asset market, the international community has sought to ensure that recent gains in global tax transparency brought about by AEOI will not be eroded. In light of the specific features of the Crypto-Asset markets, the

³³ More information about the Foreign Account Tax Compliance Act is available at <https://home.treasury.gov/policy-issues/tax-policy/foreign-account-tax-compliance-a>

³⁴ More information about Country-by-Country Reporting is available at www.oecd.org/tax/beps/beps-actions/action13/

³⁵ More information about AEOI under the CRS is available at www.oecd.org/tax/automatic-exchange/

OECD, working with G20 countries, has developed the CARF³⁶, a dedicated global tax transparency framework which provides for the automatic exchange of tax information on transactions in Crypto-Assets in a standardised manner with the jurisdictions of residence of taxpayers on an annual basis. In October 2022, the G20 called on the Global Forum to take forward the work on the CARF's implementation.

The CARF consists of three distinct components:

- a) a domestic legal framework that requires Reporting Crypto-Asset Service Providers to collect and report the information;
- b) a Multilateral Competent Authority Agreement on Automatic Exchange of Information pursuant to the CARF and related Commentary (or bilateral agreements or arrangements); and
- c) an electronic format (XML schema) to be used by Competent Authorities for purposes of exchanging the CARF information, as well as by Reporting Crypto-Asset Service Providers to report CARF information to tax authorities (as permitted by domestic law).

To date, 56 jurisdictions have announced their intent to work towards swiftly transposing the CARF into domestic law and activating exchange agreements in time for exchanges to commence by 2027 (subject to national legislative procedures as applicable).³⁷

d) Spontaneous Exchange of Information

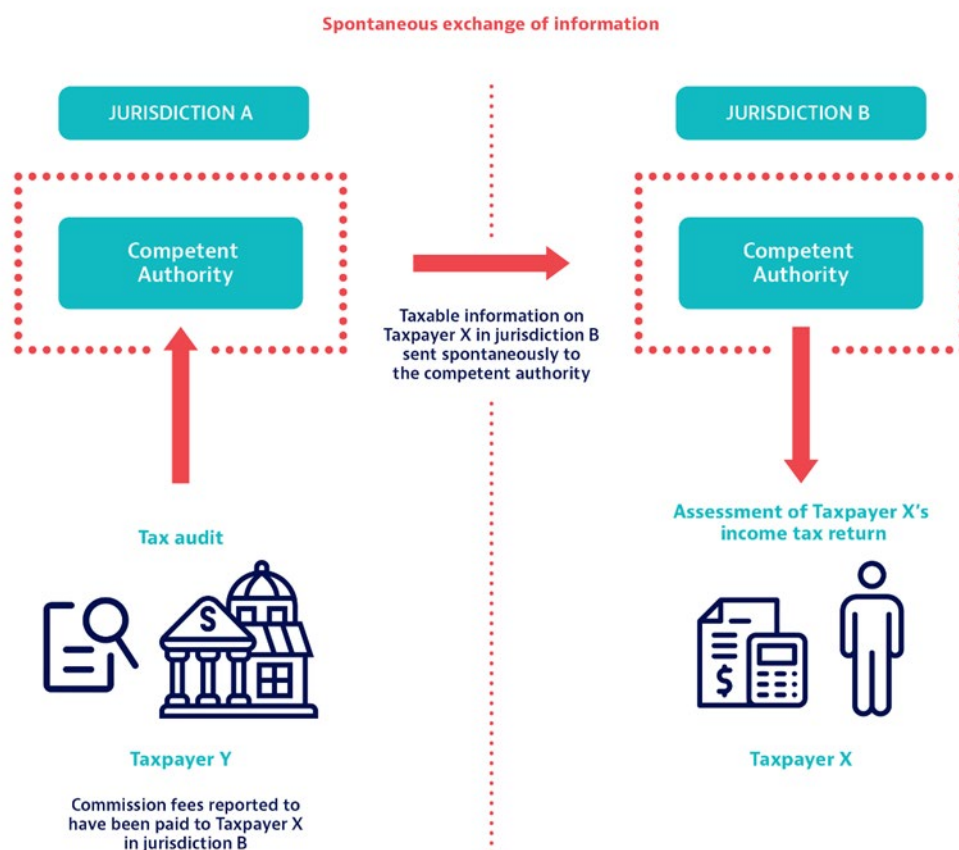
SEOI refers to a situation where the CA of a jurisdiction, while administering its tax laws, obtains information it believes may be of interest to one of its treaty partners for tax purposes. In this scenario, the CA shares this information, without a prior request from the recipient jurisdiction. The effectiveness of SEOI hinges on the ability of tax inspectors to identify relevant information during their investigations. It is worth noting that the CA providing information spontaneously should request feedback from the recipient tax authority, as it may lead to tax adjustments in the sender's jurisdiction.

For instance, if a foreign tax authority is informed on a spontaneous basis about commission fees paid to one of its residents, further investigation might reveal that no such fees were paid. In this case, the deduction of commission fees would be denied, and taxable income would be adjusted accordingly.

³⁶ OECD (2023), *International Standards for Automatic Exchange of Information in Tax Matters: Crypto-Asset Reporting Framework and 2023 update to the Common Reporting Standard*, OECD Publishing, Paris, <https://doi.org/10.1787/896d79d1-en>.

³⁷ The signatories to the joint statement on the implementation of the CARF is available at <https://www.oecd.org/tax/transparency/documents/CARF-signatories-joint-statement.pdf>.

Figure 3. Spontaneous exchange of information



Source: OECD and ATAF (2020), *Establishing and Running an Effective Exchange of Information Function: A joint Global Forum and ATAF Toolkit*, op cit.

Other Forms of Exchange of Information

In addition to the above-mentioned forms of EOI, international agreements providing for mutual administrative assistance in tax matters may also facilitate other forms of EOI. These include simultaneous tax examination (STE), tax examination abroad (TEA) and industry wide EOI.

a.) Simultaneous tax examinations

A STE is a collaborative arrangement involving two or more jurisdictions, each independently examining the tax affairs of a taxpayer in which they have a common or related interest. This examination is conducted by each tax authority in its respective jurisdiction with the objective of collecting relevant information and exchanging it with the other participating jurisdiction. Oftentimes, the international agreements providing for a STE may require a further administrative agreement between the CAs on cases eligible for and the methods for initiating a STE between the two jurisdictions. However, it should be noted that differences in the statutes of limitations among participating jurisdictions must be considered before initiating a STE.

STE can be a comprehensive and coordinated approach to tackling complex tax matters that transcend borders.

STEs may be used to coordinate tax authorities' approach to tackling complex tax matters that transcend their borders in the following scenarios:

- **Suspected cross-border tax avoidance and evasion:** This includes cases of tax shelter suspicions, unreported income, money laundering, kickbacks, or other illegal financial activities. It also covers situations involving low tax jurisdictions or complex tax avoidance schemes.
- **Tax risk identification:** STEs are useful in identifying consumption tax risks, such as those arising from triangular delivery operations or reverse charges.
- **Inter-jurisdictional financial activities:** These examinations are applicable in situations where there are shared costs or profits, transfer pricing issues, or multinational business practices across different taxing jurisdictions.
- **Industry-specific non-compliance:** STEs are instrumental in uncovering non-compliance trends unique to certain industries or groups, especially where complex transactions or new financial instruments are used.

b.) Tax examination abroad

A TEA refers to the practice of sending tax officials to a foreign jurisdiction for the purpose of gathering information related to a specific case. This method can be advantageous in certain circumstances, but it must be authorised under the domestic tax laws of both jurisdictions to respect their sovereignty. Decisions related to authorising such visits and specifying their terms and conditions are at the discretion of individual jurisdictions. It is essential that the tax officials conducting examinations abroad are duly authorised representatives of their respective CAs. The presence of foreign tax officials during an examination may occur at the request of the jurisdiction seeking information to facilitate understanding and information gathering, or at the initiative of the requested CA to streamline the process and reduce the burden of data collection. In some cases, authorised representatives from one jurisdiction's CA may participate in examinations abroad, which can provide valuable insights into the business and other relationships of a resident with foreign associates.

When implementing a TEA, tax authorities have two primary modes of foreign official involvement:

- **Passive presence:** Foreign tax officials are limited to observing the examination and liaising only with officials of the hosting jurisdiction. They cannot directly interview taxpayers or other individuals.
- **Active presence:** Foreign tax officials are permitted to conduct interviews and directly examine relevant records related to the taxpayers under examination.

TEAs are particularly beneficial in urgent situations, such as understanding the business and relational dynamics between domestic taxpayers and their foreign associates, especially where information critical to this understanding is held outside the jurisdiction. Furthermore, TEAs can ease the compliance burden for taxpayers, fostering cooperation and efficiency among tax authorities, thus reducing duplication, costs, and time.

c.) Industry-wide exchange of information

An industry-wide EOI involves representatives of the partner jurisdictions meeting to discuss the way in which a particular economic sector operates, the financing schemes, the way prices are determined, the tax evasion trends identified, etc. It does not concern a specific taxpayer but an economic sector as a whole, for instance, the pharmaceutical industry, the oil and gas industry or the tele-communications sector.

4.2 Improving Beneficial Ownership Transparency

Complex corporate structures and shell companies make it difficult for tax authorities to identify the real owners of assets and track financial flows, which hinders efforts to increase transparency. Establishing public and centralized registers of beneficial ownership is crucial for improving tax transparency. These registers should require the disclosure of the individuals who ultimately control or benefit from a company's operations. To be effective, beneficial ownership registries should be accessible to law enforcement authorities, regularly updated, and supported by strong verification mechanisms to ensure the accuracy of the information provided. Countries should also enact and enforce strict penalties for non-compliance with beneficial ownership reporting requirements, ensuring that individuals and corporations face consequences for hiding their ownership behind layers of legal entities.

Since 2016, the EOIR standard requires the availability of beneficial ownership of legal persons and arrangements in the jurisdiction. Moreover, availability of this information within the jurisdiction also reinforces the implementation of the recommendations of the FATF on beneficial ownership transparency. Therefore, improving the legal and regulatory framework

for EOI also improves the legal and regulatory framework for combating money laundering and terrorism financing³⁸.

4.3 Balancing Transparency with Data Privacy Protections

Tax transparency initiatives often require the collection and sharing of sensitive information, leading to concerns about privacy violations and data security risks. It is vital that jurisdictions must strike a balance between promoting tax transparency and protecting individuals' privacy. To achieve this, governments should develop strong data protection laws and ensure that tax authorities and financial institutions implement robust cybersecurity measures. For example, encryption of sensitive information and secure data storage protocols can prevent unauthorized access or data breaches.

Additionally, countries should limit the scope of public disclosure of tax-related information to what is necessary for accountability, while protecting sensitive personal data that could expose individuals to risks such as identity theft or extortion. Privacy concerns can also be addressed by ensuring that exchange of information between tax authorities is conducted through secure channels and that only relevant authorities have access to the information.

Protecting the confidentiality of tax information, particularly information exchanged under international treaties, is a key requirement of the international standards for EOI. Domestic laws need to provide for stringent administrative and/or criminal penalties in cases of unauthorised disclosure. This not only safeguards sensitive information but also fosters trust in the EOI process. Foreign tax authorities will only have confidence in EOI if the information exchanged is used and disclosed only in accordance with the EOI agreement on the basis of which it is exchanged. Similarly, taxpayers need assurance that sensitive information relating to their affairs will not be disclosed inappropriately, whether intentionally or by accident.

The international standards on tax transparency, the EOIR standard and the AEOI standard, both require that information exchanged under tax treaties should be treated as confidential and only used in accordance with the instrument under which it has been exchanged. Unless otherwise agreed by the jurisdictions concerned, such information may be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the exchange of information clause. Such persons

³⁸ OECD (2023), Tax and Development Case Study - Combating tax evasion, avoidance, and illicit financial flows to mobilise domestic resources in West Africa, OECD and Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD, Paris, <https://www.oecd.org/tax/transparency/documents/combating-tax-evasion-avoidance-and-illicit-financial-flows-to-mobilise-domestic-resources-in-west-africa.pdf>.

or authorities shall use the information only for such purposes unless otherwise agreed between the parties and in accordance with their respective laws.

Therefore, a jurisdiction should have a domestic and international legal framework that protects the confidentiality of tax treaty-exchanged information by restricting its usage to the purposes for which it was exchanged and forbidding its unauthorised use or disclosure. In addition, it should have policies and systems that, in practice, ensure the information exchanged under tax treaties is kept confidential and properly safeguarded. The OECD and the Global Forum have jointly developed a guide to help jurisdictions ensure that the requirements to maintain confidentiality under all exchange of information instruments are properly observed³⁹. Furthermore, the Global Forum has developed a confidentiality and information security management toolkit to assist countries that wish to participate in CRS-AEOI by ensuring that they meet good practice standards in confidentiality and data safeguarding. The toolkit provides general guidance on implementing legal and information security management (ISM) frameworks that ensure the confidentiality of taxpayer information⁴⁰.

4.4 Reducing Compliance Burdens and Mitigating Reputational Risks for Businesses

Increased tax transparency initiatives, such as country-by-country reporting (CbCR) and detailed disclosure requirements, can impose significant administrative burdens on businesses, especially smaller firms that lack the resources to comply with complex regulations. To address this it will be important to simplify reporting requirements and creating standardized formats for tax disclosures can help reduce the compliance burden for businesses. For example, adopting digital tax reporting systems that allow businesses to file their financial information electronically and in a standardized format can streamline the reporting process and reduce the cost of compliance.

Furthermore, governments should consider providing technical assistance and support to small and medium-sized enterprises (SMEs) to help them comply with tax transparency regulations. This could include offering tax reporting software, guidance on fulfilling disclosure requirements, or even subsidizing the cost of compliance for smaller firms. By making it easier and less costly to comply with transparency measures, governments can increase overall compliance and reduce resistance from businesses. Taxpayer education is key to getting the buy in and cooperation of taxpayers in the quest for increased tax transparency.

³⁹ OECD and Global Forum (2012), Keeping it Safe - Joint OECD/Global Forum Guide on the Protection of Confidentiality of Information Exchanged for Tax Purposes, OECD, Paris -

<https://www.oecd.org/tax/transparency/documents/global-forum-keeping-it-safe.pdf>

⁴⁰ OECD (2020), Confidentiality and Information Security Management Toolkit, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD, Paris available at

https://www.oecd.org/tax/transparency/documents/confidentiality-ism-toolkit_en.pdf

Increased tax transparency can lead to reputational damage and public backlash for companies and individuals perceived to engage in aggressive tax planning, even if their actions are legal. To mitigate this, governments and tax authorities could focus on fostering a culture of tax compliance and responsible corporate behaviour, by encouraging cooperative compliance. Policymakers can work with the private sector to develop voluntary tax codes of conduct, which encourage companies to adopt fair and transparent tax practices and publicly commit to tax compliance. Additionally, governments should clearly distinguish between legal tax planning and illegal tax evasion in public discourse, helping to prevent unjust stigmatization of companies that comply with the law but optimize their tax position. Public awareness campaigns can educate the public on the difference between these practices, reducing the risk of reputational damage for companies that follow transparent and legal tax strategies.

4.5 Building Capacity in Tax Authorities

Many tax authorities, particularly in developing countries, lack the resources, expertise, and technology to effectively implement and enforce tax transparency measures. Building the capacity of tax authorities is essential to ensuring the successful implementation of transparency initiatives. Governments should invest in training tax officials, modernizing tax administration systems, and deploying advanced data analytics tools to help authorities take advantage of increased tax transparency and detect patterns of tax avoidance or evasion. In addition, these countries can be supported through external technical assistance and financial support to improve their tax systems.

CHAPTER 5: SOLUTIONS TO LIMITATIONS AND CHALLENGES IDENTIFIED BY JURISDICTIONS

5.1 Cross-Border Assistance in the Recovery of Tax Claims.

In an increasingly globalized world where economic activities transcend borders, and tax collection has become challenging, Assistance in Collection ensures fair and effective tax collection between countries by mutual agreement. Assistance in Collection serves a dual purpose of combating tax evasion and ensuring fair tax administration. Countries enjoy several tangible benefits of Assistance in Collection such as maximizing revenue collection, strengthening tax compliance and promoting compliance with national tax laws.

5.1.1 Importance And Benefits of Assistance in Collection

- a. **Combating Tax Evasion and Avoidance:** Assistance in Collection between countries is crucial in combating tax evasion and avoidance. Taxpayers often exploit differences in tax laws and jurisdictions to hide income or assets offshore, depriving governments of revenue. Through mutual assistance provisions, countries cooperate to uncover such practices and enforce tax laws effectively. Following the 2016 Panama Leak where over 11.5 million files and legal documents held by Panama Law Firm, Mossack Fonseca, were anonymously leaked unveiling how individuals and entities used shell corporations to evade and avoid tax, launder money, and commit fraud⁴¹, countries worldwide collaborated, leveraging the MAAC Convention's Assistance in Collection provisions to recover tax from taxpayers involved in tax evasion schemes⁴².
- b. **Ensuring Tax Transparency and Fairness:** Assistance in Collection promotes transparency and fairness in the global tax system and fosters trust in the tax system and reduces opportunities for tax abuse. In assisting in collection, countries end up sharing information and assisting in audits and investigations, so that they can ensure that taxpayers pay their fair share of taxes, regardless of their location or jurisdiction.
- c. **Maximizing Revenue Collection:** Assistance in Collection creates an effective cooperation in tax matters to maximize revenue collection for governments. By sharing expertise, resources, and information, countries can identify tax liabilities more accurately and reduce the risk of revenue loss due to evasion or avoidance. This additional revenue can be used to fund public services, invest in infrastructure, and promote economic development. Through Assistance in Collection, which enhances cooperation countries

⁴¹ Prasad & Company LLP, Chartered Professional Accountants, "The Panama Papers Explained", <https://www.prasadcpa.com/blog/the-panama-papers-explained/>

⁴² Hamish Boland-Rudder, Allan Holmes, and Ryan Chittum, "Impact of Panama Papers rockets around the world; U.S. officials react cautiously", April 5, 2016, The Centre for Public Integrity, <https://publicintegrity.org/accountability/impact-of-panama-papers-rockets-around-the-world-u-s-officials-react-cautiously/>

can recover substantial amounts of unpaid taxes, contributing to fiscal sustainability and economic growth.

- d. **Strengthening Global Tax Compliance:** Another important benefit of Assistance in Collection is that it promotes global tax compliance by creating a more transparent and enforceable tax environment. When countries collaborate and share information, taxpayers are less likely to engage in evasion or avoidance schemes, as the risk of detection and enforcement increases. Assistance in Collection creates a deterrent effect and promotes voluntary compliance. When taxpayers perceive a high risk of detection and enforcement, they are more likely to comply with tax laws willingly.

Collaboration between countries sends a strong message that tax evasion will not go unpunished, encouraging compliance behaviour. This fosters a culture of compliance where taxpayers are more inclined to fulfil their tax obligations voluntarily. By sharing insights and coordinating responses, countries can identify emerging tax evasion risks and take preventive measures to protect their tax base.

- e. **Advances the Fight Against Cross-Border Tax Evasion and Illicit Financial Flows:** Taxpayers often exploit jurisdictional differences and loopholes to conceal income or assets offshore, depriving governments of revenue and facilitating illegal activities such as cross-border tax evasion, Illicit Financial Flows, and money laundering. Assistance in Collection is instrumental in combating these illegal activities. Through Assistance in Collection, countries can detect and deter such practices, disrupting illicit financial flows, recovering unpaid taxes, and strengthening their defences against cross-border tax evasion and illicit financial activities.

- f. **Creates an Avenue for International Cooperation Among Countries:** Recognizing that tax issues transcend national boundaries, countries come together under bilateral, regional, and multilateral agreements to assist in collection by addressing common challenges and achieving shared objectives. Assistance in Collection creates a platform for international cooperation and collaboration among countries. Through mutual support and coordination, countries can leverage each other's strengths and resources to enhance tax administration and enforcement. This fosters a spirit of solidarity and mutual trust among participating countries, driving collective efforts to combat tax evasion and ensure fair tax administration globally.

- g. **Creating an Avenue for Countries to Collect Assessed Revenue Regardless of the Location of the Taxpayer or Their Assets or Income:** In a globalized economy, where individuals and businesses operate across borders, enforcing tax laws can be challenging. However, through assistance in collection countries can overcome jurisdictional barriers and access relevant information and capacity to enforce tax collection effectively. Assistance in tax collection enables countries to collect assessed revenue irrespective of the taxpayer's location or the location of their assets or income. This allows countries to identify taxpayers with offshore accounts and assets, ensuring that they fulfil their tax obligations

regardless of their location. As a result, countries can collect assessed revenue more efficiently, reducing the risk of tax evasion and loss of tax revenue.

- h. **Promotes Compliance with National Taxation Laws of Countries:** When countries collaborate and share information, taxpayers are more likely to comply with tax laws to avoid detection and penalties. Assistance in Collection promotes compliance with national taxation laws by enhancing enforcement mechanisms and deterring tax evasion. Additionally, by fostering a culture of cooperation and transparency, Assistance in Collection reinforces the importance of tax compliance as a cornerstone of good governance and fiscal responsibility. Assistance in Collection provides countries with tools and frameworks for contributing to a more equitable and sustainable tax system globally.

5.1.2 Legal Basis of Assistance In Collection

The legal basis and provisions for Assistance in the Collection of taxes between countries primarily stem from bilateral, regional, and multilateral agreements and conventions specifically Double Taxation Conventions (DTCs), Regional Agreements for Mutual Administrative Assistance in Tax Matters, and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. The legal framework of Assistance in Collection does not cover only the legal basis but other areas such as the scope of assistance in collection, authorities, or entities competent to request or assist in the collection, enforcement procedures, conditions under which a request for assistance in collection can be made, and agreement or memorandum of understanding. It is crucial to also note that the fact that some member states to these bilateral and multilateral conventions must first ratify and domesticate these laws before they become effective and enforceable in those states. This may take the form creating an enabling domestic legal framework to complement the international legal framework.

a. Double Taxation Convention (DTC)

Double Taxation Conventions are bilateral agreements between two countries aimed at preventing double taxation of income or gains that may arise when the same taxpayer is subject to taxation in both countries. DTCs play a significant role in facilitating assistance in the collection of taxes between countries in several ways. DTCs include provisions for mutual assistance in tax collection, allowing one country to request assistance from the other country in collecting taxes owed by a taxpayer. This assistance may involve measures such as the enforcement of tax assessments, the recovery of tax claims, or the collection of outstanding tax debts through administrative or judicial means. By providing a legal framework for cooperation and assistance in tax matters, DTCs help to ensure that taxpayers fulfil their tax obligations and that tax revenues are collected efficiently. The current double taxation convention models often used by states include:

- OECD Model Tax Convention on Income and on Capital (2017).

- United Nations Model Double Taxation Convention between Developed and Developing States (2017).
- ATAF Model Agreement for the Elimination of Double Taxation with Respect to Taxes on Income and the Prevention of Tax Avoidance and Evasion.

The OECD, UN, and ATAF models are identical in Article 27 which covers Assistance in Collection. Article 27(1) of these models form the legal basis for assistance in collection between countries by stating that, “The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.” This Article 27 (1) article establishes the legal foundation for countries to assist each other in collecting taxes. Article 27 generally outlines the type of revenue that may be claimed which includes taxes, interests, penalties, and collection to non-residents.

b. Regional Agreements for Mutual Administrative Assistance in Tax Matters

Regional Agreements for Mutual Administrative Assistance in Tax Matters are agreements between countries within a specific region that facilitate cooperation and Assistance in Collection. These agreements aim to provide mutual assistance in tax collection, and combat tax evasion and avoidance within the regional context. They play a crucial role in fostering regional integration, strengthening tax systems, and promoting economic development. Some of these Regional Agreements that fosters in Assistance in Collection include:

- African Tax Administration Forum Agreement on Mutual Administrative Assistance in Tax Matters (ATAF AMATM) – Article 2 states that the objective of the Agreement is to enable the Contracting parties assist one another in tax matters.⁴³
- Andean Community Income and Capital Tax Convention (Andean Community Decision 578) which focuses its article 21 on Assistance in Collection processes.⁴⁴
- Caribbean Community (CARICOM) Double Taxation Treaty which makes provision for mutual administrative assistance in tax matters.⁴⁵
- The Southern African Development Community Agreement on Assistance in Tax Matters (SADC Agreement) - provides for tax cooperation between its member states – Article 7 of the Agreement provides for Assistance in Collection.⁴⁶

⁴³ ATAF AMATM, https://events.ataftax.org/includes/preview.php?file_id=46&language=en_US

⁴⁴ Andean Community Decision 578,

<https://internationaltaxtreaty.com/download/bolivia/dtc/Andean%20Community-DTC-May-2004.pdf>

⁴⁵ CARICOM Double Taxation Treaty, <https://caricom.org/treaties/double-taxation-agreement/#:~:text=Details%3A,of%20Regional%20Trade%20and%20Investment.>

⁴⁶ SADC Agreement,

https://www.sadc.int/sites/default/files/202108/Agreement_on_Assistance_in_Tax_Matters_-_2012_-_English.pdf

- The Southern African Development Community Memorandum of Understanding on Co-operation in Taxation and Related Matters (SADC MoU). Articles 5 (5), 6 (6) and 6 (7) of covers Assistance in Collection.⁴⁷
- Supplementary Act A/SA.3/07/23 on Mutual Administrative Assistance in Tax Matters between ECOWAS Member States which provides for Assistance in Collection.
- The Directive 2010/24/EU of 16 March 2010, which provides for mutual assistance for the recovery of claims relating to taxes, duties, and other measures.⁴⁸
- The European Commission Implementing Regulation NO. 1189/2011 of 18 November 2011 (European Commission, 2011)⁴⁹ as amended by the Implementing Regulation NO. 2017/1966 of 27 October 2017.⁵⁰
- Nordic Mutual Assistance Convention on Mutual Administrative Assistance in tax Matters facilitates administrative cooperation such as Assistance in Collection in tax matters between Nordic countries.

c. The Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAAC)

The Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAAC) is one of the most comprehensive legal instruments on Assistance in Collection.⁵¹ The MAAC provides a multilateral framework for Exchange of Information which is inclusive of Assistance in Collection. The MAAC allows participating countries to request and provide assistance in tax matters. Article 1 the MAAC forms the legal basis for Assistance in Collection. It provides that, “1(1) The Parties shall, subject to the provisions of Chapter IV, provide administrative assistance to each other in tax matters. Such assistance may involve, where appropriate, measures taken by judicial bodies; (2)(b) Such administrative assistance shall comprise: assistance in recovery, including measures of conservancy, and (3) A Party shall provide administrative assistance whether the person affected is a resident or national of a Party or of any other State. MAAC further provides for the scope, form, and manner Assistance in Collection should take: “Article 11(1) At the request of the applicant State, the requested State shall subject to the provisions of Articles 14 and 15, take the necessary steps to recover tax claims of the first-mentioned State as if they were its own tax claims.

⁴⁷ SADC MoU, https://www.sadc.int/sites/default/files/2021-08/Memorandum_of_Understaning_in_Cooperation_in_Taxation_Related_Matters.pdf

⁴⁸ Official Journal of the European Union L84/1, <http://data.europa.eu/eli/dir/2010/24/oj>.

⁴⁹ Official Journal of the European Union L302/16, http://data.europa.eu/eli/reg_impl/2011/1189/oj.

⁵⁰ Official Journal of the European Union L279/38, http://data.europa.eu/eli/reg_impl/2017/1966/oj.

⁵¹ Richard Murphy, “*The Automatic Exchange of Information: A Quiet Revolution?*” British Tax Review, 4 (2016) at 434-448.

5.1.3 Assistance in Collection in Practice

a.) Scope of Assistance in Collection

Scope of Assistance in Collection details persons covered, and the kinds and types of taxes covered. Most often, persons covered are residents and non-resident taxpayers, tax debtors, and third parties with or without liability for the payment of the tax claim. With regards to the taxes covered, it spans across a wide scope. Article 11 (2) of MAAC states that, “The provision of paragraph 1 shall apply only to tax claims which form the subject of an instrument permitting their enforcement in the applicant State and, unless otherwise agreed between the Parties concerned which are not contested.” This provision means that the tax claims must be documented in a legal instrument that allows for their enforcement in the country requesting for assistance unless the countries by mutual agreement deviate from doing so.

Additionally, Article 27 (2) of the UN Model DTC states that, "The term “revenue claim” as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.” Revenue claims as mentioned in the provision may include taxes, interests, and penalties.

b.) Authorities or Entities Competent to Request Or Assist In The Collection of Taxes.

Competent authorities or entities to request or assist in the collection of taxes may vary depending on the jurisdiction, agreements, or conventions in place between the countries. Competent authorities may either be Revenue or Tax Authorities or Ministry of Finances.

c.) Enforcement Procedures.

There are procedural rights and safeguards which affect persons affected by enforcement of assistance in collection such as confidentiality and data protection. Also, enforcement procedures involve observing the time beyond when a revenue claim may not be enforced (years covered, time limits, and age of claims).

d.) Conditions Under Which a Request For Assistance In Collection Can Be Made.

Certain important conditions must be satisfied before a request for assistance in collection of taxes can be made. Some of these conditions are:

- i Protection of the rights of the taxpayer.
- ii Enforceability of the revenue claim under the laws of the country requesting the assistance.

- iii The revenue claim is owed by a person who, at that time, cannot, under the law of that country, prevent its collection.
- iv Revenue claims against residents of the requesting country can only be submitted if it is not contested.

e.) Agreement or Memorandum of Understanding.

The Competent Authorities or Entities of the contracting states may enter into an agreement or a Memorandum of Understanding (MoU) to lay out the details of how assistance in collection of taxes will be practically applied. The following details must be included in the agreement or MoU:

- i Legal basis for the assistance for collection: The legal basis for the request for the assistance in collection must be clearly laid out in the Agreement or MoU. The legal basis may be based on a DTC between the contracting parties, a Regional Agreement of which they are both parties to, the MAAC, or national laws of both contracting states.
- ii Names and details of all officials of the competent authorities of the contracting states: The names and details of all officials of the Competent Authorities of the requesting state and the responding states should be included in the MoU for ease of communication between the states.
- iii Taxes Covered: The MoU should detail the type of taxes that may be requested in either state for assistance in collection. The taxes need not be the same in both countries.
- iv Documentation that should accompany a request: The MoU must clearly state the details of documents that must accompany the request. Article 13 of the MAAC outlines the documents that should accompany an Assistance in Collection request. These include:
 - a declaration that the tax claim concerns a tax within the scope of taxes covered under the MAAC.
 - a declaration that the tax claim is not or may no longer be contested.
 - an official copy of the instrument permitting enforcement in the state requesting for the assistance.
 - any other document required for recovery.
- v Minimum amounts: The MoU should set out the minimum amount of money that must be met in order to make a request. This creates a threshold which is considered significant enough to request assistance in its collection.
- vi Currency and exchange rate: The contracting parties must state the currency and exchange rate to be used in the collection of taxes. The currency and exchange rate may be that of either state.
- vii Calculation of interest: It is important to include how interest subject to the request will be calculated. This should include whether interest should be added automatically to the tax claim, or a new request should be required to recover interest calculated.

- viii Deferral, payment by instalments, and waiver of claims: In accordance with article 16 of the MAAC, the Agreement or MoU must indicate the country that has the responsibility to accept deferral of payments, payment by instalments plans, and waiver of all or part of the tax claims.
- ix Time limits for responding to a request: Article 14 of the MAAC espouses that questions concerning any period beyond which a tax claim cannot be enforced shall be governed by the law of the requesting state. The MAAC also states that a request made after 15 years from the date of the original document that permits enforcement places no obligation on the responding state to adhere to. In this regard, the statute of limitation period in accordance with the domestic legislation of the requesting state must be adhered to. The MoU must provide the time limit for a responding state to respond to a request and the time limit within which a state can bring a request.
- x Communication between the competent authorities: The MoU must state the manner and means of communication between the contracting states. The manner and means of communication must be secured and confidential. The communication channel may take the form of electronic (email, telephone) or postal mail.
- xi Costs of collection: The MoU should clearly state how tax claims will be collected and who bears the costs amounting from the collection.:
- xii Transfer of payments to the requesting state: The MoU must clarify how tax claims collected should be transferred to the requesting state, which currency it should be transferred, as well as the time within which to transfer the money recovered to the requesting state.
- xiii Uncollectible or unrecoverable claims: The MoU must state what constitutes an uncollectible or unrecoverable claim and what the responding state should do when it determines a claim to be uncollectible or unrecoverable.
- xiv Confidentiality: Requests made under Assistance in Collection is subject to the same confidentiality rules required under EOI. The MoU should state that the confidentiality of the information requested is subject to the legal instrument that gives the basis for the request to be made.
- xv Dispute Resolution Mechanism: The MoU should cover disputes arising from the application of assistance in collection under the governing agreement. It should clarify and lay out the dispute resolution mechanisms for the agreement governing the request.
- xvi Potential modifications to the request: The MoU should clearly outline the consequences of how potential modifications to the request such as the amount of tax claim.
- xvii Withdrawal of a request: The MoU should state how and when a request for assistance in collection should be withdrawn. This includes the means of communication and notification of the withdrawal.

5.1.4 Challenges and limitations on cross-border assistance in the recovery of tax claims (CBAR)

According to the findings of a survey conducted by the Africa Initiative Working Group on cross-border assistance in the recovery of tax claims (CBAR)⁵² the challenges faced by jurisdictions seeking to participate in this form of administrative assistance can be categorised into legal framework challenges, administrative framework challenges and challenges linked to capacities of relevant authorities.

a. Legal framework challenges

The main challenges that prevent jurisdictions from effectively participating and benefitting from CBAR can further be divided into challenges in the international legal framework and challenges in the domestic legal framework.

i International legal framework challenges

Like other forms of mutual administrative assistance, cross-border assistance in tax collection is anchored on an enabling international agreement that provides for this form of assistance. Therefore, the following may prevent jurisdictions from seeking or providing effective from and to other jurisdictions:

- **Narrow treaty network:** a jurisdiction with a narrow treaty network has a limited number of jurisdictions from which it may seek assistance. Where the tax debtors have relocated their assets and incomes to jurisdictions with which it does not have a tax treaty, it may be prevented from collecting the tax debt as there will be no legal gateway for seeking assistance.
- **Treaty which does not provide for cross-border assistance in tax collection:** if a jurisdiction's tax treaties do not have an article which provides for cross-border assistance in tax collection, it may be prevented from seeking assistance from its treaty partners.
- **Reservations against providing cross-border assistance in tax collection:** in the case of multilateral agreements which provide for different forms of administrative assistance in tax matters (e.g. the MAAC), some forms of assistance can be open to reservations. Jurisdictions may enter reservations against providing specific forms of assistance in general, or in respect of specific taxes for example in relation to service of documents, measures of conservancy and cross-border assistance in tax collection.⁵³ When a

⁵² More information on the findings of the Working Group is available at <https://www.oecd.org/tax/transparency/documents/cross-border-assistance-recovery-of-tax-claims-african-countries.pdf>

⁵³ All the reservations and declarations made by jurisdictions Party to the MAAC are available at www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=127&codeNature=0. A

reservation is entered in respect of cross-border assistance in tax collection, it prevents the jurisdiction from providing but also from requesting this form of assistance.

- Administrative requirements under the international agreements: the international legal instrument under which cross-border assistance in tax collection may be possible may require additional action before assistance may be provided. For example, DTCs with provisions modelled on Article 27 of the UN or OECD Model Tax Convention often requires the competent authorities to settle the mode of application of the article governing cross-border assistance in tax collection by mutual agreement. Therefore, if this mutual agreement is not in place, for example in the form of a memorandum of understanding, the partner jurisdictions may face additional hurdles in seeking or providing this form of assistance.

ii Domestic legal framework challenges

The international legal framework must be supported by an enabling domestic legal framework. In some jurisdictions the national law, policy or administrative considerations may not allow, severely restrict (e.g. to countries that have similar tax systems or tax authorities or as to the taxes covered) or request justification for cross-border assistance in collection of foreign tax claims. The following gaps in the domestic legal framework may prevent a jurisdiction from seeking or providing this form of assistance:

- Constitutional restrictions: in some jurisdictions, limitations contained in the constitution may prevent the tax authority from assisting foreign tax authorities to recover tax debts.
- No enabling provision in domestic law: in addition to the legal gateway provided by the international agreement, there must be a legal provision in the domestic legal framework which empowers the tax authority to collect tax debts on behalf of a foreign tax authority. Without this legal authority, tax debtors may challenge the power of the tax authority to collect a foreign tax claim or remit the taxes recovered on behalf of a foreign tax authority.
- Statute of limitation: in most jurisdictions, a tax authority is prevented from taking certain actions, including collecting tax debts, beyond a period specified by a statute of limitation. The collection of taxes in a cross-border context may be a lengthy process and the period in the statute of limitation may be easily passed during the process of tracing the tax debtors and their assets or incomes which could be targeted for recovery. In this context, a short statute of limitation period may be an impediment to cross-border assistance in tax collection.

synoptic table of reservations made under the MAAC by countries is also available on demand from the Global Forum Secretariat.

- Effective provisions for recovering domestic tax debts: on receiving a request to recover foreign tax debt, the requested jurisdiction is obligated to apply its own domestic laws, policies and procedures to recover it as if it was its own debt. A jurisdiction's domestic legal framework is not effective for recovering domestic tax debts, it may be equally ineffective for recovering foreign tax debts.

b. Administrative challenges

In addition to the challenges presented by the international and domestic legal frameworks, a jurisdiction may face administrative hurdles that may prevent it from seeking or providing cross-border assistance in tax collection. These include:

- i Lack of awareness on the possibility to seek assistance: in some jurisdictions, the officials tasked with recovering tax debts may not be aware of the possibility of seeking cross-border assistance in tax collection that exist under the jurisdiction's tax treaties. In such cases, the tax recovery officials would close the case after exhausting domestic measures without, where appropriate, seeking assistance.
- ii Lack of awareness on the potential of other forms of mutual administrative assistance: an effective framework for cross-border assistance in tax collection may be fortified by other forms of mutual administrative assistance in tax matters such as:⁵⁴
 - Exchange of information: effective recovery of taxes in a cross-border context is dependent on the tax authority's ability to trace the tax debtor's address, assets or income located in foreign jurisdictions which may then be targeted for recovery. Therefore, EOI may play a critical role as it can enable jurisdictions to identify the address, income or assets of tax debtors. This may be through request sent to another jurisdiction under the EOIR standard or the analysis of data received automatically.
 - Service of documents: using EOI to identify the tax debtors address may make it possible for the tax authority to formally serve the tax debtor with assessment notices which precedes collection and recovery. Therefore, EOI coupled with service of documents makes it possible for the tax authority to formally notify its taxpayers resident abroad of assessments issued against them and afford them with the opportunity to dispute or agree before recovery, which is the last stage in the collection process. Therefore, EOI and service of documents can pave way to effective cross-border assistance in tax collection. A jurisdiction that is unaware of this link may not use this form of assistance effectively.

⁵⁴ For more information see OECD (2023), *Toolkit for Establishing a Function for Cross-Border Assistance in the Recovery of Tax Claims*, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD, Paris <https://www.oecd.org/tax/transparency/documents/cross-border-assistance-recovery-of-tax-claims-african-countries.pdf>

- Measures of conservancy: using EOI to identify the tax debtors' assets or income may enable the requesting tax authority to take measures to preserve them before the tax debt crystallises formally which may be a step before initiating cross-border assistance in tax collection. Therefore, a jurisdiction that is unaware of this potential link between EOI, measures of conservancy and cross-border assistance in tax collection may not fully benefit from this form of administrative cooperation.
- iii Inadequate capacity to recover domestic tax debts: reciprocity is an essential principle of all forms of mutual administrative assistance in tax matters. In the specific case of cross-border assistance in tax collection, a jurisdiction seeking assistance should also be able to help its treaty partners to recover their tax debts. In addition to having an appropriate legal framework and administrative structures, the jurisdiction should have a domestic tax debt recovery function that is effective as it will be used to recover the foreign tax debts. If the domestic tax debt recovery function is not effective, the jurisdiction may not provide effective assistance to its foreign counterparts.
- iv Inadequate administrative structures for assistance in tax collection: to provide effective assistance to its treaty partners a jurisdiction should have a function that coordinates its cooperation with foreign tax authorities and the tax debt recovery function at the domestic level. It should therefore have well skilled staff allocated to this function to coordinate with foreign partners (establishing secure and reliable communication channels for providing assistance in tax collection, ensuring that the staff is trained to understand foreign tax systems and legal frameworks). A jurisdiction that does not have proper administrative structures for assistance in collection may face challenges in seeking and providing this form of assistance.

5.1.5 Current status of assistance in collection

A number of international organisations are active in the area of cross-border assistance in tax collection. Box 1 highlights the practical tools available to support the implementation and use of cross-border assistance in tax collection.

a.) Global Forum on Transparency and Exchange of Information for Tax Purposes

Following calls from African countries⁵⁵ and other developing countries to strengthen the international tax co-operation framework by ensuring effective cross-border assistance in tax

⁵⁵ Statement of the participants to the 5th Anniversary dinner of the Africa Initiative available at <https://www.oecd.org/tax/transparency/documents/Statement-10-years-global-forum-Africa-Initiative-ministerial.pdf>

collection,⁵⁶ members of the Africa Initiative identified this as one of the priority areas for the Africa Initiative from the year 2021.⁵⁷

In response to this call, a dedicated working group was established within the framework of the Africa Initiative in 2021 which conducted a fact-finding exercise to understand the current position of African countries on cross-border assistance in tax collection and ascertain the conditions necessary for an effective use of this from of international tax co-operation by African countries. The results are summarised in a note⁵⁸, which highlighted the need for building capacities in Africa tax administrations in order to unlock its potential for domestic resource mobilisation.

To support African countries in implementing and benefiting from this form of cooperation, the Global Forum Secretariat has, among other things, developed a toolkit to guide tax authorities on establishing appropriate frameworks for assistance in tax collection function⁵⁹. It has further published a note based on the survey conducted by the Africa Initiative Working Group on Cross-Border assistance in the Recovery of tax Claims on the status of this form of administrative assistance and the conditions necessary for effective cooperation in African countries⁶⁰.

In addition, the Global Forum Secretariat has provided training through regional and country-specific workshops and seminars to raise awareness on the potential of assistance in collection and the requirements for effective participation, including with partners such as ATAF and CREDAF. The Global Forum Secretariat is working on further tools for tax authorities use in making best use of assistance in tax collection.

⁵⁶ Statement of Outcomes of the Global Forum's 10th Anniversary Plenary Meeting available at <https://www.oecd.org/tax/transparency/statement-of-outcomes-global-forum-10-years.pdf>.

⁵⁷ Statement of Outcomes of the 8th Africa Initiative Meeting, available at <https://www.oecd.org/tax/transparency/documents/8th-meeting-of-the-africa-initiative-statement-of-outcomes.pdf>

⁵⁸ OECD (2022), *Building Effective Frameworks for Cross-Border Assistance in the Recovery of Tax Claims in African Countries*, Global Forum on Transparency and Exchange of Information for Tax Purposes, available at www.oecd.org/tax/transparency/documents/cross-border-assistance-recovery-of-tax-claims-african-countries.pdf. The report prepared by the Working Group was approved during the 10th meeting of the Africa Initiative held on 15 November 2021. The statement of outcomes of the meeting is available at <https://www.oecd.org/tax/transparency/documents/10th-meeting-africa-initiative-statement-of-outcomes.pdf>.

⁵⁹ OECD (2023), *A Toolkit for Establishing a Function for Cross Border Assistance in the Recovery of Tax Claims*, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD, Paris, available at www.oecd.org/tax/transparency/documents/a-toolkit-for-establishing-a-function-for-cross-border-assistance-in-the-recovery-of-tax-claims.pdf

⁶⁰ OECD (2022), *Building Effective Frameworks for Cross-Border Assistance in the Recovery of Tax Claims in African Countries*, Global Forum on Transparency and Exchange of Information for Tax Purposes, available at www.oecd.org/tax/transparency/documents/cross-border-assistance-recovery-of-tax-claims-african-countries.pdf

b.) OECD Forum on Tax Administration

The OECD's Forum on Tax Administration (FTA)⁶¹ brings together Commissioners and tax administration officials from over 50 tax administrations from all regions of the world with the objective of enhancing the effectiveness, efficiency and resiliency of tax administration.

The FTA's Tax Debt Management Network (TDMN) is one of the FTA's networks that brings together experts on tax debt management from its membership. The FTA's TDMN is active in fostering collaboration between its members on sharing best practices and discussing common challenges on domestic and international recovery issues. The FTA's TDMN has developed and published the report "Enhancing International Tax Debt Management"⁶² in 2020, which identify areas of improvement in the international tax debt collection. The FTA's TDMN has also published "Tax Debt Management Maturity Model"⁶³ in 2019, which is a self-assessment tool for the tax administration and includes the component of international recovery. The maturity model is currently being updated and a revised version is expected to be published in the second half of 2024.

5.2 The Crypto-Asset Reporting Framework

See Section 4.1.1 on Exchange of Information.

5.3 Use Of Treaty Exchanged Information For Non-Tax Purposes

5.3.1 Introduction

Illicit financial flows (IFFs) are defined as Financial flows that are illicit in origin, transfer or use, that reflect an exchange of value and that cross country borders. These movements have a cross-cutting nature and involve a diversity of crimes and offences transcending tax evasion, such as money laundering, wildlife trafficking, smuggling and trafficking in minerals, terrorism financing and corruption. IFF's severely undermine a jurisdictions' political and economic security by creating weak institutions. They can drain foreign exchange reserves, distort competition, inflate prices for real estate and other assets, lower tax receipts, and reduce government revenue.

Jurisdictions therefore can benefit from adopting a 'whole of government' approach to addressing IFFs through the sharing of information from tax to non-tax authorities, which can

⁶¹ More information on the OECD's FTA is available at <https://www.oecd.org/tax/forum-on-tax-administration/>

⁶² OECD (2020), *Forum on Tax Administration, Tax Debt Management Network, Enhancing International Tax Debt Management*, available at <https://www.oecd.org/tax/forum-on-tax-administration/publications-and-products/enhancing-international-tax-debt-managament.pdf>

⁶³ OECD (2019), *OECD Tax Administration Maturity Model Series, Tax Debt Management Maturity Model*, available at <https://www.oecd.org/tax/forum-on-tax-administration/publications-and-products/tax-debt-management-maturity-model.pdf>

include information exchanged under international tax agreements which is also known as the “Wider use of treaty-exchanged information”. This type of information sharing could significantly assist investigations carried out by other non-tax law enforcement authorities, such as anti-money laundering and countering the financing of terrorism (AML/CFT), anti-corruption, prosecution and customs authorities.

Tax authorities are in the possession of large amounts of information obtained through exchange of information on request, automatically or spontaneously from other partner jurisdictions that can be of great relevance in assisting investigations by other law enforcement authorities, such as AML/CFT, anti-corruption, prosecution and customs authorities. The sharing of information between these law enforcement authorities is key to achieving successes and gains in investigating and combating and IFFs and fighting the underlying criminal activities. Wider use of treaty-exchanged information can be carried out under various bilateral and multilateral international tax agreements provided that certain conditions are met. This part explores this important topic and provide guidance to jurisdictions on how they can utilise information exchanged under international tax agreements to combat illicit financial flows in various government institutions and agencies. The legal and practical steps to achieve this will assist jurisdictions in making use of this valuable source of information.

5.3.2 Wider Use of Tax-Treaty Exchanged Information

A country will most likely engage in wider use of tax-treaty exchanged information if the tax administration can identify that the information is useful for other purposes. Tax officials are likely to be in contact with information that leads to suspicion of a crime – other than a tax crime – and in most countries, there is an obligation to raise these suspicions with the appropriate law enforcement authority.

For this to happen, tax administrations will consciously need to raise awareness and increase capacities for tax officials to be able to identify indicators of possible financial crimes and IFFs. Some of the measures that a tax administration can take for this includes raising awareness on the obligations that tax administrations have in raising suspicions with law enforcement authorities and the possibility to share information obtained through EOI with other agencies; training key personnel to identify the typical the indicators of specific types of crimes; amend risk assessments to include compliance checks of specific sources of information (e.g. internal audit reports, documents filed with other governmental agencies, use of foreign entities, etc.). The OECD has developed a Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors⁶⁴ that provides guidance to tax officials in understanding how their contribution can assist criminal investigators and law enforcement authorities in countering

⁶⁴ <https://www.oecd-ilibrary.org/docserver/9789264205376-en.pdf?expires=1727674767&id=id&accname=guest&checksum=5221C23105FB442ACE211446AE8F7663>

these crimes. The wider use of tax treaty exchanged information also becomes relevant while investigating tax crimes, where tax officials might come across information useful to other agencies. Tax crimes relating to direct and indirect taxation are considered in many countries as predicate crime to money laundering in line with the FATF Recommendations.

a. Requirements for wider use

Information exchanged under EOI must always be foreseeable relevant for the administration or enforcement of the tax laws of the parties. Once the information has been exchanged, it may be used for other (wider) purposes, provided that the conditions set forth in the relevant EOI instrument are met. Generally, information obtained under EOI can only be used for tax purposes. The wider use of treaty-exchanged information whereby non-tax authorities can have access to information obtained through EOI is an exception to this rule. To apply this exception, there must be a valid legal basis allowing for the use of information for other purposes in the domestic laws of both Contracting States and to the extent that the Competent Authority of the supplying jurisdiction authorizes such use.

The international agreement governing the exchanges of information must expressly indicate that information can be used for other purposes. The older international instruments usually do not expressly allow EOI for other purposes. Amendments to the OECD Model Tax Convention on Income and Capital were introduced in 2012, by adding the following language at the end of paragraph 2 in article 26: “Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorizes such use.” These amendments were also introduced in article 26 of the UN Model Double Taxation Convention. Article 26 of both Conventions continues to use this language today.

Where an international agreement allows for exchanged information to be used for other purposes two conditions must be met:

- i. the domestic legislation in both the requesting and sending jurisdictions allow their tax authorities to share information with non-tax authorities for the same specific non-tax purpose; and
- ii. the sending jurisdiction has provided prior authorization to use the information for other purposes to the requesting jurisdiction.

In practice, the international legal basis should not be an issue for countries wanting to engage in wider use. The MAAC, with 147 participating jurisdictions, includes in its article 22(4) a very similar provision as the OECD Model Tax Convention: “(...) information received by a Party may be used for other purposes when such information may be used for such other

purposes under the laws of the supplying Party and the competent authority of that Party authorizes such use.” However, it will be necessary to assess if the domestic legislation requirement is met, i.e. that the domestic legislation in both treaty partners permits sharing treaty exchanged information with non-tax authorities.

If the two requirements above are met, and information is shared with another law enforcement agency, confidentiality should be observed as per the provision in the international instrument, which usually indicates that treaty-exchanged information can only be used for tax purposes unless otherwise indicated, i.e. non-tax purposes such as money laundering, terrorism financing and corruption. Non-tax authorities making use of treaty-exchanged information for other purposes must abide by the international confidentiality standards as set out in the international instrument, guaranteeing that information is treated as secret and protected in the same manner as information obtained under domestic legislation, to the extent needed to ensure the necessary level of protection of personal data.

b. Wider use of treaty-exchanged information in practice

Participating jurisdictions engaging in wider use will need to establish operational procedures to ensure effective and confidential use of tax treaty exchanged information for other purposes. The Global Forum published in July 2023 a report to the G20 on Facilitating the Use of Tax-Treaty Exchanged Information for Non-Tax Purposes, which contains a description of a possible administrative framework to facilitate and operationalize wider use. This report elaborated on some of the considerations to take into account to facilitate putting wider use into practice, including:

- The use of administrative instruments, such as a competent authority agreement, to define specific non-tax uses and non-tax authorities with whom treaty-exchanged information could be shared.
- Implementation of MOUs for clarity on wider use at the domestic level to ensure cooperation while guaranteeing confidentiality, through options which include sharing information upon request of the non-tax authority or spontaneously from the EOI competent authority.
- Authorization approaches, which can either be on a case-by-case basis or through a pre-approved authorization for specific non-tax purpose and non-tax authorities with a post-reporting commitment.
- Use of templates for streamlined communications between the Partners.

As mentioned before, confidentiality is one of the cornerstones for EOI. Non-tax authorities need to guarantee that they are subject to the same confidentiality standards as the tax administration regarding the use and disclosure of tax information. It is important to raise awareness on these obligations among non-tax authorities and also to ensure that there are

sufficient mechanisms in place for the non-tax authorities to keep the information confidential as per the international standards.

c. Experience in wider use – Global Forum Secretariat survey

The information provided by almost 150 jurisdictions to a survey of the Global Forum Secretariat shows that the experience in doing wider use is very limited and considered to be challenging. However, a few jurisdictions, mostly European countries, have already engaged in wider use of information, primarily for anti-money laundering purposes⁶⁵.

At least 18 out of 140 respondents reported having encountered difficulties in attempting to engage in wider use of information. Jurisdictions reported lack of awareness of compatible non-tax purposes authorised under the laws of partner jurisdictions, as well as lack of awareness of the international legal framework allowing the wider use of information. On the operational level, the most common challenges identified by the respondents include the lack of responses, the refusal of authorisation for wider use without a clear justification, delays in communication, as well as the administrative burden in requesting and obtaining the authorisation.

d. Challenges Of Exchanging Tax-Treaty Information for Other Purposes

Challenges relating to wider use of tax-treaty exchanged information span practical, legal, and strategic dimensions as indicated in the following subsections.

i Practical challenges

On the operational level, the most common challenges identified by the respondents include;

- Lack of responses following the submission of the request for wider use of tax treaty exchanged information to the supplying jurisdiction. This undermines the possibility to an early mitigation of potential issues.
- Refusal of authorization for wider use without a clear justification. Countries may be hesitant to authorize wider use if they perceive that it might be misused or extend beyond the agreed-upon scope.
- Delays in communication - This increases the turnaround time for prosecution of cases and weakens the effectiveness of this mechanism.

An effective framework with clear guidelines and streamlined communication channels would facilitate the use of tax treaty exchanged information for non-tax purposes. Otherwise, the Tax

⁶⁵ OECD (2023), *Facilitating the Use of Tax-Treaty-Exchanged Information for Non-Tax Purposes: A contribution to a whole-of government approach to tackling illicit financial flows*, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD, Paris, available at <https://www.oecd.org/tax/transparency/documents/facilitating-the-use-of-treaty-exchanged-tax-information-for-non-taxpurposes.pdf>.

Administrations are exposed to breach of confidentiality and erosion of trust between treaty partners. It may also result in a break in the chain of Custody and evidentiary value of the information.

ii Domestic Law Limitations

While many tax treaties allow for wider use, jurisdictions may have domestic legislation that limits cooperation between agencies, including the sharing of information. To address this, it will be necessary to enact legislation and establish MoUs for cooperation. Without this framework, bottlenecks arise that precipitate the ad hoc sharing of information which weakens cooperation.

iii Awareness Gap

Jurisdictions express a lack of awareness regarding compatible non-tax purposes authorized under the laws of partner jurisdictions as well as lack of awareness of the international legal framework allowing the wider use of information. This points to a strategic gap in understanding the scope and permissibility of using shared information for purposes beyond taxation.

iv Confidentiality standards in other agencies

Depending on the agencies involved in investigation and prosecution of offenses in a jurisdiction, corroboration of information and evidence is critical to successful joint investigations. While some jurisdictions may have mature framework for interagency cooperation than others, a flaw in the movement of information from one agency to another may introduce additional risks which may result in confidentiality erosion, legal framework misinterpretation and ultimately unauthorized use of information.

e. Initiatives For the Use of EOI For Other Purposes

i Punta del Este Declaration

The Punta del Este Declaration (Declaration) is a political commitment to combat tax evasion and other illicit financial flows through the implementation and use of the tax transparency standards. The Declaration was initially signed at ministerial level by 4 Latin American countries during the 2018 plenary meeting of the Global Forum, organized in Punta del Este, Uruguay, and subsequently endorsed by 11 other Latin American countries, reaching the number of 15 signatories. To date, all Latin American Global Forum members are signatories of the Declaration.

Under the Declaration, the signatories agreed to fully and effectively implement the international tax transparency standards and resolved, among others, to:

“... lead by example in effectively using the powerful global infrastructure for exchange of information, which has been built in the past decade to counter illicit financial flows and support domestic resource mobilisation” and,

“... consider the possibility of wider use of the information provided through exchange of tax information channels for other law enforcement purposes as permitted under the multilateral Convention on Mutual Administrative Assistance in Tax Matters and domestic laws...”

The Declaration translated into a Latin America Initiative supported by the Global Forum Secretariat and other development partners to implement the set objectives. In this context, the Initiative has worked to facilitate wider use since 2021.

- ***Framework for a pilot project on the wider use of treaty exchanged information***

A baseline study carried out in 2021 by the Initiative showed that, while most of its members have the international and domestic legal basis for wider use of information, instances of wider were very low in practice.

Building on this study, members of the Initiative approved in 2022 in San José, Costa Rica, a framework for a pilot project on the wider use of treaty-exchanged information in Latin America (the Framework). The Framework aims at facilitating wider use of treaty exchanged information and at streamlining the processes involved in obtaining consent for the use of such information for non-tax purposes.

The main components of the Framework are:

- A draft Competent Authority Agreement (CAA) to provide a single mechanism to facilitate wider use between the interested countries by:
 - establishing clear process and conditions to request and provide authorization for wider use of information;
 - defining the non-tax purposes allowed (e.g. the detection, investigation and prosecution of crimes and/or offences related to money laundering and terrorist financing, corruption and customs); and
 - setting the modalities of granting authorisations (e.g. case-by-case or upfront authorizations);
- A draft Memorandum of Understanding (MoU) to operationalise in practice wider use of information between the tax administration and the other domestic law enforcement agencies while complying with the legal and confidentiality requirements; and
- A training programme on confidentiality in the context of tax treaty exchange of information for non-tax authorities.

- ***Pilot Project***

The Framework has been the object of a Pilot Project, under which the participating Latin American countries collaborate to develop, tailor and implement the CAA and MoUs based on the Framework, taking into consideration their particular circumstances and needs. As of 31 September 2024, Argentina, Brazil, Colombia, Costa Rica, Dominican Republic, Paraguay and Peru participate to the Pilot Project. Brazil, Colombia, Costa Rica, Dominican Republic, and Paraguay signed in May 2024 the Competent Authority Agreement of the Pilot Project on the Authorised Wider Use of Treaty-Exchanged Information.

- ii **The World Bank's National Risk Assessment**

The World Bank Group has developed an analytical risk assessment tool to guide countries in conducting their money laundering / terrorist financing (ML/TF) risk assessment at the national level. This tool is known as the National Risk Assessment (NRA) tool, and it comprises several Excel-based and interrelated modules that enable countries to assess their ML/TF threats and vulnerabilities. "Threats" refers to the scale and characteristics of the proceeds of criminal activities or financing of terrorism in the jurisdiction. "Vulnerabilities" refers to weaknesses or gaps in a jurisdiction's defences against money laundering and terrorist financing. Threats or vulnerabilities may exist at the national or sector level, and all together determine the ML/TF risk level in a jurisdiction.

The general objectives of the tool are the following:

- To guide jurisdictions in assessing their ML/TF risks, with a view to helping them use the information gained to design a more effective, risk-based anti-money laundering and combating the financing of terrorism (AML/CFT) regime.
- To contribute to capacity building in the country, not only for assessing the ML/TF risks but also for improving the data and information collection framework and practices.
- To raise awareness, and trigger interaction and cooperation among the stakeholders from governments and the private sector.

One of the modules is the Tax Crime Risk Assessment, developed by the World Bank to support countries in assessing their tax crime risks and associated money laundering risks. This module consists of submodules and guidance: tax crime threat assessment and tax evasion vulnerability. It also provides guidance for a systematic and organized participatory process, with the broad participation of public and private sector stakeholders, which enables countries in performing a self-assessment using the module.

In addition, the module incorporates international good practices on combating tax crimes, including global experience gained by the World Bank in assisting countries in performing national risk money laundering and terrorist financing risk assessments. Countries engaging in

the Tax Crime Risk Assessment will receive training on the use of the tools, and guidance on strengthening the credibility and consistency of the assessment. The process has proven to build country capacity for the longer term and establishes a process for regularly updating the understanding of tax crimes and associated money laundering risks.

The Tax Crimes Risk Assessment Tool is an Excel/-based instrument. The threat submodule assesses known and perceived tax crime threat and proceeds. Using expert analysis of enforcement data and international cooperation information, the Excel-based tool for threat supports the understanding of the order of magnitude of known tax crimes, relative incidence and proceeds generated of various tax crimes, and the nature of tax crimes based on qualitative analysis and past cases. Through a review of the expert opinion and open-source information on the tax crime threat, the tool supports the assessment of the perceived tax crime and related money laundering threat. Moreover, it also facilitates the assessment of threat of money laundering connected to domestic and foreign tax crimes. It captures common typologies and case studies to support the understanding of tax crime threat.

For assessing vulnerability, the World Bank uses an Excel tool which translates international good practices into a benchmarking framework to measure practical and comparable progress. With the tool, countries can evaluate their relative strengths and weaknesses in their use of people, processes, and technology. Based on trackable data and information collection, measures can be compared to international good practices in a wide range of areas.

The process to conduct this assessment is entirely country-organized, led and owned, allowing to build capacity through self-assessment with long-lasting effects. It has proven to be a rapid learning process, where countries continue to undertake future risk assessments without external support. It also builds public and private sector collaboration through multi-disciplinary process and helps identify gaps in data and information. The World Bank is available throughout the assessment to provide technical support if needed.

Results after undergoing the NRA's Tax Crime Risk Assessment allows for a vast understanding of the tax crimes in the country, enabling effective action planning and dissemination. This will also allow for an improved whole of government approach in the country to fight tax crime, where exchange of tax information becomes key to effectively audit taxpayers. Successful tax audits can lead to uncovering white-collar crime or corruption which can, in turn, lead to prosecution of tax evasion or recovery of unpaid taxes.

iii OECD's Operational Pilots to EOI in relation to high priority matters

At its April 2023 meeting, the Forum on Administration (FTA) Bureau agreed to take forward work to help facilitate possible pilots among interested tax administrations focused on

facilitating both rapid responses to requests for EOI and enhancing the use of spontaneous EOI (SEOI). Around the same time, the OECD Task Force on Tax Crime (TFTC) agreed to commence work on a small pilot focused on promoting both rapid and spontaneous exchanges in relation to cross-border VAT Fraud – this being identified as a priority matter for Member jurisdictions located outside of Europe in particular.

The purpose of these initiatives is to enhance the use of existing mechanisms, including international instruments, infrastructure and networks, to promote more frequent and efficient exchanges. Although this initiative is not specifically targeting wider use of tax treaty exchanged information, it is likely that information exchanged during the investigation of a tax crime ends up being identified as relevant for other law enforcement agencies, therefore activating the wider use mechanism.

FTA and TFTC Members are currently defining the information subject to exchange in the pilots, which may include:

- Identity and legal and beneficial ownership of individuals held within domestic real-estate registries;
- Information on identity and assets held by high-net worth individuals;
- Identity information of individuals and/or legal persons under investigation for specific crime typologies (e.g. the enforcement of cross-border VAT Fraud, already identified as a priority by the TFTC); and
- Changes in status, for example taxpayers carrying out taxable activities in another jurisdiction, moving tax residency or establishing a business in another jurisdiction.

Based on previous experiences, the outcomes expected from these pilots include expanded use of spontaneous exchange of information, greater trust and co-operation between tax administrations, and improved inter-agency cooperation for criminal tax matters. It is expected that the first pilot exchanges will occur between interested jurisdictions through 2024.

5.4 Monitoring and evaluating the impact of exchange of information

Monitoring and evaluating EOI activities is another critical aspect of the implementation strategy. It involves tracking the number and nature of requests sent and received, assessing response times, and evaluating the quality of information exchanged. This continuous assessment helps in identifying areas for improvement and ensuring that EOI practices are aligned with international standards. Additionally, it is important to assess the impact of EOI on enhancing tax compliance and enforcement. This can be measured through various indicators, such as an increase in tax revenue collection, uncovering of previously undisclosed assets and income, and the overall deterrence effect on tax evasion practices. Regular evaluation not only demonstrates the effectiveness of EOI activities but also provides valuable

insights for future policy-making and strategic planning in the realm of international tax cooperation. The Global Forum, has developed monitoring tools and tools for measuring the impact of EOI⁶⁶ which are available to jurisdictions on demand:

- Tracking tool for exchange of information and its glossary (2021)
- Impact assessment form for exchange of information (2021)

5.5 Peer Review Process

All jurisdictions that commit to implement the international tax transparency standards (EOIR and CRS-AEOI) also commit to be peer reviewed. The Global Forum is the international body tasked with monitoring the implementation of the international tax transparency standards and to review the effectiveness of their implementation in practice. To that end, the Global Forum carries out peer review processes in relation to each of its members and non-members that are relevant to its work. This is to ensure that the standards are properly implemented and a level playing field is promoted. The monitoring and peer review processes provide assurance to Global Forum members that all jurisdictions are properly implementing the standards and highlight where more needs to be done to enhance global tax transparency.

The Global Forum has an established peer review process in relation to the EOIR standard, which is already in its second round.⁶⁷ With respect to the AEOI standard, the Global Forum has already reviewed the domestic and international legal frameworks in place, with first results having been published at the end of 2020⁶⁸ and updated annually.⁶⁹ In 2022 the Global Forum published the first results of its initial peer reviews of the effectiveness in practice of the implementation of the AEOI Standard, including ratings, for the first 99 jurisdictions. The effectiveness reviews of two additional jurisdictions were published in the 2023 update to the AEOI Peer review report.

The Global Forum issues ratings, based on the seriousness of the deficiencies identified in the course of the review process, accompanied by recommendations to the jurisdictions to improve their legal framework or effectiveness in practice. Ratings can be improved over time when a

⁶⁶ Global Forum - <https://www.oecd.org/tax/transparency/documents/documents-available-to-tax-authorities-upon-request.htm>

⁶⁷ The compliance ratings following the first round and second round peer reviews against the standard of exchange of information on request are available <https://www.oecd.org/tax/transparency/documents/exchange-of-information-on-request-ratings.htm>. All the EOIR peer review reports published by the Global Forum to date are available at https://www.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-peer-reviews_2219469x.

⁶⁸ OECD (2020), *Peer Review of the Automatic Exchange of Financial Account Information 2020*, OECD Publishing, Paris, <https://doi.org/10.1787/175eff4-en>

⁶⁹ See OECD (2023), *Peer Review of the Automatic Exchange of Financial Account Information 2023 Update*, OECD Publishing, Paris, <https://doi.org/10.1787/5c9f58ac-en>; OECD (2022), *Peer Review of the Automatic Exchange of Financial Account Information 2022*, OECD Publishing, Paris, <https://doi.org/10.1787/36e7cded-en> and OECD (2021), *Peer Review of the Automatic Exchange of Financial Account Information 2021*, OECD Publishing, Paris, <https://doi.org/10.1787/90bac5f5-en>.

jurisdiction effectively responds to the recommendations made (and could be downgraded, e.g. when a step back is identified).

The ratings contained in the peer review report are public and may have a reputational impact on the jurisdiction. A good rating provides international investors with comfort that the jurisdiction has a sound regulatory framework to ensure tax compliance, and some development banks consider the outcomes of the Global Forum's peer review processes for their investment decisions. The results of the Global Forum peer reviews are used by jurisdictions, international organisations and multilateral development banks when establishing their policies and operations.

A jurisdiction new to EOI would, in most cases, start with the implementation of EOIR which is peer reviewed by the Global Forum. It should, therefore, establish a strategy towards ensuring effective implementation of the EOIR standard to positively influence the outcome of the peer review. To effectively prepare for peer reviews by international bodies in terms of EOI for tax purposes, a jurisdiction should adopt a practical, step-by-step strategy focused on compliance with the EOIR and CRS-AEOI standards:

- a. Assessment and gap analysis: Conduct a thorough review of the current legal and regulatory framework. Compare it against the EOIR and CRS-AEOI standards. Identify gaps and areas needing improvement to meet these international standards. Technical assistance can be provided by the Global Forum to conduct this analysis on a modular approach.⁷⁰
- b. Legal framework enhancement: Amend or introduce legislation to align with EOIR and CRS-AEOI standards. This includes laws on beneficial ownership, exchange of information, and access to information. Ensure that these legal provisions are not only on paper but are practically enforceable.
- c. Establishment of information exchange mechanisms: Develop efficient mechanisms for information collection and exchange. This might involve setting up new processes, enhancing existing ones, and ensuring secure channels for information transmission.
- d. Training and capacity building: Invest in comprehensive training programs for tax officials and relevant staff. Focus on the nuances of EOIR and CRS-AEOI, including how to handle requests, process information, and ensure data safety and confidentiality.
- e. Pilot testing and internal audits: Before undergoing external peer reviews, conduct internal audits or pilot testing of the EOI processes. This practice run helps identify any operational issues or lapses in compliance, allowing for timely corrections.

⁷⁰ OECD (2022), *Capacity Building: A new Strategy for the Widest Impact*, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD, Paris. Available at <https://www.oecd.org/tax/transparency/what-we-do/technical-assistance/Capacity-Building-Strategy.pdf>.

- f. Engagement with the Global Forum: Actively engage with the Global Forum by participating in its workshops, training sessions, and feedback mechanisms. This engagement offers insights into best practices and keeps the jurisdiction updated on expectations.
- g. Stakeholder communication and transparency: Maintain transparent communication with domestic stakeholders, including financial institutions, about their roles and responsibilities under the EOI standards.
- h. Documentation and reporting: Keep comprehensive records of all EOI processes, requests, and exchanges. Proper documentation will be crucial during peer reviews to evidence compliance and effectiveness.

PART 4: PRACTICAL GUIDANCE FOR JURISDICTIONS NEW TO EXCHANGE OF INFORMATION FOR TAX PURPOSES

A jurisdiction that is new to EOI should consider taking the following steps to prepare itself for effective participation in EOI.

6.1 Raising Awareness On Exchange Of Information Within The Tax Authority

Effective engagement in EOI is more about function than vast resources, especially in the early stages. It involves strategically allocating resources based on the specific needs of the tax authority. This includes setting up an enabling EOI infrastructure, which comprises a supportive domestic legal framework, a network of EOI agreements, and establishing a dedicated function within the tax authority. This function, although requiring some initial resources like office space, IT infrastructure, and personnel, doesn't need to be extensive from the outset.

Collaboration across various stakeholders is key. This includes tax auditors, the primary users of EOI, relevant departments within ministries such as finance or foreign affairs for international agreement negotiations, and other government agencies holding exchangeable information. The initial focus should be on raising awareness about the importance and mechanics of EOI. This helps in several ways:

- Enlightening top management in the tax authority on the benefits and potential of EOI as a tool for reinforcing domestic tax law compliance and enhancing domestic resource mobilisation.
- Training tax auditors and other tax compliance officials about the possibilities, forms, and engagement requirements of EOI.
- Informing other government agencies, like those overseeing legal entities and arrangements, about their role in ensuring the availability of necessary information for exchange.

Therefore, the tax authority should develop a strategy outlining:

- The concept and relevance of EOI.
- The specific forms of EOI the tax authority intends to engage in.
- The current resources available for EOI participation and any additional resources needed, emphasising a practical and need-based approach.

6.2 Reforming the legal and regulatory frameworks for exchange of information

All forms of mutual administrative assistance in tax matters, including EOI, are based on an enabling domestic legal framework that allows the jurisdiction to exchange information with

other jurisdictions and an international legal framework that provides a legal gateway for the actual exchanges. Therefore, a jurisdiction that is new to EOI should benchmark its domestic and international legal and regulatory frameworks with the EOI requirements. Assistance to undertake this reform may be available from multilateral organisations such as the Global Forum⁷¹, CIAT, ADB, ATAF and WBG.

Participation in EOI often necessitates reforms to the domestic legal and regulatory frameworks to conform with the requirements of the international standards facilitating the exchanges. For example, the implementation of the Standard on Transparency and Exchange of Information on Request (EOIR) requires: (i) the jurisdiction should ensure the availability of ownership and identity information (including beneficial ownership information) and accounting information for all types of legal entities and arrangements, as well as banking information; and (ii) the tax authority should have access to this information for exchange with foreign tax authorities. This often requires participating jurisdictions to align their legal and regulatory frameworks with international standards, a process which may involve the drafting of new legislation or the amendment of existing laws to require availability of this information in the jurisdiction and access by the tax authority. Availability of this information for exchange with other jurisdictions may also ensure the availability of this information for domestic tax administration purposes and for other law enforcement purposes thereby strengthening the tax authority and other governmental authorities⁷².

6.2.1. Establishing an enabling domestic legal framework

This process of establishing an appropriate domestic legal framework may involve the following steps:

- a. **Step 1:** a review of the domestic legal and regulatory frameworks to ensure consistency with the EOI requirements. This gap analysis should lead to the identification of areas where reform is needed to align the domestic legal and regulatory frameworks with these requirements.

For instance, a country implementing the EOIR standard shall ensure that its legal framework ensures the availability of, access to and exchange of foreseeably relevant

⁷¹ OECD (2023), New Horizons in Capacity Building for Tax Transparency: 2023 Global Forum Capacity Building Report, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD, Paris <https://www.oecd.org/tax/transparency/documents/2023-Global-Forum-Capacity-Building-Report.pdf>

⁷² OECD (2023), Pioneering Global Progress in Tax Transparency: A Journey of Transformation and Development – 2023 Global Forum Annual Report, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD, Paris, <https://www.oecd.org/tax/transparency/documents/global-forum-annual-report-2023.pdf> and

OECD (2019), Transparency and Exchange of Information for Tax Purposes - Multilateral Co-operation Changing the World: 10th Anniversary Report, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD, Paris - <https://www.oecd.org/tax/transparency/global-forum-10-years-report.pdf>

information, including ownership, accounting and banking information, without undue restrictions or delays.

- b. **Step 2:** depending on the outcome of the gap analysis conducted under step 1, the country may need to either propose amendments to existing legal provisions or propose new legal provisions. Key elements for inclusion on the domestic legal framework include:
- **General provisions:** These ensure that treaty obligations are upheld within domestic law. This is often achieved through specific legal provisions or judicial interpretation, confirming that tax treaty provisions override conflicting domestic law elements.
 - **Record keeping obligations:** It's crucial that taxpayers and relevant information holders maintain accurate records for at least five years. Domestic legislation should impose penalties for non-compliance with these record-keeping requirements.
 - **Access powers:** Tax authorities should have the power to gather necessary information, irrespective of bank secrecy laws or domestic tax interests. Sanctions should be in place for those who fail to provide requested information.
 - **Confidentiality:** The protection and proper use of tax information, including that exchanged under treaties, must be a priority. The law should stipulate administrative and/or criminal penalties for unauthorised disclosure of confidential information.

6.2.2. Establishing international legal framework for exchanging information with other jurisdictions

An international legal framework provides the legal gateway for information exchange between jurisdictions (see section 2.3.1. for more details). A jurisdiction that is new to EOI should consider taking the following steps:

- a. **Step 1:** the jurisdiction should take stock of its international agreements that provide for EOI. This will enable the jurisdiction to:
- establish how many jurisdictions are covered by its network of EOI agreements and, therefore, how many jurisdictions it can legally exchange information with.
 - determine whether the jurisdictions with which it has the closest economic connections (and therefore a higher potential to exchange information with) are covered.
 - establish the forms of EOI possible under its EOI agreements.
- b. **Step 2:** the jurisdiction should review its EOI agreements against the requirements of the international standards for example to ensure that they:

- allow for the exchange of foreseeably relevant information in respect of all persons and taxes.
 - allows for EOI without limitation by a form of secrecy (e.g. bank secrecy or legal professional privilege) that is not included in the exceptions permitted by the international tax transparency standards.
 - allow for the exchange of information notwithstanding the lack of a domestic tax interest by the requested tax authority.
- c. **Step 3:** based on the outcome of the gap analysis conducted under steps 1 and 2, the jurisdiction should consider:
- taking appropriate steps to bring its EOI agreements into force so that it has a legal gateway for EOI with other countries.
 - addressing the gaps identified in its EOI agreements by initiating the signing of a protocol or note addressing the gaps in the EOI article.
 - expanding its network of EOI agreements to cover the countries desirous of entering into an EOI relationship with it.
 - taking steps to activate the type of EOI the country is interested in. For example, activating CRS-AEOI through the CRS-MCAA, activating CbCR-AEOI through the CbCR-MCAA or signing MoUs or Competent Authority Agreements to govern other forms of EOI such as STEs and TEAs.

Negotiating and finalising bilateral agreements, such as DTCs or TIEAs, can be a demanding and lengthy process for jurisdictions, which may constrain their capacity for international tax cooperation. In contrast, the MAAC provides a more efficient alternative, offering a unified legal framework that facilitates cooperation in tax matters across multiple countries.

Box 7. Technical assistance provided to jurisdictions new to EOI by the Global Forum

The Global Forum Secretariat actively supports both its member jurisdictions and those considering membership. This support includes comprehensive long-term Induction Programmes for jurisdictions that joined the Global Forum post-2015, and customised assistance for other members based on their specific requirements. A country's success in these programs largely hinges on its level of political and organisational commitment. Countries adopting a whole-of-government approach, actively engaging with the Secretariat's recommendations and technical assistance, are more likely to effectively implement the required standards and fully leverage the benefits of Global Forum membership. In 2022, notable progress was observed in 38 out of 42 induction programmes. Additionally, tailored technical support was provided to 54 members. Prospective members also received pre-membership support, with five non-member jurisdictions benefiting from this initiative.

Source: OECD (2023), *New Horizons in Capacity Building for Tax Transparency: 2023 Global Forum Capacity Building Report*, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD, Paris

<https://www.oecd.org/tax/transparency/documents/2023-Global-Forum-Capacity-Building-Report.pdf>

6.3 Institutional Readiness and Capacity Building

While an enabling legal and regulatory framework (both domestic and international) is the starting point for engaging in EOI, a country needs functional institutions to effectively engage in EOI. Therefore, establishing a specific function that will administratively manage the tax authority's cooperation with foreign tax authorities (an EOI unit) is a critical step for developing countries new to EOI in creating an effective system for international tax cooperation. The EOI unit serves as the central hub for managing and executing all EOI-related activities within a jurisdiction as illustrated by Figure 4.

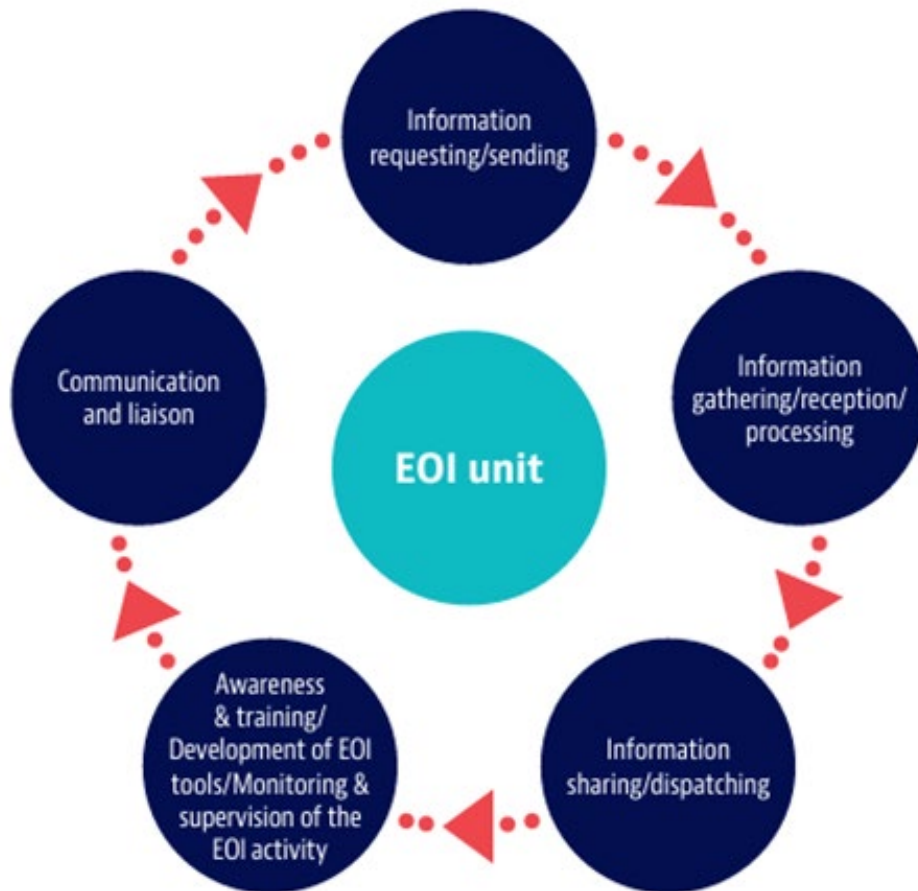


Figure 4 The EOI circle: simplified description of the operational activities of the EOI unit

Source: OECD and ATAF (2020), *Establishing and Running an Effective Exchange of Information Function: A joint Global Forum and ATAF Toolkit*, OECD, op cit.

The key steps in establishing an EOI unit are as follows:

- a. **Step 1:** clearly defining the mission of the EOI unit. This mission statement should outline the unit’s key objectives and responsibilities, which typically include processing incoming and outgoing EOI requests, ensuring compliance with international standards, and liaising with foreign tax authorities. The EOI may also play a key role in policy formulation and communication. It may be responsible for or support the negotiation, signing, and implementation of EOI agreements, as well as drafting and explaining related legislation and regulations. It is often responsible for disseminating knowledge of EOI within the tax authority (training auditors on the use of EOI) and liaising with domestic and international stakeholders. The EOI unit is also responsible for providing necessary guidance and tools and collecting feedback on the effectiveness of EOI in tax authority. In addition, the EOI unit often coordinates the jurisdiction’s involvement in international EOI forums, such as the peer reviews conducted by the Global Forum and the jurisdictions contribution to international organisations working in the area of tax

transparency. Therefore, a clear mission provides a focused direction for the unit's activities and sets the foundation for its operational framework.

- b. **Step 2:** The second building block concerns the institutional positioning of the EOI unit. A strategic decision must be made regarding whether the unit should operate under the auspices of the ministry of finance or be integrated within the tax authority. This decision should be informed by considerations such as the existing administrative structure, resource availability, and the level of independence required for the unit to function effectively. The chosen structure should facilitate seamless coordination with other relevant departments and government agencies involved in the EOI process and ensure the EOI unit has the necessary authority and access to carry out its mandate.

- c. **Step 3:** The third crucial building block is the allocation of adequate resources to the EOI unit. This includes both human and financial resources. Human resources are particularly important – the unit should be staffed with skilled personnel who have expertise in international tax matters, legal aspects of EOI, and the handling of confidential data exchanged under tax treaties. When a jurisdiction initiates its EOI operations, practicality often dictates that the EOI function may initially be managed by existing tax officials who also handle other responsibilities. While the ideal scenario involves dedicating skilled personnel exclusively to the EOI unit, with expertise in international tax, legal aspects of EOI, and secure data handling, initial resource constraints can necessitate a more flexible approach. These officials, therefore, might need to balance their EOI duties with their regular tasks. Continuous training and capacity-building initiatives are essential to keep the staff abreast of evolving international standards and best practices. Financial resources, on the other hand, are necessary to develop the required infrastructure, such as secure communication channels for exchanging information and IT systems for data management.

As Box 8 illustrates, the EOI unit can evolve as the country becomes more involved in the EOI work.

Box 8. Evolution of the EOI Unit in Kenya

Kenya joined the Global Forum in 2010. At this point, Kenya did not have an EOI unit in place to handle EOI and faced challenges in ensuring the transparency of its taxpayers' cross-border activities. Kenya had a limited network of EOI partners with nine double tax conventions despite the huge demand for EOI from the audits of cross-border transactions.

Following the support from the Global Forum Secretariat which started in 2013, Kenya kicked off its EOI journey by establishing its EOI unit in 2014 under the Large Taxpayers Office of the Domestic Taxes Department and devoted some resources to it including three officials. Kenya also delegated the CA powers from the Cabinet Secretary, National Treasury and Planning to the Commissioner General of KRA who in turn delegated the day-to-day administration of the EOI function to the Commissioner, Intelligence & Strategic Operations Department in 2018.

Although Kenya had established the minimal infrastructure for EOI, Kenya sent only one request during the period 2014 to 2018. This was due to manual EOI processes, the lack of awareness on the potential of EOI from tax auditors and investigators, and a limited EOI network of only nine double tax conventions.

With the objective of strengthening the EOI function, KRA embarked on a strategy in 2019 aimed at making the country a visible player in the global tax transparency community. The following actions were taken:

In order to strengthen the EOI function, the function was restructured and repositioned in the KRA organisation chart and physically relocated to a new office designated for EOI staff only; More resources were allocated to the EOI unit including increasing its staff from three in 2014 to nine officials in 2021;

The staff underwent EOI trainings in various areas of tax transparency;

The MAAC which had been signed in 2016 was ratified and came into force in 2020, which widened the information reach to more than 140 partners.

The priority given by Kenya to EOI and the EOI unit's efforts had ripple effects. The two participants of the Global Forum Secretariat's Train the Trainer programme have already trained 283 staff. The use of EOI has steadily increased from 1 request in 2018 to 17 in 2019, 73 in 2020 and 173 in 2021. This resulted into increased revenue gain realised with EUR 1.1 million (USD 1.05 million or KES 130 million) in 2019, EUR 86 000 (USD 82 560 or KES 10.5 million) in 2020 and EUR 8.1 million (USD 8.5 million or KES 985.2 million) in 2021. Building on this success, Kenya embraced a new challenge by committing in 2020 to implementing the AEOI standard with first exchange in September 2022. With the support

from the Global Forum, and partners, including the United Kingdom (Her Majesty's Revenue and Customs) and ATAF, Kenya has implemented the relevant international legal framework and passed its primary legislation. In parallel, it developed its secondary legislation and actively worked to set up a solid CDS framework, including ISM and the relevant IT and administrative capacity.

The evolution of the EOI function in Kenya over the years is a demonstration of the critical role played by top management strong support and involvement to improve the organisation of the EOI unit, provide the resources needed and enhance the relevant confidentiality principles, with an aim of effectively increasing domestic revenue mobilisation through tackling cross-border tax evasion.

Source: Kenya Revenue Authority (KRA) in OECD, AUC and ATAF (2022), *Tax Transparency in Africa 2022: Africa Initiative Progress Report*, OECD Paris available at <https://www.oecd.org/tax/transparency/documents/tax-transparency-in-africa-2022.pdf>

In addition to these foundational elements, developing appropriate infrastructure and operational processes is vital for the EOI unit's functionality. This involves establishing secure and efficient systems for handling and processing EOI requests, maintaining confidentiality, and ensuring timely responses. Effective operational processes should include clear protocols for receiving, reviewing, and responding to requests, as well as mechanisms for quality control and monitoring compliance with international standards. By focusing on these key areas – defining the mission, determining the institutional placement, resourcing, infrastructure development, and process optimisation – developing countries can build a robust and effective EOI unit capable of meeting the challenges of global tax cooperation.

The Global Forum and ATAF have jointly published the Toolkit for Establishing and Running an Effective EOI Function. It provides policy considerations and provides guidance on setting up and managing an effective EOI function in order to improve co-operation among tax authorities and better tackle tax evasion and other IFFs⁷³.

6.4 Operationalising EOI Mechanisms

Once the EOI unit is established, the tax authority needs to develop and adopt EOI policies and procedures manual governing the EOI processes that are aligned to international standards. The development of the EOI policies and procedures manual should be guided by an understanding of different EOI forms that the jurisdiction will be involved in as each form of EOI requires

⁷³ OECD and ATAF (2020), *Establishing and Running an Effective Exchange of Information Function: A Joint Global Forum on Transparency and Exchange of Information for Tax Purposes and ATAF Toolkit*, OECD, Paris https://www.oecd.org/tax/transparency/documents/EOI-Unit-toolkit_en.pdf.

specific procedural guidelines to ensure their effective implementation. The documentation of the EOI policies and procedures provides clarity to the officers handling EOI functions and auditors on the processes they should follow to make or send requests as well as the usage and protection of the confidentiality of tax treaty-exchanged information.

The creation of EOI manuals, guidelines, and training materials is indispensable for ensuring that the staff responsible for EOI are well-equipped to process information requests efficiently. These resources should provide comprehensive guidance on various aspects of EOI, including legal requirements, procedural steps for handling requests, and the technicalities of information exchange. The manuals should be easily accessible and regularly updated to reflect changes in international standards or domestic legislation. Additionally, regular training programs are vital to keep staff updated on the latest developments in EOI practices and to ensure a uniform understanding of the processes across the tax authority. The Global Forum, in cooperation with the African Development Bank and the World Bank Group, has published a model manual on EOI that details the processes involved in sending and answering a request for information⁷⁴.

6.5 Stakeholder engagement and information gathering

The information required by the EOI standards is often maintained outside of the tax authority. For example, under the EOIR standard, information relevant for EOI may be maintained by third parties such as other government departments (e.g. registries for companies, partnerships, trust, foundations, etc.), banks (banking information) or the legal entities and arrangements. Therefore, effective participation in EOI requires collaboration between the tax authority, other government agencies and third parties.

Engagement with relevant stakeholders within and outside the tax authority involves establishing robust communication channels and collaboration mechanisms for gathering the information required for exchange with treaty partners. Seamless collaboration is essential for the EOI unit to access and gather the necessary information to respond to incoming and outgoing EOI requests where this information is not in the tax authority database. Maintaining clear and efficient dialogue with these entities is key to ensuring timely and effective cooperation in the EOI process.

The establishment of formal collaboration agreements with other government agencies or authorities is a strategic approach to streamline the information gathering process. These agreements, often formalised through MoUs⁷⁵, delineate the methods of access, principles,

⁷⁴ OECD, AfDB and WBG (2021), Model Manual on Exchange of Information for Tax Purposes, OECD, Paris available at <https://www.oecd.org/tax/transparency/documents/EOI-manual.pdf>

⁷⁵ OECD and ATAF (2020), Establishing and Running an Effective Exchange of Information Function: A Joint Global Forum on Transparency and Exchange of Information for Tax Purposes and ATAF Toolkit, OECD,

conditions for information exchange, and response timelines. Such agreements guarantee that when the EOI unit requires information from a particular agency or authority, it will be provided promptly and efficiently. Where MoUs exist, the EOI manual should explicitly list the concerned agencies and authorities. In the absence of an MoU, the EOI unit should have standard procedures for contacting these entities, typically through a standardised letter issued by the EOI unit manager or CA, outlining the legal basis and necessary details for the information request.

Internally, it is imperative to establish a well-functioning collaboration framework between the EOI unit and other departments within the tax authority. This collaboration is vital for both processing incoming requests from foreign jurisdictions and handling outgoing requests initiated by local tax offices. One effective strategy is to designate EOI contact persons in local tax offices and conduct regular consultations with them. However, irrespective of the communication method, guidelines on confidentiality must always be adhered to, ensuring that any shared information is used solely for the stated purposes.

6.6 Participating in the work of international bodies engaged in exchange of information

Active engagement with international bodies tasked with monitoring the effective implementation of the tax transparency standards is key to effective cooperation with treaty partners. Participation in global tax cooperation initiatives provides these jurisdictions with access to a wealth of resources, expertise, and support networks. This engagement facilitates the understanding and adoption of international best practices and standards in EOI.

A jurisdiction should consider participating in the work on tax transparency to speed up capacity-development.

Paris https://www.oecd.org/tax/transparency/documents/EOI-Unit-toolkit_en.pdf. Examples of MoUs can be found in the Annex D.