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**APPENDIX – GUIDE TO INCREASING TAX TRANSPARENCY**

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# **I: INTRODUCTION TO TAX TRANSPARENCY**

## **CHAPTER 1: INTRODUCTION**

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 tax authorities to combat 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 for tax purposes (EOI).

### **1.1 Importance and Potential Benefits of Increased Tax Transparency**

#### **a) 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, tax transparency has emerged as a powerful tool 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 abroad or engage in complex tax schemes. By increasing the visibility and accessibility of tax information, transparency helps level the playing field for compliant 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, tax transparency remains a crucial tool for promoting tax compliance and upholding the principles of fairness and equity.

#### **b) Building Public Trust and Confidence**

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. This leads to 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, tax transparency 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.

### **c) Advancing Global Cooperation and Development**

Tax transparency is not only essential at the national level but 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, enhances domestic resource mobilisation 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 General context for exchange of information for tax purposes**

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 enhance 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 to 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 evading 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 jurisdictions 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 evaded taxes, hold evaders accountable, and close loopholes in their tax systems. **Box 2** illustrates the use of EOI to combat evasion of VAT.



## **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>.

- 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. See Section 5.2 for more information on the wider use of tax treaty exchanged information.
- 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 they are not entitled to. 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 information only available in foreign jurisdictions, auditors can gain a more complete picture of a taxpayer's financial situation, ensuring accurate assessments and minimising tax evasion

opportunities. **Box 3** illustrates how EOI may be used to supplement information available domestically to strengthen the tax audit process.

### **Box 3. 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. See Section 5.1 for information on assistance in tax collection.

In addition to accessing information relevant for enforcing compliance with domestic tax laws, a country participating in EOI may also derive several benefits, which include the following:

- i. Enhancing voluntary tax compliance:** EOI can deter tax evasion by increasing the perceived risk of detection. When taxpayers know that their foreign activities are subject to scrutiny, they are more likely to comply with reporting obligations and pay their fair share of taxes.
- j. Increasing tax morale and public trust in the tax system:** access to tax-related information held outside the tax authorities' jurisdiction signals to the public that no taxpayer is beyond the reach of the tax authority. This demonstrates the ability of the tax authority to enforce its domestic tax laws even in a cross-border context therefore increasing overall tax morale and enhances the public trust in the tax systems that information relevant for tax authority will be accessed wherever it is situated.

### **Other benefits of participating in exchange of information**

In addition to accessing information relevant for tax administration, jurisdictions participating in EOI can gain significant benefits from implementing EOI.

- a. Strengthening legal frameworks for domestic tax administration**

- *Conforming with the requirements of the international standards facilitating the exchanges.*

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 authorities.

- ***Improving transparency of bearer shares***

Bearer share enables the real owners of the shares to remain anonymous to authorities and may therefore be used to facilitate tax evasion, money laundering and other illegal acts. To prevent their misuse, the EOIR standard (Element A.1.2) requires that, where jurisdictions permit the issuance of bearer shares, they should have appropriate mechanisms in place that allow the owners of such shares to be identified. One possibility among others is a custodial arrangement with a recognised custodian or other similar arrangement to immobilise such shares.

The legal and regulatory framework governing bearer shares and its implementation in practice is one of the elements assessed in the Global Forum peer reviews. Through this process, bearer shares, one of the instruments historically allowing concealment of ownership, have been mostly abolished or modified to enable the identification of their owners. About 90% Global Forum members, who have been subject to the EOIR peer reviews, do not permit the issuance of bearer shares, or have in place arrangements for identifying the owners. To achieve this result, over 40 jurisdictions have either abolished bearer shares, or introduced adequate custodial or non-custodial arrangements for identifying their owners since 2009.

Ensuring the availability of information on the holders of bearer shares is not only essential for EOI purposes but also for domestic purposes. This is usually a critical information for tax authorities but also for other law enforcement agencies. Therefore, improving transparency on bearer shares and their holders strengthens the ability of the tax authority and other law enforcement agencies to tackle domestic and cross-border tax evasion and other IFFs, while ensuring compliance with tax transparency standards and other international standards such as the Financial Action Task Force (FATF) Recommendations, which also require jurisdictions to have in place mechanisms for preventing and mitigating risk of misuse of bearer shares and bearer share warrants.

- ***Eliminating bank secrecy for tax purposes***

Participating in EOI may also increase access to bank information by the tax authority. The EOIR standard requires that jurisdictions should not decline, on the basis of its secrecy

provisions (e.g. bank secrecy), to respond to a request for bank information made pursuant under an EOI agreement (Element B.1.5).

The Global Forum peer review for monitoring the effective implementation of this requirement indicates that practically all Global Forum members that have been peer reviewed so far have eliminated bank secrecy vis-a-vis tax authorities. To deliver this result, nearly 80 jurisdictions have made changes to their regulatory regimes and practices since 2009.

Various jurisdictions have adopted different strategies regarding the withdrawal of bank secrecy laws. These strategies vary, with some jurisdictions eliminating bank secrecy simultaneously for both domestic and EOI purposes. Others, like Tunisia, adopted a more gradual approach. Tunisia initially lifted bank secrecy in the context of EOI. Subsequently, this approach was extended to include domestic matters.<sup>1</sup>

### **b. Strengthening the fight against other illicit financial flows**

Improvements in the legal and regulatory frameworks relevant for EOI may also improve the legal and regulatory frameworks for combating other IFFs. Since 2016, the EOIR standard requires the availability of information on the beneficial owners of legal persons and arrangements in the jurisdiction. However, availability of this information within the jurisdiction also reinforces the implementation of the recommendations of the Financial Action Task Force (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 financing.

### **c. Building international credibility**

Effective participation in EOI significantly enhances a jurisdiction's reputation in the international stage. By engaging in EOI, a jurisdiction demonstrates its commitment to meet global tax transparency standards to level the playing field in the fight against tax evasion and IFFs. This commitment is recognised and valued by the international community, including foreign investors, governments, multilateral bodies and international organisations. This not only improves a country's standing in the global taxation system but also opens up opportunities for more favourable trade and investment conditions.

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<sup>1</sup> 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: 10<sup>th</sup> 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>.

Some international and multilateral organisations and governments take into account the ratings obtained in the Global Forum peer reviews in their decision-making process. Box 4 illustrates how the International Finance Corporation (IFC) uses the ratings obtained by a jurisdiction in the peer review process. Compliance with international tax transparency standards is a good tax governance signal thereby facilitating better access to international financial markets and resources.

#### **Box 4. International Finance Corporation use of Global Forum ratings**

The International Finance Corporation (IFC), a member of the World Bank Group, is the largest global development institution focused on the private sector in emerging markets. The IFC works with more than 2 000 businesses worldwide to create markets and opportunities in the toughest areas of the world. The nature of IFC’s business means it works with a diverse range of development partners: from multinationals to small local companies, and from government institutions to NGOs, in both investment and advisory services projects.

IFC conducts integrity due diligence (“IDD”) on its business clients and partners. This is similar to the “Know Your Customer” process used in the financial industry. IDD is critical to ensure that IFC works with reputable and sustainable business partners so that its investments are successful, its resources are used effectively, and its development objectives are met.

IFC defines integrity risk as the risk of engaging with external institutions or persons whose background or activities may have adverse reputational and, often, financial impact on IFC. Integrity risks include, but are not limited to, corruption, fraud, money laundering, tax evasion, lack of transparency and undue political influence.

Fundamental to any relationship is knowing who owns and controls a client by identifying the ultimate beneficial owner. IFC will not invest if it does not know the identity and reputation of its clients, or if it believes that a client may be controlled by an undisclosed third party. Opaque structures may be used to evade taxes, hide ownership and wealth, facilitate criminal activity and launder the proceeds of crime. For all of these reasons, as part of its IDD process, IFC is required to conduct due diligence to understand the structures used by its clients.

Where there is an intermediate jurisdiction, IFC may undertake an investment only after it is satisfied that the structure of the transaction is legitimate and not designed to be used for tax evasion, tax abuse or other illegitimate purpose.

In conducting this assessment, IFC takes into account the standards on tax transparency promulgated by the Global Forum on Transparency and Exchange of Information for Tax Purposes (the “Global Forum”). Offshore structures with a controlling interest in IFC projects must be domiciled in an intermediate jurisdiction that is compliant or largely compliant with the EOIR standard.

Source: IFC (2021), *Unique Markets, Responsible Investing IFC’s Integrity Due Diligence Process*, Washington DC: <https://www.ifc.org/content/dam/ifc/doc/2023/202103-ifc-integrity-due-dilligence-process.pdf>.

## 1.3 Ongoing Work by Various Organizations on Increasing Tax Transparency

### 1.3.1 United Nations (UN)

#### **Fighting Illicit Financial Flows**

The UN's work in this area stems from the decision by Member States to combat IFFs, as they recognize that they 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 IFFs. Goal sixteen of the 2030 Agenda includes a target on significantly reducing IFFs.

In the General Assembly resolution 76/196<sup>2</sup>, Member States recognized that combating IFFs 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 77/154<sup>3</sup> and 78/140<sup>4</sup> which further amplified the resolution on promotion of international cooperation to combat IFFs and strengthen good practices on assets return to foster sustainable development. These resolutions have identified combating tax related IFFs 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 strengthen 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

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<sup>2</sup> <https://documents.un.org/doc/undoc/gen/n21/409/49/pdf/n2140949.pdf>

<sup>3</sup> <https://documents.un.org/doc/undoc/gen/n22/755/54/pdf/n2275554.pdf>

<sup>4</sup> <https://documents.un.org/doc/undoc/gen/n23/419/75/pdf/n2341975.pdf>



2016 document “Coherent Policies for Combatting Illicit Financial Flows”.<sup>5</sup> 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 that cross country borders”, which is widely accepted by countries. The conceptual framework<sup>6</sup> identifies four main types of activities that can generate IFFs:

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

Measuring and tracking tax related IFFs 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 IFFs. In December 2020, UNCTAD and UNODC jointly published the Conceptual Framework for the Statistical Measurement of Illicit Financial Flows (‘the Conceptual Framework’)<sup>7</sup>. 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 IFFs for measurement purpose, and the suggested methodologies of measurement for pilot testing. The first tax and commercial IFFs estimates were released in UNCTAD’s SDG Pulse in 2023<sup>8</sup>.

Strengthening international cooperation in tax matters is essential in combating tax-related IFFs. The General Assembly adopted resolution 78/230 on the promotion of inclusive and effective international tax cooperation at the United Nations, which identified IFFs as one of the topics that could be addressed through an early protocol to the United Nations Framework Convention on International Tax Cooperation. The Intergovernmental Negotiating Committee has noted that the issue of IFFs is an important subject that is relevant to the Framework Convention even if it is not subject of an early protocol.

The Secretary General’s report of the Seventy-Eighth Session<sup>9</sup> recognized that ongoing changes to the global economy were creating pressure on tax systems amid a rise in

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<sup>5</sup> United Nations, Coherent Policies for Combatting Illicit Financial Flows, United Nations Office on Drugs and Crime (UNODC) and Organization for Economic Co-Operation and Development (OECD), Issue Brief Series from the Inter-Agency Task Force on Financing for Development, July 2016

<sup>6</sup> 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](https://www.unodc.org/documents/data-and-analysis/statistics/IFF/IFF_Conceptual_Framework_for_publication_FINAL_16Oct_print.pdf)

<sup>7</sup> 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](https://www.unodc.org/documents/data-and-analysis/statistics/IFF/IFF_Conceptual_Framework_for_publication_FINAL_16Oct_print.pdf)

<sup>8</sup> [https://unctad.org/system/files/official-document/stat2023d3\\_en.pdf](https://unctad.org/system/files/official-document/stat2023d3_en.pdf)

<sup>9</sup> <https://docs.un.org/en/A/78/186>



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 IFFs, 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 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 IFFs when the resulting resources flow across borders. Given that secrecy allows perpetrators of IFFs 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 therefore crucial for combating tax related IFFs.

Aside from directly exposing IFFs and allowing enforcement of tax laws, governments can incentivize taxpayers to voluntarily declare previously undeclared assets and deter future efforts at tax avoidance and evasion. The Secretary General's report of the Seventy-Eighth Session calls for more inclusive information-sharing systems to be combined with effective use of information for enforcement. It also 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 IFFs. 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 12B in the UN 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 UN 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 is 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 specify STTR.

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

### **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*”<sup>10</sup>, 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 IFFs 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, to make sure that all taxpayers, including multinationals, paid 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 Africa<sup>11</sup>, inviting regions to carry out similar exercises and also invited the International

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<sup>10</sup> [https://www.un.org/esa/ffd/wp-content/uploads/2015/08/AAAA\\_Outcome.pdf](https://www.un.org/esa/ffd/wp-content/uploads/2015/08/AAAA_Outcome.pdf)

<sup>11</sup> [https://au.int/sites/default/files/documents/40545-doc-IFFs\\_REPORT.pdf](https://au.int/sites/default/files/documents/40545-doc-IFFs_REPORT.pdf)

Monetary Fund (IMF), the World Bank and the UN 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 to tax authorities where they operate; access to beneficial ownership information for competent authorities; and progressively advancing towards automatic exchange of tax information among tax authorities as appropriate, with assistance 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 a commitment to work to further enhance its resources in order to strengthen its effectiveness and operational capacity.

### **The UN Committee of Experts on International Cooperation in Tax Matters (UN Tax Committee)**

The UN Tax Committee agreed in 2009 to a code of conduct on cooperation in combating international tax evasion<sup>12</sup> that sets minimum standards of conduct required of Member States regarding the exchange of information in efforts to combat international tax evasion but is not binding on Member States unless they bind themselves to it. It has 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 EOI 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

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<sup>12</sup> <https://digitallibrary.un.org/record/671895?ln=en>

address the identified gaps and challenges; and advise 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 EOI and any gaps in existing guidance and standards on EOI and is now introducing this guidance on increasing tax transparency.

### 1.3.2 Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum)

Since 2009, the Global Forum<sup>13</sup> 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 Union<sup>14</sup> committed to implementing these standards. Developing countries represent over 55% of its 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) in Paris, France.

The core mission of the Global Forum is to ensure the effective implementation of three international standards which are critical in combating cross-border tax evasion and other IFFs:

- The Standard for Transparency and Exchange of Information on Request (EOIR)<sup>15</sup> 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 Standards on Automatic Exchange of Information (AEOI):
  - The Common Reporting Standard for the automatic exchange of financial account information (CRS)<sup>16</sup> 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

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<sup>13</sup> More information about the Global Forum is available at: <https://www.oecd.org/tax/transparency/>

<sup>14</sup> More information about the Global Forum members is available at: <https://www.oecd.org/tax/transparency/who-we-are/members/>

<sup>15</sup> More information about the EOIR Standard is available at: <https://web-archiver.oecd.org/temp/2024-04-13/556831-exchange-of-information-on-request-peer-review-process.htm>

<sup>16</sup> 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>.

that the information is kept confidential and properly safeguarded and particular requirements are placed on jurisdictions to ensure this.

- The Crypto-Asset Reporting Framework (CARF)<sup>17</sup> which provides for the reporting and automatic exchange of tax information on transactions in Crypto-Assets in a standardised manner. The CARF defines the Relevant Crypto-Assets in scope and the intermediaries and other service providers that will be subject to reporting. The CARF incorporates recent developments in the global anti-money laundering standards of the FATF and seeks to ensure that Crypto-Assets do not become an impediment to global tax transparency.

All Global Forum members are committed to implement the EOIR standard. Regarding the CRS, unlike other members, developing country members 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 Forum Secretariat to define a practical timeline for the implementation of CRS. Finally, the jurisdictions that have not been identified as relevant for the implementation of the CARF by the Global Forum (i.e. they are not considered to host or to seek to host a relevant crypto-asset sector and therefore do not pose a risk to the level playing field) are not asked to implement the CARF, but they will receive technical support if they wish to implement it. The substantial efforts in establishing the EOIR and AEOI frameworks (CRS and CARF) are showing positive outcomes, with these tools increasingly aiding tax administrations in enhancing tax compliance and domestic resource mobilisation.<sup>18</sup>

At its core the Global Forum is a monitoring and peer review body whereby members review the effectiveness of each other's implementation of the international standards on transparency and EOI. Where issues are identified, recommendations are made to address them. To monitor the effective implementation of the EOIR standard, the Global Forum has conducted two rounds of EOIR peer reviews. 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 February 2025, 138 jurisdictions have been assessed in the second round of EOIR

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<sup>17</sup> OECD (2022), *Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard*, OECD, Paris, <https://www.oecd.org/tax/exchange-of-tax-information/crypto-asset-reporting-framework-and-amendments-to-the-common-reporting-standard.htm>.

<sup>18</sup> 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>.

peer reviews<sup>19</sup>. There are over 49 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 CRS. This includes reviewing the completeness of the legal frameworks implementing the CRS once they were enacted and carrying out reviews of the effectiveness of the implementation of the CRS 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% or 108) of the 114 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 CRS (resulting in a determination of “In Place But Needs Improvement”). Initial reviews of the effectiveness of the implementation of the CRS in practice which was designed to provide an initial desk-based check of all of the key components show that a significant majority (66%) of the 101 jurisdictions have been rated as “On Track” with ensuring the effective implementation of the CRS in practice. In 2023, the Global Forum commenced a second round of CRS effectiveness reviews that assesses in much greater depth whether the CRS is being implemented effectively in practice. The first outcome of this process, which includes on-site visits, will be published in 2026.<sup>20</sup>

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 IFFs and thus mobilise domestic revenue. A regional capacity-building approach has proven to be an invaluable tool for exchanging experiences and extending the benefits of implementing the tax

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<sup>19</sup> All the EOIR peer review reports published by the Global Forum since 2010 are available at: [https://www.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-peer-reviews\\_2219469x](https://www.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-peer-reviews_2219469x)

<sup>20</sup> For more information see OECD (2024), *Peer Review of the Automatic Exchange of Financial Account Information 2024 Update*, OECD Publishing, Paris, <https://doi.org/10.1787/1aa02413-en>.

transparency standards. Through regional initiatives in Africa<sup>21</sup>, Asia<sup>22</sup>, Latin America<sup>23</sup> and the Pacific<sup>24</sup>, 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 programme. To date, the Global Forum has released 11 toolkits<sup>25</sup>, 20 guidance, templates and other tools<sup>26</sup>, and 9 e-learning courses<sup>27</sup>.

### 1.3.3 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<sup>28</sup>. In 2006 the CIAT WG-EOI issued the Manual for Implementing and Carrying Out Information Exchange.<sup>29</sup>

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<sup>21</sup> More information on the Africa Initiative is available at: <https://web-archive.oecd.org/temp/2024-06-06/556736-africa-initiative.htm>

<sup>22</sup> More information on the Asia Initiative is available at: <https://web-archive.oecd.org/temp/2024-06-29/617892-asia-initiative.htm>

<sup>23</sup> More information on the Latin America Initiative (Punta del Este Declaration) is available at: <https://web-archive.oecd.org/temp/2024-06-01/558001-punta-del-este-declaration.htm>

<sup>24</sup> More information about the Pacific Initiative is available at: <https://web-archive.oecd.org/temp/2024-03-18/617886-pacific-initiative.htm>

<sup>25</sup> The toolkits developed by the Global Forum are available at: <https://www.oecd.org/tax/transparency/documents/key-publications-and-documents.htm>

<sup>26</sup> The guidance, templates and other tools on EOI developed by the Global Forum are available at: <https://www.oecd.org/tax/transparency/documents/documents-available-to-tax-authorities-upon-request.htm>

<sup>27</sup> The e-learning courses from the Global Forum on all aspects of EOI can be accessed from: <https://www.oecd.org/tax/transparency/resources/global-forum-e-learning.htm>

<sup>28</sup> <https://biblioteca.ciat.org/opac/book/804>

<sup>29</sup> <https://biblioteca.ciat.org/opac/book/823>

CIAT has been organizing several workshops, seminars, and training activities with partners (i.e.: OECD, IDB, WB, the Global Forum, 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 56<sup>th</sup> 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 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](#).<sup>30</sup>

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 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

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<sup>30</sup> <https://www.ciat.org/curso-de-intercambio-de-informacion-11ed/?lang=en>



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 analyse, 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.

#### 1.3.4 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 IFFs.

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 and the 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 tax transparency and EOI standards (on request (EOIR) as well as automatic exchanges under the CRS);
- 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).<sup>31</sup> 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.

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<sup>31</sup> <https://www.adb.org/what-we-do/asia-pacific-tax-hub>

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 the Global Forum and FATF standards. ADB has developed, in close collaboration with the Global Forum, an EOI Handbook<sup>32</sup> catered to DMCs that are not yet Global Forum members. The EOI 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 Pacific Initiative<sup>33</sup> in October 2020 in collaboration with development partners – including the Global Forum for EOI matters. Through tailored technical assistance 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 IFFs to increase domestic revenues for sustainable development.

### 1.3.5 African Tax Administration Forum (ATAF)

The African Tax Administration Forum is a network of African tax administrations 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 EOI as a tool for domestic resource mobilisation. ATAF is an observer to the Global Forum and a partner of the Africa Initiative.

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"<sup>34</sup>. 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

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<sup>32</sup> <https://www.adb.org/publications/exchange-information-handbook>

<sup>33</sup> <https://web-archiver.oecd.org/temp/2024-03-18/617886-pacific-initiative.htm>

<sup>34</sup> [https://events.ataftax.org/index.php?page=documents&func=view&document\\_id=306](https://events.ataftax.org/index.php?page=documents&func=view&document_id=306)

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<sup>35</sup>
- Suggested Approach to Drafting Voluntary Disclosure Legislation<sup>36</sup>
- Automatic Exchange of Information IT Infrastructure Toolkit<sup>37</sup>
- Toolkit for Joining the African Tax Administration Forum Agreement on Mutual Assistance In Tax Matters<sup>38</sup>

Toolkit: for Simultaneous tax examination and Joint Audit<sup>39</sup> 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)<sup>40</sup>. This agreement aims to boost intra-African exchanges of information. The agreement came into force in September 2017.

### 1.3.6 The World Bank (WBG)

The World Bank is an Observer of the Global Forum since 2009 and participates as a Partner in all regional technical assistance initiatives: the Africa Initiative, the Punta del Este Declaration (the Latin America Initiative), the Pacific Initiative and the 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 World Bank offers assistance to countries that are not yet members of the Global Forum, helping them understand the benefits of administrative cooperation in tax matters and the responsibilities associated with the international tax 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 - Common Reporting Standard (CRS) or Foreign Account Tax Compliance Act (FATCA) (setting up strong information security management frameworks, reviewing and drafting legislation, training, effective use of information).

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<sup>35</sup> [https://web-archiver.oecd.org/tax/transparency/documents/EOI-Unit-toolkit\\_en.pdf](https://web-archiver.oecd.org/tax/transparency/documents/EOI-Unit-toolkit_en.pdf)

<sup>36</sup> [https://events.ataftax.org/index.php?page=documents&func=view&document\\_id=239](https://events.ataftax.org/index.php?page=documents&func=view&document_id=239)

<sup>37</sup> [https://events.ataftax.org/index.php?page=documents&func=view&document\\_id=284](https://events.ataftax.org/index.php?page=documents&func=view&document_id=284)

<sup>38</sup> [https://events.ataftax.org/index.php?page=documents&func=view&document\\_id=256](https://events.ataftax.org/index.php?page=documents&func=view&document_id=256)

<sup>39</sup> [https://events.ataftax.org/index.php?page=documents&func=view&document\\_id=283](https://events.ataftax.org/index.php?page=documents&func=view&document_id=283)

<sup>40</sup> [https://events.ataftax.org/index.php?page=documents&func=view&document\\_id=305](https://events.ataftax.org/index.php?page=documents&func=view&document_id=305)

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.

### 1.3.7 Other Organizations

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.<sup>41</sup>

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<sup>41</sup> 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](https://fiscaltransparency.net/wp-content/uploads/2021/07/Making-Tax-Work-Revised-for-June-21-comments_formatted_asof07July.pdf)

## **II: LIMITATIONS AND CHALLENGES IDENTIFIED BY JURISDICTIONS IN EFFORTS TO INCREASE TAX TRANSPARENCY**

Achieving tax transparency is a complex and challenging goal that involves increasing the availability of, access to, and exchange of relevant information to control and assess the tax practices of taxpayers. While good progress has been made in recent years, jurisdictions that have responded to the survey undertaken by the UN Tax Committee indicated several limitations and challenges regarding tax transparency.

This part comprises two chapters (chapter 2 and 3). Chapter 2 will address general limitations and challenges as noted by the participants in the UN Tax Committee work whilst chapter 3 will address those identified by jurisdictions that took part in the aforementioned survey.

### **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. For example, legislation in some jurisdictions may prohibit "nominee" ownership schemes, and when there is an individual holding property with the purpose of concealing the identity of the true owner or property the origin of which is found illegal, legislation may consider there is an independent crime committed by such individual; whereas other legislation may contemplate, regulate and even protect "nominee" ownership schemes.

#### **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 different 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.

### **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 transactions carried out through a legal entity or arrangement. There are countries that do not require legal entities or arrangements to disclose this information, or they allow legal entities or arrangements to obscure ownership through layers of legal structures registered in different jurisdictions.

The lack of beneficial ownership transparency makes it easy for legal entities or arrangements 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 FATF<sup>42</sup> recommendations, implementation remains inconsistent, particularly in jurisdictions that benefit economically from secrecy.

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<sup>42</sup> <https://www.fatf-gafi.org/en/topics/fatf-recommendations.html>

While the international tax transparency standards (both on request and automatic) and the FATF recommendations aim to improve beneficial ownership transparency, in practice challenges persist. 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 Investment hubs**

Some jurisdictions can be used to conceal income and assets, making it difficult for tax authorities to track and tax such activities. Such jurisdictions act as investment hubs, 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 investment hubs.

Investment hubs represent 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 legal entities or arrangements 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 legal entities and arrangements registered there.

Although some investment hubs have faced international pressure to reform, many continue to resist full transparency, offering legal structures and confidentiality protections that may be used to facilitate tax avoidance and evasion.

#### **2.5 Lack of Capacity and Resources**

Tax authorities in some developing countries may lack the skilled personnel, technological infrastructure, and financial resources necessary to effectively enforce and monitor tax transparency measures. These countries face limits on their ability to fully participate in global tax transparency efforts and to invest in or develop the capacity needed to meet increasing transparency requirements and require strong capacity-building support. 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 without external support and capacity-building efforts from development partners.

## **2.6 Resistance from taxpayers**

Efforts to increase tax transparency face various challenges, one of which is resistance from taxpayers themselves. Certain taxpayers 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. For example, automatic exchanges under the CRS require Financial Institutions to report information on financial accounts to tax authorities or exchange it with the tax authorities where they are resident. 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, countries implementing the OECD's Base Erosion and Profit Shifting (BEPS) recommendations require MNCs meeting the specified criteria 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 MNCs 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 taxpayers 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 tax avoidance, even if such activities are legal. In recent years, tax avoidance practices by MNCs 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.

## **CHAPTER 3: LIMITATIONS AND CHALLENGES IDENTIFIED BY JURISDICTIONS**

Participants in the work of the United Nations Committee of Experts on International Cooperation in Tax Matters (UNTC) 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 response to a questionnaire shared by the UNTC to garner feedback on the challenges faced in the implementation of international standards for the exchange of information for tax purposes, the jurisdictions reported 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.

Some of these challenges are unique to specific jurisdictions, while others stem from a general lack of awareness of the international standards on transparency and EOI and guidance available from international organisations active in the tax transparency arena. Part 3 of this guide highlights key solutions for addressing the challenges faced by jurisdictions in enhancing tax transparency and implementing the EOI standards. It also aims to improve awareness of the available guidance to support these efforts.

### **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 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 towards the peer review season.
- 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.

### **III: SUGGESTED SOLUTIONS TO IDENTIFIED LIMITATIONS AND CHALLENGES**

Efforts to ensure all countries benefit from increased global tax transparency face numerous challenges. These include concerns regarding the lack of political will to participate in global tax transparency frameworks, participation costs, legislative deficits that do not allow countries to effectively participate in EOI including through lack of appropriate access powers by tax authorities and legal basis for exchanging this information with other countries, use of complex corporate structures to conceal ownership and identity information and the risk of capital flight.

Overcoming the challenges associated with increasing tax transparency requires a multifaceted approach that addresses the concerns of governments and taxpayers. Broadly, several strategies can be employed to address these challenges. These include strong political commitment and allocation of adequate resources to participate in the global tax transparency work, 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 following 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 who responded to the survey by the UN Tax Committee.

## **CHAPTER 4: GENERAL SOLUTIONS**

### **4.1 Strengthening Global Cooperation**

Globalisation has made it easier for taxpayers to operate and move their financial assets and profits 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 their taxpayers held 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.

Lack of global cooperation could be a significant barrier to tax transparency. Different jurisdictions have varying tax laws, tax information disclosure rules, and enforcement capabilities, creating opportunities for tax evasion through regulatory arbitrage. One of the most effective ways to address this challenge is to strengthen global cooperation through international frameworks and agreements.

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 EOI, service of documents, measures of conservancy and cross-border assistance in the recovery of tax claims (CBAR).

#### **4.1.1 Exchange of Information for Tax Purposes**

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 and safeguard their tax systems.

#### 4.1.2 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”.<sup>43</sup> 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.

In the context of EOIR, all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality principle.

The standard of “foreseeable relevance” requires that at the time a request is made there is a reasonable possibility that the requested information will be relevant; whether the information, once provided, actually proves to be relevant is immaterial. A request may therefore not be declined in cases where a definite assessment of the pertinence of the information to an ongoing investigation can only be made following the receipt of the information. The competent authorities should consult in situations in which the foreseeable relevance of requested information is not clear to the requested jurisdiction. However, the requested jurisdiction is not obligated to provide information in response to requests that are “fishing expeditions”, i.e. speculative requests that have no apparent nexus to an open inquiry or investigation

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<sup>43</sup> For more information see Paragraphs 5, 5.1, 5.2 and 5.3 of the commentary to Article 26 of the OECD model of Tax Convention on Income and on Capital in OECD/ATAF (2020), Establishing and Running an Effective Exchange of Information Function: A joint Global Forum and ATAF Toolkit, OECD, Paris available at [https://www.oecd.org/tax/transparency/documents/EOI-Unit-toolkit\\_en.pdf](https://www.oecd.org/tax/transparency/documents/EOI-Unit-toolkit_en.pdf) and Paragraphs 7.2 to 7.5 of the commentary to Article 26 of the United Nations Model Double Taxation Convention between Developed and Developing Countries, [https://www.un.org/esa/ffd/wp-content/uploads/2018/05/MDT\\_2017.pdf](https://www.un.org/esa/ffd/wp-content/uploads/2018/05/MDT_2017.pdf)

The 2012 revision to Article 26 of the OECD Model Tax Convention on Income and on Capital further developed the interpretation of the standard of “foreseeable relevance”, notably spelling out the circumstances in which “group requests” meet the standard of “foreseeable relevance” and when they do not and adding new examples regarding foreseeable relevance. The group requests are EOI requests in relation to a group of taxpayers not individually identified but having common features and behaviours suspected of non-compliance with the requesting jurisdictions’ tax laws.

Article 26 of the United Nations Model Double Taxation Convention between Developed and Developing Countries also refers to the term “foreseeably relevant” and the commentary specifies that the standard of “foreseeably relevant” is intended to provide for exchange of information in tax matters to the widest possible extent. At the same time, it clarifies that Contracting States are not at liberty to engage in “fishing expeditions” or to request information about a particular taxpayer that is highly unlikely to be relevant to the tax affairs of that taxpayer.

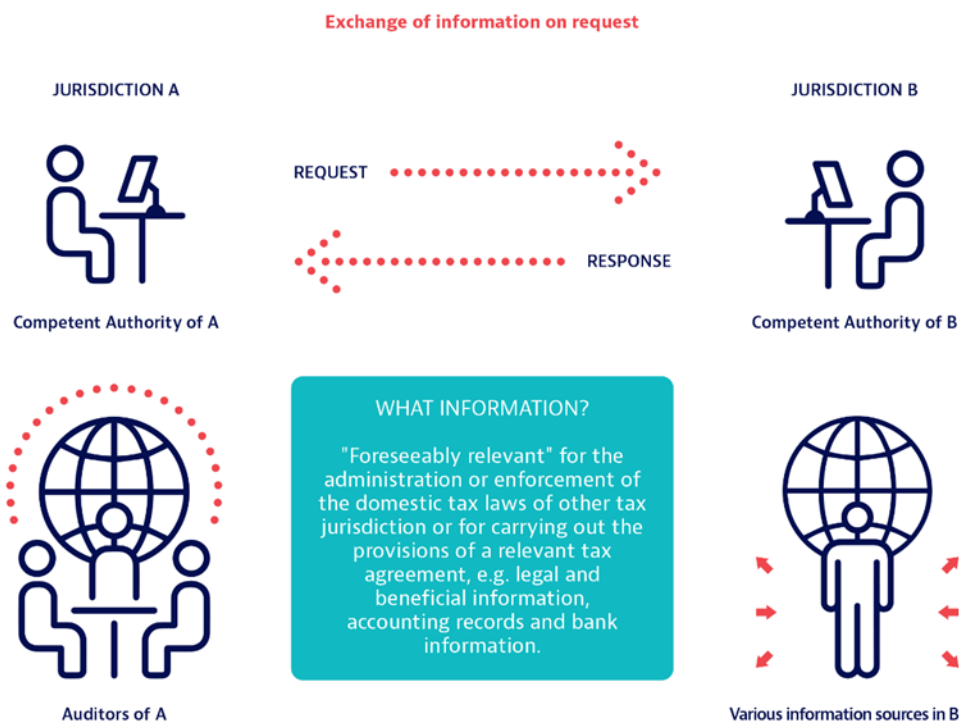
### ***Primary forms of exchange of information***

The main/primary forms of EOI are EOIR, AEOI and spontaneous EOI. Among all the forms of EOI, EOIR and AEOI under the Common Reporting Standard (CRS) and the Crypto-Asset Report Framework (CARF) have emerged as the three internationally agreed standards of tax transparency and EOI. The Global Forum is the international body monitoring and peer reviewing the implementation of these international standards.

#### *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 competent authority 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**



Source: OECD and ATAF (2020), *Establishing and Running an Effective Exchange of Information Function: A joint Global Forum and ATAF Toolkit*, OECD, Paris available at [https://www.oecd.org/tax/transparency/documents/EOI-Unit-toolkit\\_en.pdf](https://www.oecd.org/tax/transparency/documents/EOI-Unit-toolkit_en.pdf).

All members of the Global Forum are committed to implement the EOIR standard. In 2023, more than 125 jurisdictions reported using EOIR with over 28 900 requests for information sent to foreign tax authorities to support ongoing tax investigations.<sup>44</sup>

Compliance with the EOIR standard is evaluated through the Global Forum's peer review process, which assesses both the jurisdiction's legal and regulatory framework and its practical implementation. Implementing the EOIR standard requires each jurisdiction to respond effectively to requests they receive from their treaty partners.

The EOIR standard is built around three key requirements, namely:

- **ensuring the availability of ownership, accounting and banking information:** the EOIR standard requires that jurisdictions should ensure that ownership and identity information (including information on legal and beneficial owners) and accounting records (including underlying documentation such as invoices and contracts) for all

<sup>44</sup>OECD (2024), *15 Years: Promoting Transparency and Cooperation – 2024 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-2024.pdf>

relevant entities and arrangements, as well as banking information (including the legal and beneficial owners of bank accounts), is available to the tax authorities.

- **providing access to this information by the tax authorities:** the EOIR standard also requires that the tax authorities of a jurisdiction possess the legal authority to acquire ownership and identity information, accounting records and banking information that the standard requires to be available within the jurisdiction.
- **exchanging this information:** the EOIR standard requires that jurisdictions have an established international legal basis or mechanism, along with the necessary organisational structure, to facilitate the exchange of information with its treaty partners.

The three key requirements of the EOIR standard are further broken down into ten essential elements as enumerated in the Table 1.

**Table 1. The ten essential elements of the EOIR standard**

<b>Part or Element</b>	<b>Description</b>
<b>Part A. Availability of information</b>	Part A of the 2016 Terms of Reference requires jurisdictions to ensure that ownership, identity, accounting and banking information is available. Such information may be kept for tax, anti-money laundering, regulatory, commercial or other reasons. If such information is not kept or the information is not maintained for a reasonable period of time, a jurisdiction’s competent authority may not be able to obtain and provide it when requested. Not only should jurisdictions require that this information be maintained but also that it be kept for at least 5 years, even in cases where the relevant entity or legal arrangement has ceased to exist. Also, effective enforcement provisions to ensure the availability of information must be in place, including adequate monitoring for non-compliance, as well as sufficiently strong compulsory powers. These aspects are an inherent requirement under each of the elements in Part A.
<b>Element A.1. Availability of ownership and identity information</b>	Jurisdictions should ensure that ownership and identity information, including information on the legal and beneficial owners, for all relevant legal persons and arrangements (companies, partnerships, trusts and foundations) is available to their competent authorities. Where jurisdictions permit the issuance of bearer shares, there should be appropriate mechanisms in place that allow the owners of such shares to be identified.
<b>Element A.2. Availability of accounting information</b>	Jurisdictions should ensure that reliable accounting records, including underlying documentation are kept for all relevant entities and arrangements. The accounting records should (i) correctly explain all transactions, (ii) enable the financial position of the Entity or Arrangement to be determined with reasonable accuracy at any time and (iii) allow financial statements to be prepared. Such accounting records should further include underlying documentation, such as invoices, contracts, etc. and should reflect details of (i) all sums of money received and

	expended and the matters in respect of which the receipt and expenditure takes place; (ii) all sales and purchases and other transactions; and (iii) the assets and liabilities of the relevant entity or arrangement.
<b>Element A.3. Availability of banking information</b>	Banking information should include all records pertaining to the accounts as well as to the related financial and transactional information, including information regarding the legal and beneficial owners of the accounts.
<b>Part B. Access to information</b>	Part B of the 2016 Terms of Reference requires jurisdictions to ensure that the competent authority has access to ownership and identity information, including legal and beneficial ownership information for all legal entities and arrangements, accounting records and banking information. It also requires that the rights and safeguards available in the jurisdiction are compatible with effective EOI.
<b>Element B.1. Power to obtain and provide information</b>	Competent authorities should have the power to obtain and provide information that is subject of an EOI request from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information (e.g. bank secrecy or corporate secrecy)).  It also requires that the competent authorities should have powers to obtain the information even in situations where it does not need the information for its own tax purposes (e.g. information should be obtained whether or not it relates to a taxpayer that is currently under examination by the requested jurisdiction).
<b>Element B.2. Rights and safeguards should be compatible with EOI.</b>	The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective EOI.
<b>Part C. Exchange of information</b>	Part C of the 2016 Terms of Reference requires jurisdictions to have a network of EOI mechanisms that is adequate in their particular circumstances.
<b>Element C.1. EOI mechanisms should provide for effective EOI.</b>	The Jurisdiction's EOI mechanisms should: allow for EOIR where it is foreseeable relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction <ul style="list-style-type: none"> <li>● provide for EOI in respect of all persons</li> <li>● not permit the requested jurisdiction to decline to supply information because it is held by a financial institution or a person acting in an agency or fiduciary capacity</li> <li>● allow EOI regardless of domestic tax interest</li> <li>● not apply dual criminality principles to restrict EOI</li> <li>● provide for EOI in both civil and criminal domestic tax matters</li> <li>● allow for the provision of information in the specific form requested</li> <li>● be in force.</li> </ul>

<b>Element C.2. EOI networks should cover all relevant partners.</b>	The jurisdictions' network of EOI mechanisms should cover all relevant partners (jurisdictions who are interested in entering into an information exchange arrangement).
<b>Element C.3. EOI mechanisms should have provisions to ensure the confidentiality of information.</b>	The jurisdictions' mechanisms for EOI should have adequate provisions to ensure the confidentiality of information received. Information received should be treated as confidential and may be disclosed only to persons or authorities concerned with the assessment or collection of, or the determination of appeals in relation to, the taxes covered by the EOI clause. Background information and other information related to the EOI request should be treated as confidential.
<b>Element C.4. EOI mechanisms should respect the rights and safeguards of taxpayers and third parties</b>	Requested jurisdictions should not be obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or information which is the subject of attorney client privilege or information the disclosure of which would be contrary to public policy.
<b>Element C.5. The jurisdiction should request and provide information in an effective manner.</b>	Jurisdictions should be able to respond to requests within 90 days of receipt by providing the information requested or providing an update on the status of the request, and have appropriate organisational processes and resources in place to ensure quality of requests and quality and timeliness of responses. EOI assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions.

Source: OECD (2016), *2016 Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information on Request for Tax Purposes*, Global Forum on Transparency and Exchange of Information for Tax Purposes, <https://www.oecd.org/tax/transparency/documents/terms-of-reference.pdf>.

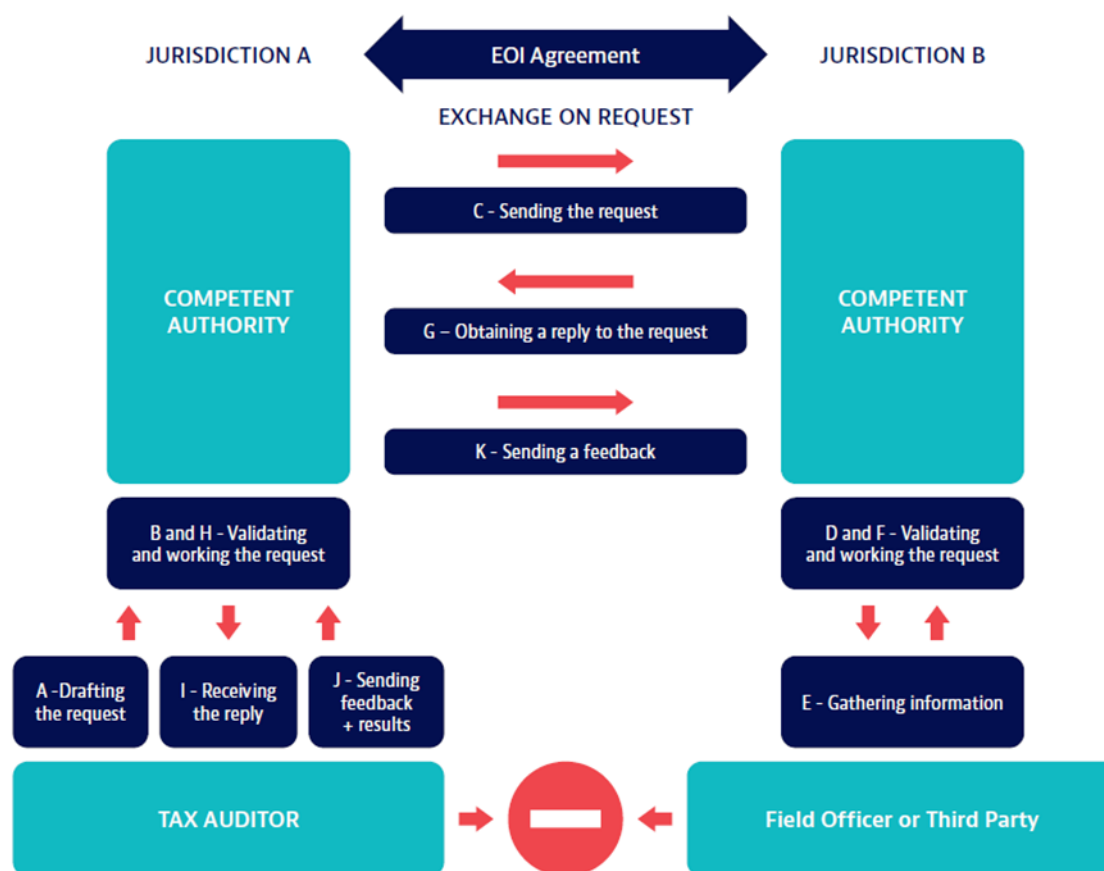
As illustrated by Table 1 the scope of information that can be exchanged under the EOIR standard is broad and diverse. It includes, but is not limited to, income data, bank details, transfer pricing information, and ownership records. The exchanged material may encompass tax returns, bank statements, accounting records, contracts, diagrams, invoices, and correspondence. This information can be in paper or in electronic format and may be sourced directly from tax authorities (like tax returns and tax payments) or from third parties, such as taxpayers, employers, financial institutions, companies, foundations, or trusts.

**Annex A** contains a list of practical guidance on the implementation of the EOIR standard that have been developed by institutions including the Global Forum, the African Development Bank, the World Bank Group, the ATAF and CIAT.

In the realm of EOIR, a jurisdiction can engage in two primary activities: sending or receiving a request for information.

A jurisdiction that intends to send an EOI request under the EOIR standard should take into account the following critical steps illustrated in Figure 2 that are further elaborated in the EOI manual.

**Figure 2. Sending a request for information**



Source: OECD, AfDB and WBG (2021), *Model Manual on Exchange of Information for Tax Purposes*, Op cit.

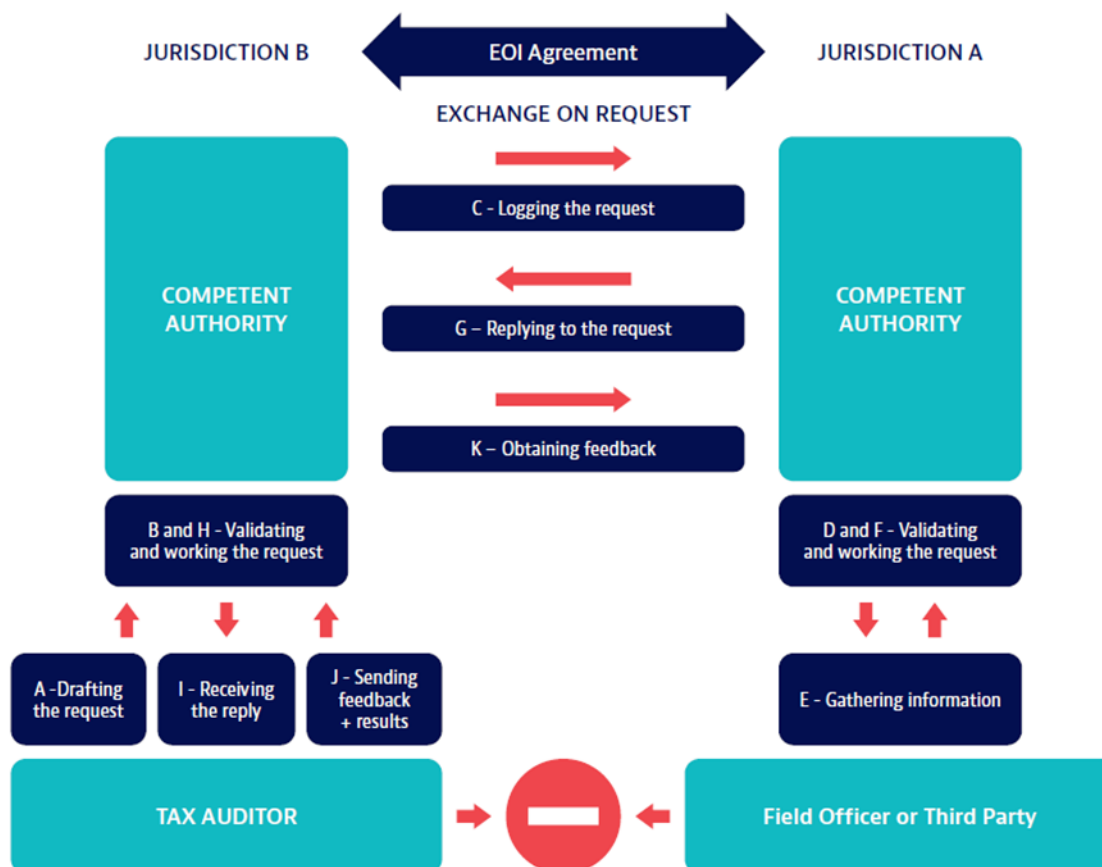
The main steps include:

- **Drafting the EOI request (step A):** the tax auditor that has identified the need for information from another jurisdiction drafts a request for information that is validated by his/her manager before being sent to the CA office (the EOI unit).
- **Validating and working the outgoing request (Step B):** the EOI unit manager or the assigned EOI officer reviews the draft request prepared by the tax auditor. This preliminary check ensures the request adheres to necessary requirements, such as the existence of a legal basis (under an EOI agreement) with the jurisdiction from whom the information is to be requested, ensuring the clarity and specificity of the request and its “foreseeably relevant” nature.
- **Sending the request (Step C):** after review, refinement and validation by the EOI unit, the CA sends out the information request along with any supporting documents. The EOI unit then monitors the progress of this request.

- **Obtaining a reply to the request (steps G and H):** the EOI unit manages the communication with the foreign jurisdiction to obtain a response to its request. On receiving a response, the EOI unit compares the information provided against the initial request.
- **Receiving the reply (Step I):** the EOI unit sends the reply to the tax auditor who requested the information.
- **Sending feedback and results (Step J):** the tax auditor provides feedback on the adequacy and completeness of the information provided to the EOI unit. If the response is insufficient or incomplete, the EOI unit will communicate with the foreign CA to require a complete response.
- **Providing feedback (Step K):** the EOI unit provides feedback on the usefulness of the information received to the requested jurisdiction. Additionally, if the tax auditor indicates that the received information could have broader applications beyond tax purposes, the CA could seek authorisation from the CA of the requested jurisdiction for wider use.

Figure 3 illustrates the steps followed when a CA receives a request for information from another jurisdiction.

**Figure 3. Receiving a request for information**





The main steps involved in responding to the request include the following:

- **Logging the incoming request (Step C):** Upon receiving an information request, the EOI unit manager assigns an EOI officer to handle the case. This officer logs the request and promptly acknowledges its receipt to the foreign CA.
- **Validating the incoming request (Step D):** The EOI officer assesses the validity and completeness of the request. This involves verifying the legal basis (including whether there is a legal instrument to facilitate the exchange between the two jurisdictions and whether the taxes and period to which the request relate are covered by the legal instrument), ensuring a valid signature from the requesting CA, assessing whether its foreseeably relevant and reviewing the content of the request for clarity and relevance.
- **Processing the incoming request (Steps E and F):** If the request is deemed valid, the EOI officer collaborates with local tax auditors, field officers, or third parties, as required, to gather the requested information. During this stage, the officer must consider whether the jurisdiction's laws require prior notification to the person(s) concerned with the request or the information holder. Notably, the EOIR standard allows for an exception from prior notification, especially in urgent cases or when notification could jeopardise the investigation of the requesting jurisdiction.
- **Responding to the incoming request (Step G):** After collecting the necessary information, the EOI officer compiles and drafts a response, which is validated by the EOI unit manager, before dispatch to the requesting CA. This response should be comprehensive, accurate, and timely.

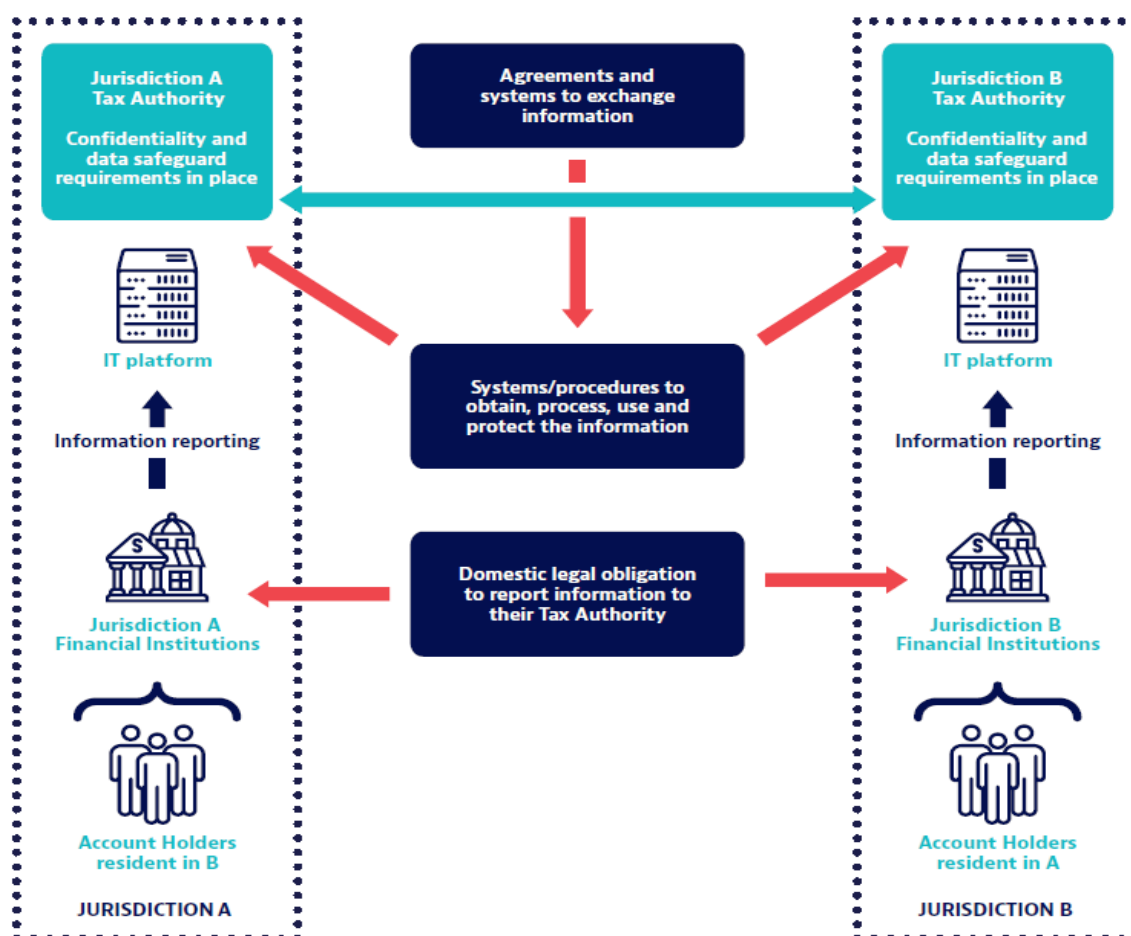
## *B. Automatic exchange of information*

### *i) Automatic exchange of information under the Common Reporting Standard*

Automatic exchange of financial account information 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,<sup>45</sup> Country-by-Country Reporting<sup>46</sup> and the Crypto-Asset Reporting Framework (CARF). However, this sub-section focuses on the automatic exchange of financial account information under the Common Reporting Standard (CRS)<sup>47</sup> as illustrated by Figure 4.

**Figure 4. 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](https://www.oecd.org/tax/transparency/documents/aeoi-implementation-toolkit_en.pdf)

The AEOI standard was developed in 2014 by the OECD in collaboration with G20 countries and adopted by the Global Forum as one of the international standards for EOI. It mandates the annual, automatic exchange of information on financial accounts held on residents (both individuals and entities) of foreign jurisdictions under a CRS.

<sup>45</sup> 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>

<sup>46</sup> More information about Country-by-Country Reporting is available at [www.oecd.org/tax/beps/beps-actions/action13/](http://www.oecd.org/tax/beps/beps-actions/action13/)

<sup>47</sup> More information about AEOI under the CRS is available at [www.oecd.org/tax/automatic-exchange/](http://www.oecd.org/tax/automatic-exchange/)

As of 4 February 2025, 127 jurisdictions (including 52 developing countries) are committed to start their first automatic exchanges by 2027.<sup>48</sup> Already, 111 jurisdictions (including 38 developing countries) have already automatically exchanged financial account information.

Information on over 134 million financial accounts was exchanged automatically in 2023, covering total assets of almost EUR 12 trillion. In this context, developing countries received information on over 40 million financial accounts covering assets of nearly EUR 2.7 trillion in 2023. The information received constitutes almost three times the number of financial accounts developing countries provided, and almost four times the total values exchanged<sup>49</sup>

Implementation of the CRS requires the participating jurisdiction to collect the information each year from their financial institutions (which include, amongst others, banks, hedge funds and investment trusts) and to automatically exchange it, at a pre-defined date (usually September of each year), with the jurisdictions where the account holder is tax resident (provided the jurisdiction has in place the necessary framework to keep the information confidential and properly safeguarded). CRS is therefore built on three key components:

- a domestic legal framework that requires financial institutions to collect and report the information
- exchange agreements between all interested appropriate partners (those interested in receiving information and that meet the required standards in relation to confidentiality and data safeguards). In order to implement the Standard, a Competent Authority Agreement is required to activate and operationalise the CRS relationship between jurisdictions, and which specifies what information will be exchanged and when<sup>50</sup>
- systems and processes for the information to be reported and exchanged effectively in practice, including to ensure compliance by Financial Institutions.

The information that should be collected and automatically exchanged under CRS includes:

- **Account holder or controlling person (i.e. beneficial owner) details:** name, address, tax residency, Tax Identification Number (TIN), date and place of birth.
- **Financial account details:** account number, financial institution name, and identification number (e.g., GIIN).

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<sup>48</sup> Status of CRS Commitments available at available <https://web-archive.oecd.org/tax/transparency/documents/aeoi-commitments.pdf>.

<sup>49</sup> OECD (2024), *15 Years: Promoting Transparency and Cooperation – 2024 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-2024.pdf>.

<sup>50</sup> More information on the CRS-MCAA is available at <https://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/>

- **Financial information relating to the account:** account balance or value, account closure details, and payments made to the account (interest, dividends, proceeds from financial assets, etc.).

CRS equips tax authorities with extensive information on residents' foreign-held wealth, aiding in detecting unreported financial accounts and enforcing domestic tax regulations. This tool enhances domestic resource mobilisation through various strategies:

- **Pre-exchange phase:** Jurisdictions can introduce a Voluntary Disclosure Programme (VDP) as part of their implementation strategy (see Box 5). VDPs offer taxpayers a chance to regularise undeclared assets and income under favourable terms, such as reduced penalties and protection from prosecution, before the start of data exchanges. VDPs can effectively increase voluntary compliance and revenue collection with minimal administrative resources.
- **Post-exchange phase:** Once jurisdictions start receiving financial account data, this information becomes instrumental in tax audits, investigations, and compliance activities. The first use of CRS-data by a tax authority is to check whether the CRS-data received is correctly reported by the taxpayers in their tax returns (e.g. account balance or income to be reported in an income or wealth tax return). To address discrepancies in tax returns, tax authorities employ various direct follow-up procedures with taxpayers. These include sending nudge letters, which alert taxpayers to potential undeclared offshore income or assets and invite corrections to tax returns. Discrepancy letters inform individuals of possible errors in their returns, offering a limited time to respond before an assessment is made. Additionally, tax audits are conducted, either as desk audits where specific documentation is requested via mail, or as on-site audits performed at the taxpayer's premises. The CRS and EOIR standards complement and reinforce each other. The wealth of financial account data received can uncover potential non-compliance cases, leading to further inquiries under the EOIR standard. Group requests, as per EOIR guidelines, may also be based on data received via CRS. In Latin America, in 2022 only, two countries identified EUR 68 million of revenue using CRS-data.<sup>51</sup>

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<sup>51</sup> OECD (2023), *Tax Transparency in Latin America 2023: Punta del Este Declaration Progress Report*, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD, Paris, <https://www.oecd.org/tax/transparency/documents/tax-transparency-in-latin-america-2023.pdf>.

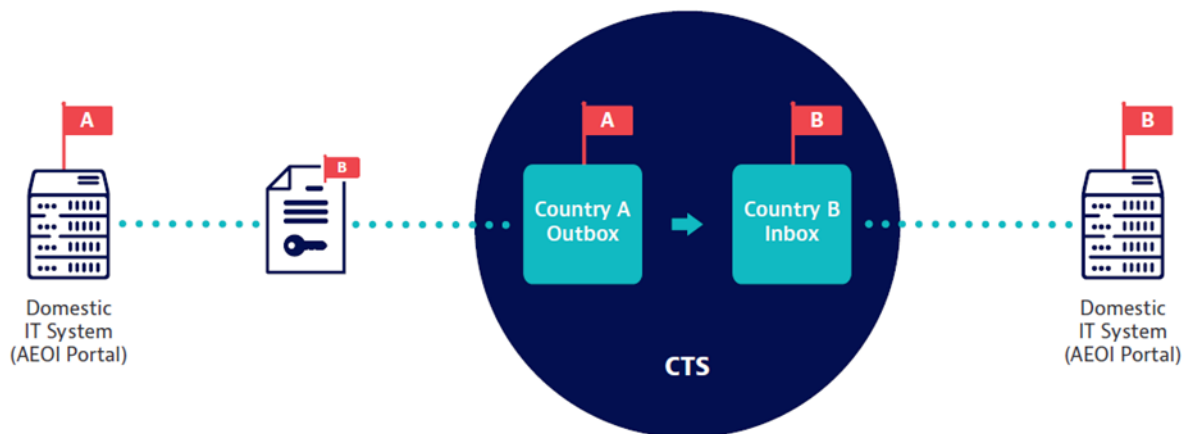
### Box 5. voluntary disclosure programme prior to first automatic exchange of financial account information under the Common Reporting Standard

Prior to its first CRS-AEOI exchanges in September 2017, South Africa launched a Special Voluntary Disclosure Programme which ran from 1 October 2016 to 31 August 2017. EUR 1.7 billion (USD 1.8 billion) worth of foreign assets were disclosed and the revenues gained amounted to EUR 280 million (USD 296 million). These are assets that were previously hidden offshore by non-compliant taxpayers that will continue to contribute to tax revenue generation in the future. As on 30 April 2019, the Nigeria’s “Voluntary Assets and Income Declaration Scheme”, which ran from 1 July 2017 to 30 June 2019, helped the tax administration collect nearly EUR 153 million (USD 162 million) of additional revenue.

Source: OECD, AUC and ATAF (2022), *Tax Transparency in Africa 2022: Africa Initiative Progress Report*, Global Forum on Transparency and Exchange of Information for Tax Purpose - <https://www.oecd.org/tax/transparency/documents/tax-transparency-in-africa-2022.pdf>

CRS exchanges involve the transfer of substantial volumes of financial account data in an electronic format. This process demands sophisticated and complex procedures, blending advanced technical solutions with manual processes. To effectively manage CRS, tax authorities need to develop robust administrative and IT capabilities. These capabilities are essential to: (i) receive the information gathered by financial institutions, (ii) process and prepare the data for transmission to treaty partners, and (iii) facilitate the actual data exchange.

**Figure 5. How jurisdictions link to the Common Transmission System**



Note: Jurisdictions are able to link their domestic AEOI portals to the CTS using an SFTP or API function. In such cases, their AEOI portal will prepare a specific file for its partner jurisdiction, encrypt this file, before it is transmitted through the CTS to the exchange partner. If the receiving jurisdiction has also linked its systems to the AEOI portal, it will be able to receive the encrypted file directly. The system therefore permits end-to-end transmission without needing to directly access the CTS.

Source: OECD (2021), *Toolkit for the Implementation of the Standard for Automatic Exchange of Financial Account Information*, op cit.

To support these processes, jurisdictions typically develop a specialised IT solution or "IT platform." This platform is designed to handle all aspects of both domestic reporting and international exchange. For the transmission and reception of CRS-data, jurisdictions utilise the Common Transmission System (CTS) platform (see Figure 5). Additionally, a standardised

IT format, known as the CRS XML schema, along with its accompanying user guide, is available. These tools aid in the electronic preparation, filing, and exchange of data, ensuring that the CRS processes are efficient, secure, and compliant with international standards.

Jurisdictions committed to the CRS undergo peer reviews by the Global Forum, which employs a staged approach to monitor implementation, providing technical assistance where needed. Prior to commencing reciprocal exchanges under the CRS standard, a jurisdiction must undergo a confidentiality and data safeguards assessment by the Global Forum. This review ensures that the jurisdiction adheres to the required standards of confidentiality and data safeguarding.

To date 94 jurisdictions have undergone a confidentiality and data safeguards assessment (CDS) by the Global Forum and have been cleared for reciprocal exchanges. Only 13 jurisdictions committed to reciprocal exchange that have undergone a CDS assessment have received recommendations to be addressed before they are cleared for reciprocal exchanges. Of these 7 are currently undergoing a post-exchange CDS assessment to enable them send and receive information under the CRS. A further 13 jurisdictions engage in non-reciprocal CRS exchanges as they do not wish to receive data. Finally, 10 jurisdictions committed to first exchanges have not yet undergone CDS assessments as they are planned taking into account the year of first exchanges.

Moreover, meeting the CDS requirements does not appear to be the primary obstacle for engaging in AEOI. A Preliminary Maturity Assessment (PMA) initiative, launched by the Global Forum Secretariat at the 2023 Global Forum Plenary meeting, delivered promising outcomes.<sup>52</sup> It sought to provide jurisdictions with a high-level appraisal of their current ISM frameworks and their overall standing vis-à-vis the CDS requirements of the AEOI standards, as well as a pathway for the implementation of all other AEOI requisites. Offered to 38 developing country members not already engaged in the ISM capacity-building activities, 21 of them, mainly from the African continent and comprising mostly Least Developed Countries and Lower-Middle Income countries, agreed to undergo the PMA. The participating jurisdictions were provided with a comprehensive report covering their strength and areas of improvement in ISM, as well as a realistic action plan to implement AEOI. In all cases, AEOI implementation was considered viable within a two to three year time span. 2027 was recommended as the start year in the vast majority of cases (19 out of 21), including through secure perimeters, where the shortcomings appeared more extensive (with 2028 or 2029 being

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<sup>52</sup> OECD (2024), *Preliminary Maturity Assessments: A 2024 Initiative to Catalyse Developing Countries' Participation in Automatic Exchange of Information*, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD, Paris, <https://www.oecd.org/tax/transparency/documents/preliminary-maturity-assessments-developing-countries-automatic-exchange-of-information.pdf>.

suggested as alternative possibilities in three cases). 2026 was recommended as the start year in two cases. Already twelve of the participating jurisdictions agreed to move to the next phases of this AEOI capacity-building project, which includes a more in-depth analysis through dedicated virtual sessions, and an onsite visit if needed, to validate the findings of the high-level appraisal, and develop of an action plan to address any gaps along with the related technical support from the Global Forum Secretariat.<sup>53</sup>

**Annex B** contains a list of practical guidance on the implementation of the CRS developed by institutions including the Global Forum and ATAF.

*ii.) 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 OECD, working with G20 countries, has developed the CARF<sup>54</sup>, 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 domestic legal framework that requires Reporting Crypto-Asset Service Providers to collect and report the information;
- a Multilateral Competent Authority Agreement on Automatic Exchange of Information pursuant to the CARF and related Commentary (or bilateral agreements or arrangements); and
- 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, 65 jurisdictions (including 14 developing countries) have committed to start CARF exchanges by 2027 or 2028. To date 49 jurisdictions are signatory to the CARF Multilateral Competent Authority Agreement (CARF MCAA).<sup>55</sup>

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<sup>53</sup> OECD (2024), *15 Years: Promoting Transparency and Cooperation – 2024 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-2024.pdf>.

<sup>54</sup> 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>.

<sup>55</sup> Signatories to the CARF MCAA is available at <https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/tax-transparency-and-international-co-operation/carf-mcaa-signatories.pdf>



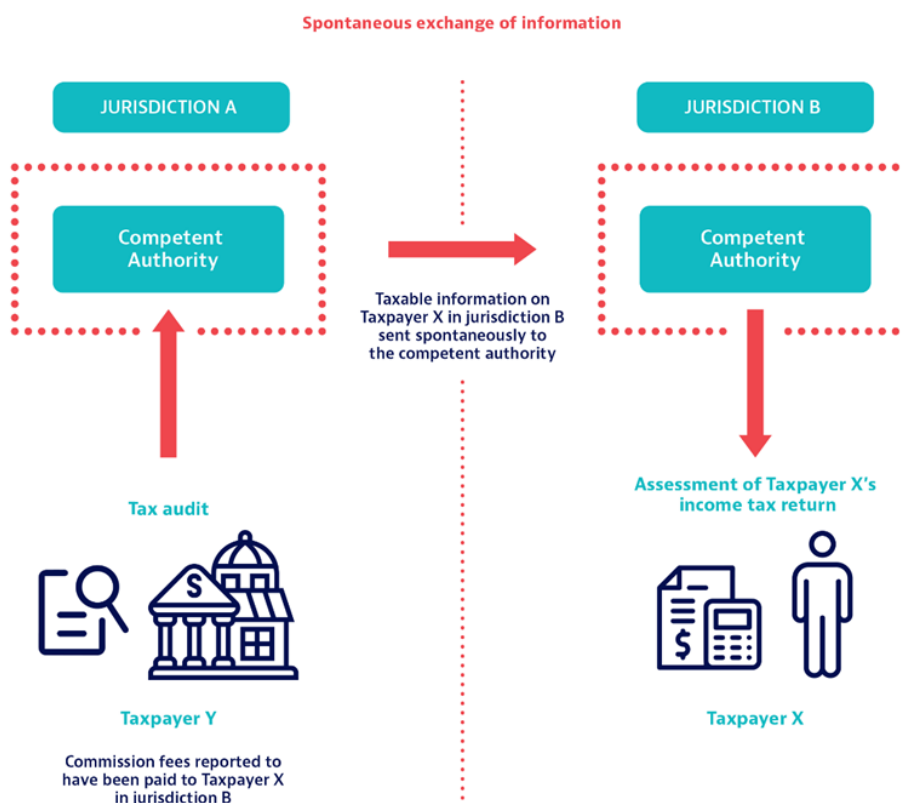
**Annex C** contains a list of practical guidance on the implementation of the CARF developed by institutions including the Global Forum and the OECD.

### *C. 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 (see Figure 6). 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.

**Annex D** contains a list of practical guidance on the implementation of spontaneous exchange of information.

**Figure 6. 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.

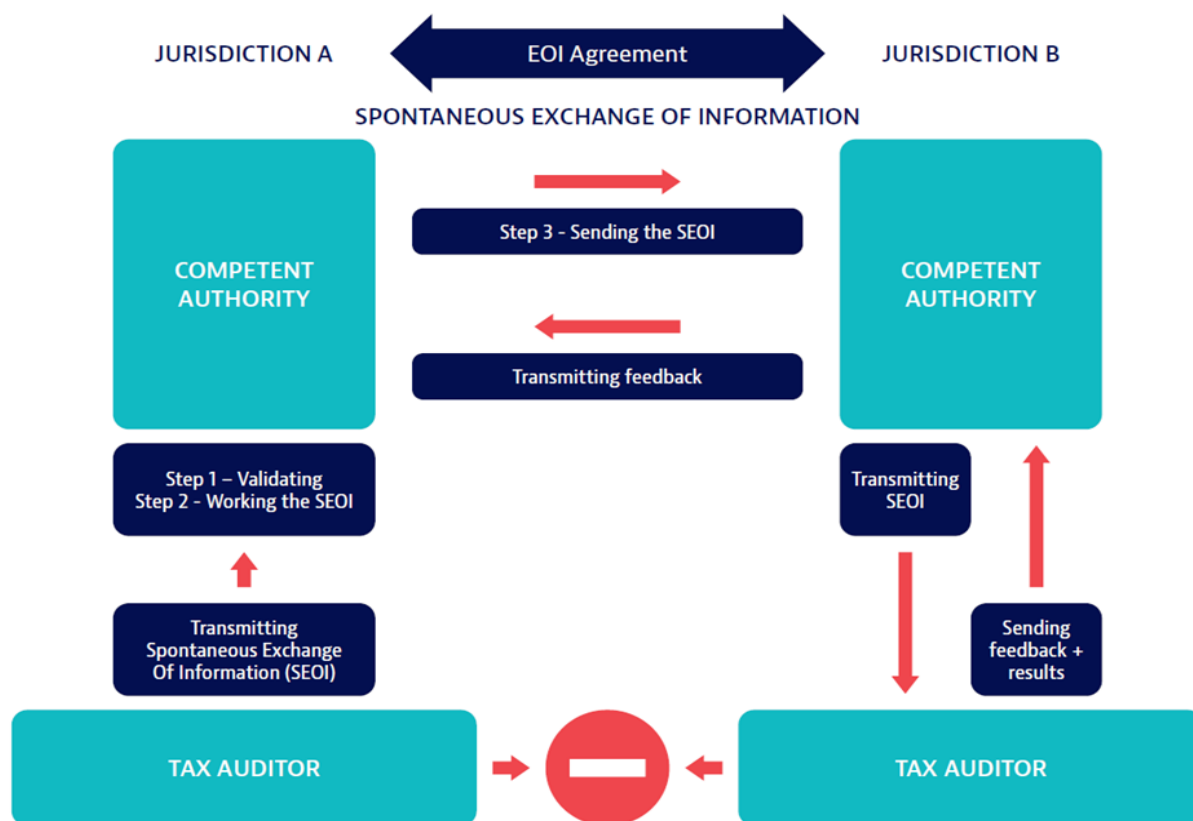
Several scenarios can trigger the initiation of SEOI. These include (but are not limited to):

- Suspected tax losses: instances where there is suspicion that significant tax revenue losses might be occurring in another jurisdiction.
- Use of low-tax intermediaries: concerns about the utilisation of intermediary countries with low taxation to reduce overall tax burdens.
- Undeclared payments: payments made to residents in another jurisdiction that are suspected of not being declared.
- Artificial profit transfers: suspicions that tax savings are being achieved through artificial transfers of profits within companies.
- Disguised commercial transactions: cases where the true nature of commercial transactions might be masked to exploit favourable tax regimes.
- Tax avoidance or evasion schemes: Situations where there is a likelihood of specific tax avoidance or evasion schemes being used by taxpayers.

The effectiveness of information provided spontaneously is often high, as it originates from details identified and selected by tax officials in the sending jurisdiction during audits or other tax investigations. However, the success of SEOI largely hinges on the proactive engagement of officials in the supplying jurisdiction. These officials should be vigilant and ready to share with their CA information that could be beneficial to a treaty partner.

To bolster the effectiveness of SEOI, tax authorities should consider implementing strategies to encourage and facilitate its usage. This could include training for tax auditors to heighten awareness about the importance and potential impact of SEOI. Additionally, signing MoUs or similar agreements can be instrumental in promoting and streamlining the process of spontaneous information exchange. The processes involved in sending a SEOI are illustrated by Figure 7.

**Figure 7. Sending a spontaneous exchange of information**



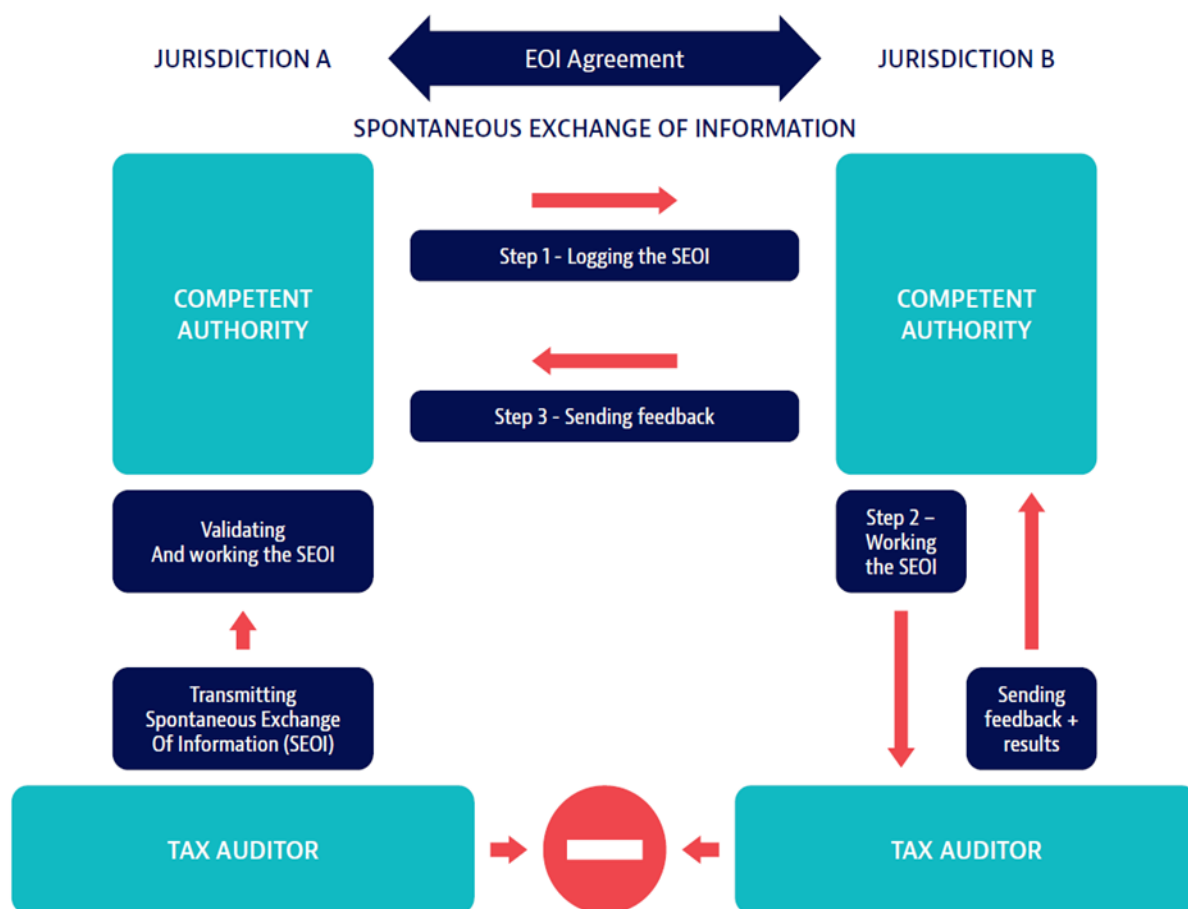
Source: OECD, AfDB and WBG (2021), *Model Manual on Exchange of Information for Tax Purposes*, op cit.

The procedure for initiating a SEOI typically involves the following key steps:

- **Validating the SEOI (Step 1):** The process begins when a tax auditor comes across information potentially relevant to foreign tax authorities. Once this information reaches the EOI unit, an EOI officer assesses its relevance and verifies if there is a legal foundation for initiating the exchange. This step is crucial to ensure that the information is not only pertinent but also compliant with international standards for information exchange.
- **Processing the outgoing SEOI (Step 2):** After validating the SEOI, the EOI officer records the information in the EOI unit's systems and prepares the details of the SEOI. This preparation involves organising the information in a manner that is clear, concise, and useful for the receiving jurisdiction, ensuring that it meets the required standards for spontaneous information exchange.
- **Dispatching the SEOI (Step 3):** Finally, the compiled SEOI is sent from the CA of the sending jurisdiction to the CA of the foreign jurisdiction. This step marks the active exchange of information, initiated without a specific request, but based on the sending jurisdiction's assessment of the information's potential relevance to the receiving jurisdiction.

Figure 8 illustrates the processes involved in receiving a SEOI and managing the information received.

**Figure 8. Receiving a spontaneous exchange of information**



Source: OECD, AfDB and WBG (2021), Model Manual on Exchange of Information for Tax Purposes, *op cit*.

The process for handling a SEOI when received by a jurisdiction involves several steps:

- **Logging the incoming SEOI (Step 1):** Upon receipt of a SEOI, the CA of the receiving jurisdiction records it in their EOI systems. An EOI unit manager or an assigned EOI officer then evaluates the spontaneous information to determine its potential usefulness. This initial assessment is key to understanding the relevance and applicability of the information in the context of the receiving jurisdiction.
- **Processing the SEOI (Step 2):** After logging, the SEOI is forwarded to the relevant local tax office. Here, tax officials conduct a more detailed analysis of the information's relevance and determine the appropriate course of action. This may include measures to

ensure compliance with domestic tax laws or provisions of DTCs, depending on the nature of the information received.

- **Providing feedback (Step 3):** An essential component of the SEOI process is the feedback loop between the CAs. The receiving CA should communicate back to the supplying CA regarding the utility of the information. This includes whether the information contributed to the identification and/or recovery of additional tax revenues, or if it led to the imposition of penalties or sanctions. Regular and comprehensive feedback is crucial as it fosters continuous improvement in the quality of future SEOI exchanges.

#### 4.1.3 Other forms of EOI

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.

**Annex E** contains a list of practical guidance on the implementation of other forms of EOI including simultaneous tax examinations, tax examinations abroad and industry-wide exchanges.

##### *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.

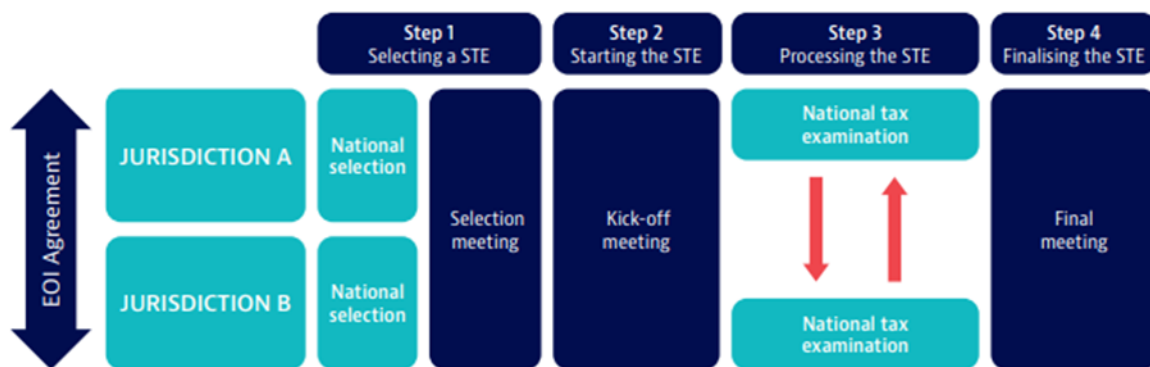
STEs may be used to coordinate tax authorities' approach to tackling complex tax matters that transcend their borders in the following scenarios:

- **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.

The STE process involves several steps as illustrated by Figure 9.

**Figure 9. Using simultaneous tax examination**



Source: OECD, AfDB and WBG (2021), *Model Manual on Exchange of Information for Tax Purposes*, op cit.

The process involved is as follows:

- **Step 1 - Considering an STE:** Tax auditors must draft an STE proposal and obtain managerial approval. This step is initiated when collaboration with foreign jurisdictions is necessary to fully understand a taxpayer's tax liabilities.
- **Step 2 - Coordinating with the foreign jurisdictions:** Prior to a selection meeting, the tax auditor gathers and analyses relevant information. This meeting, coordinated by the CA, determines the appropriateness of launching an STE.
- **Step 3 - Starting the STE:** The kick-off meeting focuses on developing the examination project, exchanging information, and discussing strategy. Preliminary findings and project plans are presented here.
- **Step 4 - Processing domestic tax audits:** Tax auditors conduct audits within their jurisdictions, following domestic procedures. Throughout the STE, auditors maintain interim contacts and exchange information through their respective CAs as agreed upon in the kick-off meeting.

- **Step 5 - Finalising the STE:** This final stage includes a concluding meeting, the production of a final report, and a results indicators document.

#### *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.

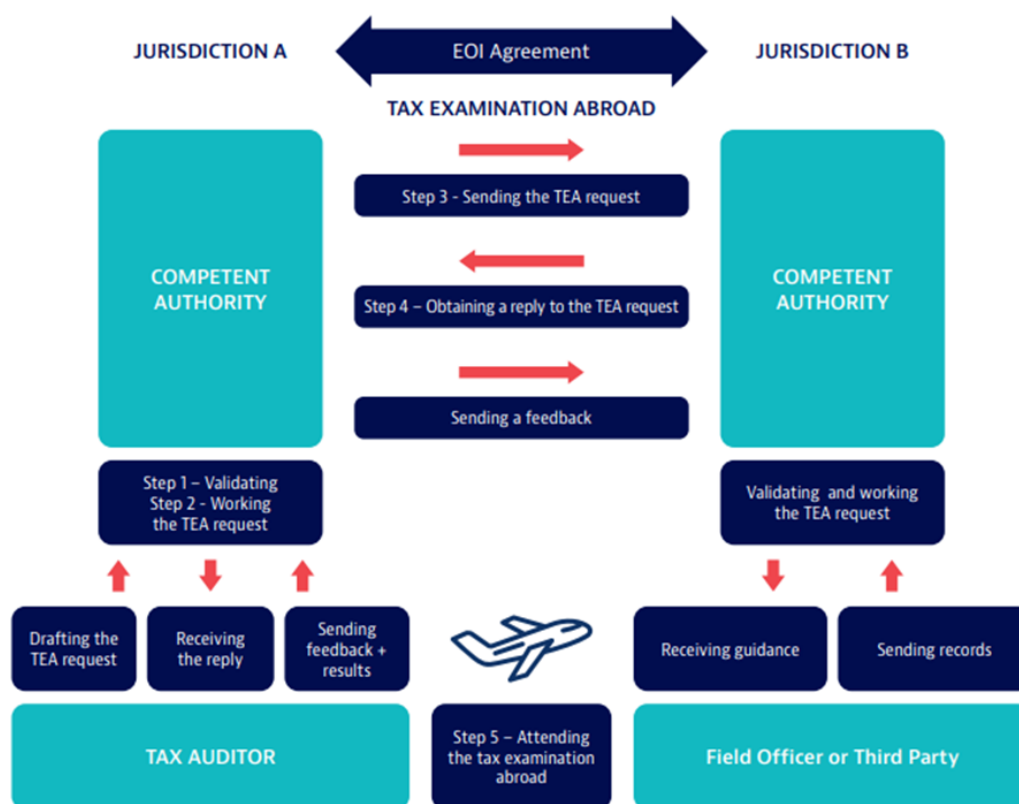
When implementing a TEA, tax authorities have two primary modes of foreign official involvement:

- **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.

Sending a request for a TEA involves a five-step process as illustrated by Figure 10.

**Figure 10. Sending a request for a tax examination abroad**



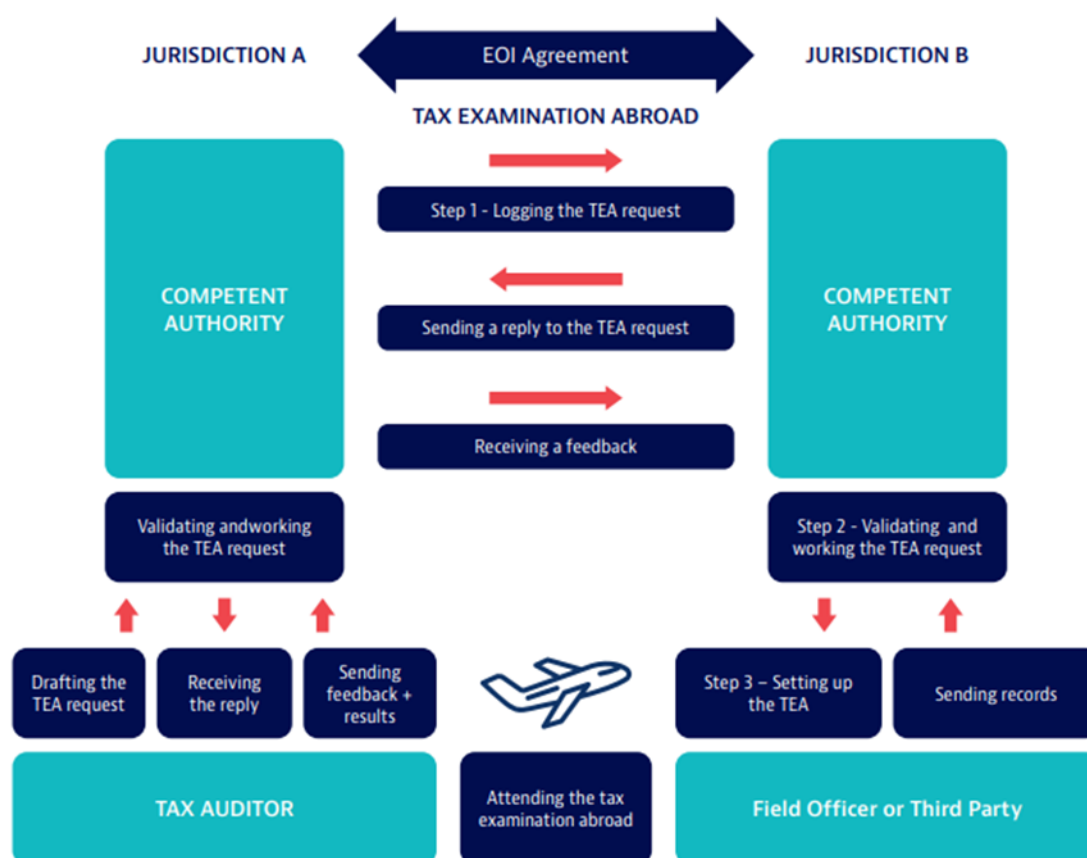
Source: OECD, AfDB and WBG (2021), *Model Manual on Exchange of Information for Tax Purposes*, op cit.

In summary the five main steps are:

- **Step 1 - Exhausting domestic means:** Tax auditors should first utilise all domestic resources, including databases, access powers, and public sources before contemplating a TEA.
- **Step 2 - Drafting the TEA request:** the tax auditors of the sending jurisdiction should verify the existence of a legal basis for the TEA between the two jurisdictions before drafting the request.
- **Step 3 - Submitting the TEA request:** After managerial approval, the request is forwarded to the EOI unit for review by the CA and transmission to the foreign CA.
- **Step 4 - Obtaining a reply to the TEA request:** The decision rests with the CA of the requested jurisdiction. The EOI unit will notify the tax auditor of the decision and provide details if the request is accepted.
- **Step 5 - Attending the TEA:** The tax auditor participates as per the stipulations of the foreign jurisdiction, later providing records and result indicators to the EOI unit.

Handling an incoming TEA request should also follow a structured approach illustrated by Figure 11.

**Figure 11. Receiving a request for a tax examination abroad**



Source: OECD, AfDB and WBG (2021), *Model Manual on Exchange of Information for Tax Purposes*, op cit.

The main steps followed by CA of a requested jurisdiction are:

- **Step 1 - Assignment and arrangement:** The incoming TEA request is logged and assigned to a local unit, determining logistical and procedural details.
- **Step 2 - Initiating the TEA:** After finalising arrangements, the local tax official, now with CA status, conducts the TEA, adhering to the agreed procedures with the foreign auditor.
- **Step 3 - Concluding the TEA:** Post-examination, the tax official prepares and labels copies of the collected records and drafts a cover letter to accompany the information provided to the foreign auditor.

### 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 (see Paragraph 26 of the Commentary on Article



26 of the UN Model Tax Convention and Paragraph 9.1 of the Commentary on Article 26 of the OECD Model Tax Convention).

#### 4.1.4 Exchange of information and the Base Erosion and Profit Shifting Project

Domestic tax base erosion and profit shifting (BEPS) due to multinational enterprises exploiting gaps and mismatches between different countries' tax systems affects all countries. However, BEPS is of major significance for developing countries due to their heavy reliance on corporate income tax, particularly from multinational enterprises. In 2015, the OECD and G20 countries, under the OECD/G20 BEPS Project, delivered 15 Actions to tackle BEPS (BEPS package).<sup>56</sup> In 2016, the OECD/G20 Inclusive Framework on BEPS<sup>57</sup> was established to implement the BEPS package.

The BEPS package has four minimum standards which all members of the Inclusive Framework have committed to implement and to be peer reviewed in order to ensure timely and accurate implementation and thus safeguard the level playing field. These include Action 5, Action 6, Action 13 and Action 14. Of these, two are aimed at improving tax transparency through EOI: Action 5 on the exchange of tax rulings and Action 13 on the exchange of Country-by-Country Reports.

##### *A. The mandatory spontaneous exchange on tax rulings*

BEPS Action 5: titled "Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance,"<sup>58</sup> is centred on increasing transparency and ensuring tax certainty. One of the key provisions of Action 5 is the mandatory spontaneous EOI on taxpayer-specific tax rulings. This exchange is obligatory in scenarios where it is presumed that information relevant to one jurisdiction will also be of interest to another, particularly in cases where the absence of such an exchange could lead to BEPS concerns. Tax rulings, as defined by BEPS Action 5, include any guidance, information, or commitment provided by a tax authority to a specific taxpayer or group of taxpayers about their tax situation, which they can rely upon. The primary goals of these tax rulings are to clarify how relevant laws and administrative practices apply to specific taxpayers or transactions, identify taxpayers subject to these laws and practices, and establish a framework for efficient compliance for both taxpayers and tax authorities.

The monitoring and peer review process for the implementation of BEPS Action 5 is conducted by the OECD Forum on Harmful Tax Practices (FHTP). This process follows a defined Terms

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<sup>56</sup> More information on the BEPS Package is available at <https://www.oecd.org/tax/beps/beps-actions/>.

<sup>57</sup> More information on the BEPS IF can be found at <https://www.oecd.org/tax/beps/>

<sup>58</sup> More information on BEPS Action 5 is available at <https://www.oecd.org/tax/beps/beps-actions/action5/>.

of Reference (ToR) and Methodology<sup>59</sup>. In February 2021, the OECD released updated ToR and Methodology<sup>60</sup> for the Action 5 peer reviews covering the years 2021-2025, as approved by the Inclusive Framework on BEPS. This ongoing review process ensures that jurisdictions adhere to the agreed standards and effectively contribute to the global effort against harmful tax practices.

In principle, tax rulings serve as a crucial tool in providing clarity and certainty to both taxpayers and the government. These rulings are agreements that specifically detail how tax law and administrative practices apply to certain taxpayers or particular transactions. They also clarify the tax implications of planned transactions. Unlike broad, published guidance, tax rulings are customised to the unique circumstances of the requesting taxpayer. This personalised approach aims at reducing the likelihood of disputes arising post-filing between taxpayers and authorities, thereby diminishing the need for judicial intervention

However, lack of transparency on tax rulings issued by jurisdictions can lead to BEPS. This is the case for instance, if jurisdictions have no knowledge or information on the tax treatment of a taxpayer in a specific jurisdiction and that tax treatment affects the transactions or arrangements undertaken with a related taxpayer resident in their jurisdiction. Therefore, the availability of timely and targeted information, which was agreed and included in a template contained in Annex C of the BEPS Action 5 Report, is essential to enable tax authorities to quickly identify risk areas.<sup>61</sup>

### ***B. Automatic exchange of Country-by-Country Reports***

BEPS Action 13,<sup>62</sup> focusing on Transfer Pricing Documentation and Country-by-Country Reporting, establishes a three-tiered standard for transfer pricing documentation, which includes:

- Master File: This document provides high-level information about a Multinational Enterprise's (MNE) global operations and transfer pricing policies. It encompasses important agreements, intangibles, and significant transactions.

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<sup>59</sup> OECD (2017), *BEPS Action 5 on Harmful Tax Practices – Terms of Reference and Methodology for the Conduct of the Peer Reviews of the Action 5 Transparency Framework*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. [www.oecd.org/tax/beps/beps-action-5-harmful-tax-practices-peer-review-transparencyframework.pdf](http://www.oecd.org/tax/beps/beps-action-5-harmful-tax-practices-peer-review-transparencyframework.pdf)

<sup>60</sup> OECD (2021), *BEPS Action 5 on Harmful Tax Practices – Transparency Framework: Peer Review Documents*, OECD, Paris, <https://www.oecd.org/tax/beps/beps-action-5-harmfultax-practices-peer-review-transparency-framework.pdf>

<sup>61</sup> OECD (2017), *BEPS Action 5 on Harmful Tax Practices – Terms of Reference and Methodology for the Conduct of the Peer Reviews of the Action 5 Transparency Framework*, op cit.

<sup>62</sup> More information on BEPS Action 13 is available at <https://www.oecd.org/tax/beps/beps-actions/action13/>.

- **Local File:** Tailored to individual countries, this file contains a detailed transfer pricing analysis of transactions between associated enterprises across different countries, significant in the context of the local tax system.
- **Country-by-Country Report:** This report, required for each jurisdiction where the MNE operates, includes comprehensive details such as revenue, pre-tax profit or loss, taxes paid and accrued, employment figures, stated capital, retained earnings, and tangible assets.

Under BEPS Action 13, the CbC Report is the only mandatory element. The Master and Local Files, while not mandatory at the international level, are recommended as they offer valuable supplementary information. When these documents are incorporated into a country's domestic legislation, the respective tax authorities have the authority to request them.

Large MNEs, particularly those with consolidated group revenues exceeding EUR 750 million in the previous fiscal year, are mandated to prepare a CbC report. This report, filed by the Ultimate Parent Entity (UPE) of the MNE group, is automatically exchanged with tax authorities in jurisdictions where the MNE operates. It is a critical tool for high-level transfer pricing and other BEPS risk assessments. The CbC report contains detailed information, including revenue, pre-tax profit or loss, taxes paid and accrued, capital, earnings, employee count, and tangible assets for each tax jurisdiction. It also identifies each constituent entity within the MNE group, detailing their jurisdiction of tax residence and main business activities.

CbC reports are invaluable in detecting transfer pricing and other BEPS-related risks. They enable tax authorities to gain insights into how local entities fit within the broader MNE group and to allocate resources towards higher-risk taxpayers. However, while these reports can inform risk assessments, they should not be used as a basis for proposing income adjustments using a formulaic approach. The exchange of CbC reports between jurisdictions follows either a reciprocal or a non-reciprocal pattern. In a reciprocal exchange, jurisdictions mutually share CbC reports, whereas in a non-reciprocal exchange, only one party sends the report without receiving a corresponding report in return.

A jurisdiction that has passed the CDS assessment by the Global Forum for the purposes of AEOI is deemed to have in place the requisite confidentiality and data safeguard framework for participating in CbC Reporting. The actual exchange of CbC reports is predominantly conducted in an electronic format, necessitating robust IT capabilities. This is due to the substantial volume of data contained within these reports. To facilitate these exchanges, jurisdictions often employ the CTS used by jurisdictions for the CRS.

### ***C. GloBE Information Return (Pillar Two)***

The GloBE Model Rules provide for the development of a standardised GloBE Information Return (GIR)<sup>63</sup>. The GIR is a comprehensive return that contains the information on the tax calculations made by the MNE Group to determine their Top-up Tax liability or to justify the absence of such a liability.

The GIR is structured into a general section applicable to the Multinational Enterprise (MNE) Group as a whole, and multiple jurisdictional sections for each operating jurisdiction, based on a uniform template. In the general section, the MNE Group provides overall information about itself, identifies the filing entity, and describes its corporate structure. This section also includes a summary table offering a high-level view of how the GloBE Rules apply across various jurisdictions.

For each jurisdiction, the jurisdictional sections follow a set template. Initial information is required for jurisdictions where certain safe harbours and exclusions are applicable. In jurisdictions without these safe harbours and exclusions, the MNE Group reports its effective tax rate calculations, any necessary Top-up Tax computations, and the allocation of any Top-up Tax.

As the content of the GIR and the dissemination approach are now outlined, the filing requirements and the appropriate mechanisms to allow tax administrations to automatically exchange GloBE information collected will be finalised in the future, including a framework of Qualifying (bilateral or multilateral) Competent Authority Agreements and IT-solutions to support the exchange of information, in particular a dedicated XML schema.

#### **4.1.5 Legal foundations for exchange of information for tax purposes**

EOI, like other forms of mutual administrative assistance in tax matters, must be anchored in an international legal instrument providing a legal basis for such cooperation with the tax authorities of foreign jurisdictions. It must also be supported by an enabling domestic legal framework which requires the availability of and access to the information to be exchanged, and which safeguards the confidentiality of the exchanged information.

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<sup>63</sup> OECD (2023), *Tax Challenges Arising from the Digitalisation of the Economy – GloBE Information Return (Pillar Two)*, OECD/G20 Inclusive Framework on BEPS, OECD, Paris, [www.oecd.org/tax/beps/globe-information-return-pillar-two.pdf](http://www.oecd.org/tax/beps/globe-information-return-pillar-two.pdf)

### *A. International legal framework for exchange of information*

An international legal basis for EOI may take several forms. These include bilateral DTCs, bilateral tax information exchange agreements (TIEAs), regional multilateral agreements or instruments providing for EOI tailored to specific geographic or economic groups or global multilateral instruments with a provision for EOI.

The EOI agreement outlines the extent of administrative cooperation, encompassing several key aspects:

- the types of taxes included under the agreement.
- the categories of persons subject to the agreement.
- the specific time periods applicable.
- the various forms of information exchange covered.
- provisions regarding confidentiality and secrecy of the information exchanged during mutual administrative assistance.
- the conditions governing its coming into force.

EOI is only possible when the international agreement is in force. For this reason, the EOI agreement usually includes a clause specifying its effective date, marking when the terms of the EOI agreement become operational for the concerned jurisdictions. It is not uncommon for certain clauses within the EOI instruments to have a staggered effect, coming into play at a later date than the overall agreement's activation. Therefore, it is crucial for authorities to thoroughly understand the specific clauses and effective dates within the EOI agreement when planning or engaging in EOI activities.

**Annex I** contains a comparative table of the key international and regional instruments for exchange of information and mutual assistance in tax matters.

#### *I. Double Taxation Conventions*

DTCs are bilateral agreements established between two jurisdictions to prevent the double taxation and allocate taxing rights between the contracting jurisdictions. DTCs usually incorporate an EOI article modelled on Article 26 of either the OECD Model Tax Convention on Income and on Capital<sup>64</sup> or the UN Model Double Taxation Convention.<sup>65</sup>

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<sup>64</sup> OECD (2017), Model Tax Convention on Income and on Capital: Condensed Version 2017, OECD Publishing, Paris, [https://doi.org/10.1787/mtc\\_cond-2017-en](https://doi.org/10.1787/mtc_cond-2017-en).

<sup>65</sup> United Nations (2017) Model Double Taxation Convention, [www.un.org/esa/ffd/wp-content/uploads/2018/05/MDT\\_2017.pdf](http://www.un.org/esa/ffd/wp-content/uploads/2018/05/MDT_2017.pdf)

The EOI clause is usually designed to encompass all types of taxes and is applicable to all persons, regardless of their nationality or tax residency status, aligning with international standards. However, it's important to note that some older DTCs might have limitations regarding the range of taxes or persons covered, or they may not include provisions for the use of information for non-tax purposes (see Chapter 5, section 5.2 below).

A DTC may facilitate various forms of EOI, including EOIR, AEOI, SEOI, TEA, and STEs. However, to operationalise certain EOI modes, particularly AEOI, a competent authority agreement or a memorandum of understanding (MoU) might be required. The extent of EOI forms permitted under a DTC can be further defined or limited by additional agreements such as an MOU, a protocol, an exchange of letters, or similar arrangements.

## *II. Tax Information Exchange Agreements*

A TIEA solely focuses on EOI and does not allocate taxing rights between the contracting states. These agreements are primarily modelled on the 2002 OECD Model Agreement on Exchange of Information on Tax Matters.<sup>66</sup> While TIEAs predominantly facilitate EOIR, they can also encompass other forms of EOI like SEOI and AEOI. This broader scope is usually achievable through additional protocols or similar agreements, enhancing the flexibility and effectiveness of TIEAs in international tax cooperation. The 2015 Model Protocol<sup>67</sup> extended TIEAs to provide for the possibility of SEOI and AEOI. In general, TIEAs generally encompass at least direct taxes and are applicable to all persons, regardless of nationality or tax residency.

One notable feature of TIEAs is their differing applicability to various tax matters. For criminal tax matters, TIEAs often allow for EOI for tax periods prior to the agreement's enforcement. In contrast, for other tax matters, the exchange typically pertains to periods following the agreement's activation.

## *III. The Convention on Mutual Administrative Assistance in Tax Matters*

An international legal basis for EOI may also be provided by a global multilateral agreement that is open for participation by all jurisdictions. The Convention on Mutual Administrative Assistance in Tax Matters (MAAC) is a comprehensive multilateral instrument providing for various forms of tax cooperation to tackle tax evasion and avoidance. The MAAC was developed jointly by the OECD and the Council of Europe in 1988 and amended by a Protocol

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<sup>66</sup> OECD (2002), Agreement on Exchange of Information in Tax Matters, OECD Publishing, Paris, <https://doi.org/10.1787/9789264034853-en>

<sup>67</sup> OECD (2015), *Model protocol for the purpose of allowing the automatic and spontaneous exchange of information under a TIEA*, available at [www.oecd.org/ctp/exchange-of-tax-information/Model-Protocol-TIEA.pdf](http://www.oecd.org/ctp/exchange-of-tax-information/Model-Protocol-TIEA.pdf)

in 2010 to make it open to all jurisdictions. As of 4 February 2025, 149 jurisdictions (including 73 developing countries) are participating to the MAAC. Additionally, the MAAC is in force for 142 jurisdictions (including 67 developing countries).<sup>68</sup>

The MAAC includes all forms of EOI, service of documents, measure of conservancy and cross-border assistance in the recovery of tax claims (CBAR). However, some countries have reserved their right to participate in forms beyond current EOI standards.<sup>69</sup> Also for certain forms of EOI, notably AEOI, the implementation may require a competent authority agreement or a similar arrangement. It is applicable to all individuals, regardless of their nationality or tax residency status, and it addresses a broad spectrum of taxes, excluding customs duties. It comprehensively covers taxes on income, profits, capital gains (when imposed separately from income or profits taxes), and net wealth, without the option for reservations. However, for other types of taxes, jurisdictions may make reservations.

The MAAC's scope in civil tax matters is generally forward-looking, applicable to future tax periods. In contrast, for criminal tax matters, it typically takes effect from the date of its entry into force for a party, covering earlier taxable periods or tax charges. Nonetheless, a party may declare a reservation to limit this retroactive effect, restricting it to taxable periods starting from the fourth year preceding the convention's enforcement.<sup>70</sup>

**ANNEX F** outlines the practical guidance for joining the convention on mutual administrative assistance in tax matters for jurisdictions that are yet to join.

#### *IV. Regional agreements or instruments*

A jurisdiction may also participate in EOI on the basis of regional agreements for mutual administrative assistance in tax matters that also provide for EOI. These agreements are often tailored to meet specific regional needs and economic alliances. Notable examples include:

- the African Tax Administration Forum Agreement on Mutual Administrative Assistance in Tax Matters (ATAF AMATM)<sup>71</sup> that provides various forms of international cooperation in tax matters for African signatory countries.

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<sup>68</sup> Status of jurisdictions participating in the MAAC is available at [www.oecd.org/ctp/exchange-of-tax-information/Status\\_of\\_convention.pdf](http://www.oecd.org/ctp/exchange-of-tax-information/Status_of_convention.pdf).

<sup>69</sup> 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](http://www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=127&codeNature=0). A synoptic table of reservations made under the MAAC by countries is also available on demand from the Global Forum Secretariat.

<sup>70</sup> Additional information on the provisions of the MAAC and the list of declarations or reservations made by participating jurisdictions is available at <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=208>

<sup>71</sup> ATAF Agreement on Mutual Administrative Assistance in Tax Matters is available at: [https://events.ataftax.org/includes/preview.php?file\\_id=46&language=en\\_US](https://events.ataftax.org/includes/preview.php?file_id=46&language=en_US).



- the Andean Community Income and Capital Tax Convention (Andean Community Decision 578)<sup>72</sup> which focuses on preventing double taxation and fiscal evasion and also includes provisions on tax cooperation among member countries.
- the Caribbean Community (CARICOM) Double Taxation Treaty<sup>73</sup> which aims to prevent double taxation and fiscal evasion within the CARICOM member states but also provides for mutual administrative assistance in tax matters.
- the Supplementary Act A/SA.3/07/23 on Mutual Administrative Assistance in Tax Matters between ECOWAS Member States which provides for EOI, among other forms of mutual administrative assistance, amongst the ECOWAS member states.
- the Southern Africa Development Community Agreement on Assistance in Tax Matters (SADC Agreement) which provides for EOIR, AEOI and SEOI between the SADC member states.<sup>74</sup>
- the European Union (EU) Council Directive Council Directive 2011/16/EU<sup>75</sup> providing for mutual assistance among EU Member States.
- the Nordic Mutual Assistance Convention on Mutual Administrative Assistance in tax Matters<sup>76</sup> which to facilitate administrative cooperation in tax matters among the Nordic countries.

### ***B. Domestic legal framework for exchange of information***

An enabling domestic legal and regulatory framework is essential for the operation of the international legal framework facilitating EOI. Incorporating the principles of international tax treaties into domestic legislation is a critical step in establishing an effective framework for EOI. Practical guidelines for this incorporation are as follows:

- **General provisions for compliance with treaty obligations:** to ensure adherence to treaty obligations, it is essential to embed specific provisions within domestic laws. These provisions must clarify that the stipulations of tax treaties override any conflicting domestic legal clauses. This can be achieved either through direct legislative action or through judicial interpretation. By doing so, a clear legal precedence is established, ensuring that international commitments are upheld within the domestic legal framework. The domestic legal framework should also require that information

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<sup>72</sup> The 2004 Andean Community Income and Capital Tax Convention (English Translation) is available at <http://internationaltaxtreaty.com/download/bolivia/dtc/Andean%20Community-DTC-May-2004.pdf>

<sup>73</sup> More information available at <https://caricom.org/treaties/double-taxation-agreement/>.

<sup>74</sup> The SADC is a Regional Economic Community comprising 16 Member States: Angola, Botswana, Comoros, Democratic Republic of Congo, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, United Republic of Tanzania, Zambia and Zimbabwe.

<sup>75</sup> More information available at <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32011L0016>

<sup>76</sup> [to obtain official link] available at <https://www.yumpu.com/en/document/view/46018014/nordic-convention-on-mutual-assistance-in-tax-matters>.



exchanged under tax treaties is kept confidential (as discussed in the next section) and only used for intended purposes.

- **Availability of the required information:** the different forms of EOI require the availability of information specific to that form of EOI. The domestic legal framework should ensure that this information is maintained and available to the CA for exchange with other jurisdictions.
- **Record-keeping obligations:** Effective EOI relies heavily on the availability of accurate, adequate and up to date information required by the international tax transparency standards. Domestic legislation must therefore require the availability of this information, dependent on the form of EOI as well as outline sanctions for non-compliance, underscoring the importance of diligent record-keeping and ensuring accountability. According to the EOIR standard, not only should jurisdictions require that this information be maintained but also that it be kept for at least five years, even in cases where the relevant entity or legal arrangement has ceased to exist.
- **Access powers for authorities:** To facilitate effective information gathering, tax authorities should be granted compulsory access powers. This includes the ability to obtain necessary information notwithstanding domestic secrecy laws, which are not included as exceptions provided by the tax transparency standards to the obligation to provide the information), any claims for banking secrecy by banking institutions or legal professional privilege by attorneys,<sup>77</sup> or irrespective of the absence of a direct domestic tax interest in the information required for exchange. The legislation should delineate when legal professional privilege may be claimed. It should also articulate clear penalties for persons that fail to comply with information requests, thus reinforcing the tax authority's capacity to gather required information.

#### 4.1.6 Confidentiality of treaty-exchanged information

Protecting the confidentiality of tax information, particularly information exchanged under international treaties, is a key requirement of the international standards for EOI. Domestic

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<sup>77</sup> The EOIR standard requires that competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). In the context of EOIR, legal professional privilege may only be claimed in communications between an attorney and client specifically limited to confidential communications produced in the context of obtaining legal advice or for legal proceedings. Moreover, other professions other than lawyers, such as accountants and tax advisors, cannot claim legal professional privilege to frustrate the exchange of information under the EOIR standard.

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 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.

**Annex G** contains practical guidance on establishing appropriate confidentiality and data safeguards frameworks for EOI.

#### 4.1.7 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 OECD, working with G20 countries, has developed the CARF<sup>78</sup>, 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.

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<sup>78</sup> 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>.

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).

At its 2022 Plenary Meeting, the Global Forum recognised the potential benefits of the CARF to address a key emerging risk to tax revenues and to transparency and EOI posed by the growth in the crypto-asset sector. The Global Forum also welcomed an invitation from the G20 to build upon its commitment and monitoring processes to ensure the widespread implementation of the CARF by relevant jurisdictions. Upon the finalisation of the CARF, the Global Forum established its CARF Group and, at its 2023 Plenary Meeting, the Global Forum called on the CARF Group to finalise the CARF commitment process by its 2024 Plenary Meeting.

In 2023, 59 jurisdictions signed a joint statement on the implementation of the CARF announcing 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).<sup>79</sup>

In the wave of the 2024 Plenary meeting of the Global Forum held in November 2024<sup>80</sup>, 65 jurisdictions made a political commitment to implement the CARF in time to commence exchanges in 2027, or 2028 at the latest, including the vast majority of significant crypto centres.<sup>81</sup> The commitment includes putting in place the appropriate domestic and international legal frameworks to implement the CARF, as well as the technical solutions for the exchanges.

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<sup>79</sup> 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>.

<sup>80</sup> The Statement of Outcomes of the 17<sup>th</sup> Global Forum Plenary Meeting is available at <https://web-archive.oecd.org/tax/transparency/documents/2024-global-forum-plenary-meeting-outcomes.pdf>

<sup>81</sup> The list of jurisdictions committed to implement the CARF in time to commence exchanges in 2027 or 2028 as part of the Global Forum's CARF commitment process is available at <https://web-archive.oecd.org/tax/transparency/documents/commitments-carf.pdf>.

To facilitate the implementation of the CARF, the Multilateral Competent Authority Agreement on the Crypto-Asset Reporting Framework (CARF MCAA). To date, 49 jurisdictions have signed the CARF MCAA.<sup>82</sup>

#### 4.1.8 Monitoring and Peer Review Processes

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.<sup>83</sup> With respect to the AEOI standards, the Global Forum has already reviewed the domestic and international legal frameworks in place for the CRS, with first results having been published at the end of 2020<sup>84</sup> and updated annually.<sup>85</sup> In 2022 the Global Forum published the first results of its initial peer reviews of the effectiveness in practice of the implementation of the CRS, 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

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<sup>82</sup> The signatories to the CARF MCAA is available at <https://web-archive.oecd.org/tax/transparency/documents/signatories-carf-mcaa.pdf>

<sup>83</sup> 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](https://www.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-peer-reviews_2219469x).

<sup>84</sup> OECD (2020), *Peer Review of the Automatic Exchange of Financial Account Information 2020*, OECD Publishing, Paris, <https://doi.org/10.1787/175eef4-en>

<sup>85</sup> See OECD (2023), *Peer Review of the Automatic Exchange of Financial Account Information 2023 Update*, OECD Publishing, Paris, <https://doi.org/10.1787/5c9f58ae-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.

## **4.2 Improving Beneficial Ownership Transparency**

Complex corporate structures and shell companies make it difficult for tax authorities to identify the real owners of income or assets and track financial flows, which hinders efforts to increase transparency. Establishing centralized registers of beneficial ownership is crucial for improving tax transparency. These registers should require the disclosure of the natural persons who ultimately control or benefit from a legal entity or arrangement. To be effective, information from beneficial ownership registries should be accessible to competent authorities (tax authorities), other law enforcement authorities such as financial intelligence units and AML-obliged persons (persons required by anti-money laundering laws to undertake customer due diligence or know your customer procedures before onboarding a customer or undertaking an occasional transaction). The results of Global Forum peer reviews of the implementation of the EOIR standard show that jurisdictions with discrepancy reporting (i.e. jurisdictions in which other persons, such as AML-obliged persons are mandated to compare the information on the beneficial owners of their clients or customers that they acquire as a result of the customer due diligence or know your customer requirements with the information contained in the register of beneficial owners) may lead to better quality of information contained in the central registers.

There must be strong verification mechanisms to ensure the accuracy of the information provided. And this information should be periodically updated to ensure it provides up-to-date information on the beneficial owners of legal entities and arrangements. Countries should also enact and enforce strict penalties for non-compliance with beneficial ownership reporting requirements, ensuring that non-compliant legal entities and arrangements face consequences for failing to provide information on their beneficial owners.

Countries may also decide to make public limited information from beneficial ownership registries, considering that the release of certain information may breach rights and safeguards in place in relation to privacy and data protection.

Since 2016, the EOIR standard requires the availability of beneficial ownership of legal persons and arrangements in the jurisdiction. However, 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 financing.

#### **Box 4. A regional improvement of transparency of beneficial ownership information<sup>86</sup>**

Under the Fiscal Transition Support Programme in West Africa funded by the European Union, the Global Forum on Transparency and Exchange of Information for Tax Purposes, the Economic Community of West African States (ECOWAS) and the West African Economic and Monetary Union (UEMOA) commissions have been actively collaborating.

A notable outcome of this collaboration is Directive C/DIR.2/07/23 on the harmonisation of rules on beneficial ownership of legal entities within ECOWAS Member States adopted by the ECOWAS Council of Ministers and the Conference of Heads of State and Government of ECOWAS in 2023. This Directive shall be transposed in the domestic legislations of 15 West African countries by 1 January 2027. It would enable the identification of the individuals who ultimately own or control a legal person or a legal arrangement such as a trust. The Directive imposes strict obligations to identify beneficial owners and requires the establishment of a register, kept by the national authorities, containing the identity of beneficial owners. Timely access to the information contained in the register by all relevant domestic authorities is also ensured.

### **4.3 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 detect patterns of tax avoidance or evasion. In addition, these countries can be supported through technical assistance and financial support to improve their tax systems. Part 4 of this guide contains foundational and practical guidance for jurisdictions that are new to EOI, to ensure their successful participation in tax transparency initiatives and the effective implementation of the internationally agreed EOI standards.

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<sup>86</sup> 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>.

## **CHAPTER 5: SOLUTIONS TO LIMITATIONS AND CHALLENGES IDENTIFIED BY JURISDICTIONS**

### **5.1 Cross-Border Assistance in Tax Collection**

#### *5.1.1 General Context for Cross-Border Assistance in Tax Collection*

As globalisation accelerates economic integration, tax administrations face mounting challenges in recovering outstanding tax debts from taxpayers who may not have assets or income available in jurisdictions where the tax debts are outstanding but who may have assets or income in other jurisdictions. While domestic tax collection mechanisms are effective within national borders, they often prove insufficient when tax debtors move beyond these limits. In this context, Cross-Border Assistance in Tax Collection (CBAR) has emerged as a crucial tool for administrative assistance to enable tax authorities recover outstanding tax claims beyond their national borders.

CBAR is a form of mutual administrative assistance that enables tax authorities to request assistance from foreign counterparts in recovering tax debts that would otherwise be difficult to enforce due to limits to the tax authorities' powers to their national borders. By enabling the recovery of outstanding tax claims across national borders, CBAR enhances tax compliance and sends a strong deterrence message to tax evaders that tax authorities will cooperate to collect and recover all assessed taxes.

CBAR operates within a legal and operational context established in an international legal framework through bilateral and multilateral tax treaties, and an enabling domestic legal framework. An appropriate international and domestic legal framework is necessary to provide the legal basis for tax administrations to seek assistance beyond their borders, ensuring that tax debts can be pursued effectively, irrespective of the debtor's location.

As one form of mutual administrative assistance, CBAR does not operate in isolation. It is closely linked to and both complements and is complemented by other forms of administrative assistance, including EOI, service of documents (notification procedures), and measures of conservancy (aimed at precautionary measures to prevent taxpayers from dissipating assets before enforcement). CBAR allows tax administrations to move beyond using information requested or automatically received in the assessment process to actually recover the taxes assessed. On the other hand, the other forms of administrative assistance play a vital role in strengthening the effectiveness of CBAR by enabling jurisdictions to trace assets, notify taxpayers, and secure tax debts before they become irrecoverable.



Despite the availability of legal frameworks, CBAR remains underutilised, particularly in developing countries, due to legal, administrative, and capacity-related constraints. Many jurisdictions face challenges in implementing CBAR due to lack of institutional capacity, resource limitations, and complexities in navigating international legal frameworks. Addressing these barriers requires a concerted effort to enhance legal provisions, streamline administrative processes, build technical expertise, and foster international tax cooperation. A number of international organisations including the Global Forum, CIAT and the OECD have developed practical guidance contained in **Annex H** which are aimed at assisting jurisdictions to addressing some of these.

As discussed in this guide, strengthening CBAR requires jurisdictions to establish dedicated administrative functions, enhance cooperation through bilateral and multilateral agreements, and leverage international best practices to build efficient and effective recovery mechanisms. Ensuring the successful adoption of CBAR will ultimately reinforce the integrity and sustainability of tax collection systems worldwide.

#### *5.1.2 Benefits and Opportunities of Cross-Border Assistance in Tax Collection (CBAR)*

CBAR offers a range of benefits for jurisdictions seeking to recover outstanding tax debts, enhance tax compliance, and improve tax morale to attain greater public confidence in the fairness of the tax system. By enabling tax authorities to enforce tax claims beyond national borders, CBAR plays a crucial role in domestic resource mobilisation, deterring tax evasion, combating tax evasion as a component of IFFs, deterring relocation of taxpayers and their assets or incomes to evade assessed taxes and enhancing mutual administrative assistance.

#### **A. Enhancing Tax Collection and Domestic Resource Mobilisation**

Tax collection is a fundamental pillar of fiscal policy, directly impacting a country's ability to finance essential public services such as infrastructure, healthcare, and education. However, globalization and the increased mobility of taxpayers and assets have made tax enforcement more challenging, particularly when tax debtors relocate or transfer their wealth abroad making it difficult for tax authorities to enforce recovery using domestic legal powers and processes.

In this context, CBAR provides an additional enforcement channel, allowing tax authorities to pursue tax debtors beyond national borders to recover revenue that might otherwise remain uncollected. This increases government resources available for public spending and enhances overall fiscal sustainability.

CBAR enhances tax collection in the following ways:



- It provides tax authorities with means to recover tax revenues that would otherwise be lost due to non-recovery by after the exhaustion of domestic collection efforts.
- It deters non-compliance, as taxpayers recognize that moving abroad or shifting assets offshore will not exempt them from their tax obligations.
- The recovery of tax claims domestically and in cross-border contexts boosts government revenue recovery, reducing fiscal deficits and strengthening financial independence.
- It enhances the credibility of tax administrations, improving taxpayer morale and voluntary compliance.

Box 7 provides examples of the role of CBAR in enhancing domestic resource mobilisation.

### **Box 7. CBAR as an effective tool for improving tax compliance and enhancing domestic resource mobilisation**

SENEGAL: COMPLEMENTING EXCHANGE OF INFORMATION WITH AN EFFECTIVE RECOVERY OF TAXES THROUGH CROSSBORDER ASSISTANCE.<sup>87</sup>

Cross-border assistance in the recovery of tax claims is another form of international co-operation in tax matters. Improvements in tax transparency mean that tax administrations are able to access the information on their taxpayers' assets held abroad, which makes it easier to recover the tax debts by activating the cross-border assistance mechanism. Cross-border assistance in tax recovery has been identified by Africa Initiative members and other developing countries as an area where further work should be carried out to ensure that countries are able to collect taxes when it is not possible to do it domestically. While this work is starting, some African countries have already embarked in the implementation of cross-border assistance in recovery, with some interesting results. This is the case for Senegal which has used this form of assistance in seven cases of tax collection over the past five years with three jurisdictions in Europe, two jurisdictions in Africa and one jurisdiction in the Caribbean. Overall, close to USD 3.3 million (EUR 2.65 million) have already been recovered for Senegal in two of these cases, which are summarised below.

#### **CASE 1: Nearly USD 279 000 (EUR 224 500) recovered for Senegal by an African jurisdiction**

The Direction Générale des Impôts et Domaines, the Tax administration of Senegal, undertook a tax audit of a corporate taxpayer, which resulted in an assessment on various taxes (Financial Activity Tax, Value Added Tax and Corporate Income Tax) amounting to nearly USD 279 000 (EUR 224 500). As the taxpayer did not pay the due amount, the tax administration launched the tax debt recovery procedure which included issuing third parties notices (e.g. to banks and other financial institutions). This resulted in seizures of working materials and a mortgage registration.

These measures did not, however, lead to a recovery of the debts because of an unexpected move of the taxpayer without informing the tax administration.

<sup>87</sup> Source: DGI Senegal in OECD, AUC and ATAF (2021), *Tax Transparency in Africa 2021: Africa Initiative Progress Report*, Global Forum on Transparency and Exchange of Information for Tax Purposes, <https://web-archiv.oe.cd.org/temp/2022-03-10/587987-tax-transparency-in-africa-2021.htm>

Following an investigation, the tax administration collected some evidence that the taxpayer organised his insolvency by moving to another WAEMU member state. The evidence included the new address and telephone contacts of the taxpayer in that country.

The tax administration then decided to submit a request for cross-border assistance in the recovery of tax claims to the country. The request was based on the following international legal instruments all in force between Senegal and the said country namely:

- The WAEMU instrument (Regulation 08/2008/CM UEMOA of 26 September 2008 on the tax convention of WAEMU member states, articles 34 and 35).
- The MAAC.

No request for clarifications was received from the requested country on this case. After around one year the requested country collected and transmitted to Senegal the total amount of the claims, i.e. USD 279 000 (EUR 224 500).

Senegal did not encounter any particular difficulties given the fact that it shares the same community space with the requested country and was in possession of relevant information regarding the taxpayer. In addition to this favorable situation, officials from the two countries' tax administrations enjoy good working relationships.

According to the Senegalese tax authorities, the key lessons learnt from this assistance are that the level of precision, clarity, and conciseness in drafting the request is crucial to the success of cross-border assistance in tax collection; and that the promotion of cross-border recovery of tax claims at the level of regional economic communities through effective and practical mechanisms is important to the fight against tax evasion in Africa

#### **CASE 2: Nearly USD 3 million (EUR 2.4 million) recovered for Senegal by a Caribbean jurisdiction**

Following a tax audit, the Senegalese tax authorities raised an assessment on various taxes including the corporate income tax and withholding taxes, for a total amount of USD 27.8 million (EUR 22.4 million).

After exhausting its domestic collection procedures without success, as there were no assets identified in Senegal belonging to the taxpayer concerned, the tax administration requested the assistance of a foreign jurisdiction (a Caribbean jurisdiction) with which Senegal has an agreement for administrative assistance in cross-border recovery of tax claims in force (the MAAC). The request was made on the basis of the information obtained from the audited taxpayer which indicated the connexion with the foreign jurisdiction.

The assistance took one year and resulted in a positive answer from the requested jurisdiction which collected and transmitted to Senegal an amount of USD 2.9 million (EUR 2.4 million).

According to the Senegalese authorities, the outcomes of this assistance show that:

- The MAAC is a particularly effective instrument for breaking down the “barriers” erected by jurisdictions once considered “non-cooperatives in tax matters”;
- The MAAC is a credible alternative to bilateral or regional agreements as it allows signatory countries to benefit from a broad network of partner jurisdictions for all forms of international tax co-operation;
- Transparent and diligent co-operation among jurisdictions in the area of cross-border assistance in recovery of tax claims complements EOI in the fight against international tax evasion as it allows tax authorities to collect the revenues due even when taxpayers or their assets are located outside the country

#### **UGANDA:**

Following an audit on Company X which covered a period of five years (2011 to 2016), it was established that certain individual shareholders had disposed of their shares in Company X but had neither declared the transactions to the Uganda Revenue Authority (URA) nor paid the capital gains tax due. Consequently, one notice of assessment was issued to Individual Y through his last known address. The URA received information that individual Y had relocated to Country B, in Africa, and that he had received payment of EUR 1.3 million (USD 1.4 million) from the sale of shares via a trust set up in Country B.

URA made a request for information to ascertain Individual Y's residence and availability of assets in Country B prior to making a request for assistance in recovery in order to confirm existence and presence of the taxpayer.

In response to URA's request, Country B confirmed that individual Y was a resident of the Country and did not own any property in his name in Country B but he was a beneficial owner of the trust and some bank accounts.

URA then followed with a request for assistance in recovery of taxes which led to a recovery of part of the taxes due i.e. EUR 36 000 (USD 38 000 or UGX 134.6 Million)

Source: Uganda Revenue Authority in OECD, AUC and ATAF (2022), *Tax Transparency in Africa 2022: Africa Initiative Progress Report*, Global Forum on Transparency and Exchange of Information for Tax Purposes, <https://web-archive.oecd.org/temp/2023-05-12/632173-tax-transparency-in-africa-2022.htm>

## **B. Strengthening Tax Compliance and Deterrence**

A strong CBAR framework not only helps recover tax debts but also acts as a deterrent against tax evasion. When taxpayers know that tax obligations may remain enforceable across jurisdictions, they may be less likely to engage in non-compliant behaviour such as relocating or shifting assets or income to avoid honouring tax obligations.

Jurisdictions that effectively publicise their participation in CBAR mechanisms can use it as a powerful compliance tool, signalling that attempts to avoid tax payments by moving assets abroad will be ineffective.

## **C. Improving International Cooperation by complementing other forms of mutual administrative assistance**

CBAR does not operate in isolation but works synergistically with other administrative assistance measures to enhance the overall effectiveness of tax enforcement.<sup>88</sup> These include:

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<sup>88</sup> For detailed elaboration of the interplay between CBAR and other forms of administrative assistance see 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, [www.oecd.org/tax/transparency/documents/a-toolkit-for-establishing-a-function-for-cross-border-assistance-in-the-recovery-of-tax-claims.pdf](http://www.oecd.org/tax/transparency/documents/a-toolkit-for-establishing-a-function-for-cross-border-assistance-in-the-recovery-of-tax-claims.pdf). For detailed elaboration of the processes between CBAR and other forms of administrative assistance see OECD (2024), *Model Manual on Cross Border Assistance in the Recovery of Tax Claims*, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD, Paris, [www.oecd.org/tax/transparency/documents/model-manual-cross-border-assistance-recovery-tax-claims.pdf](http://www.oecd.org/tax/transparency/documents/model-manual-cross-border-assistance-recovery-tax-claims.pdf).

#### i. Exchange of Information (EOI) – Facilitating Asset Tracing Before Recovery Proceedings

On the one hand, CBAR complements EOI, both on request and automatic, as it allows a jurisdiction that has used EOIR or CRS data to raise an additional assessment, to follow through and recover the taxes assessed where the taxpayers' assets or income is only available in foreign jurisdictions. On the other hand, EOI complements CBAR by allowing tax authorities to send requests for information or use CRS data to identify taxpayer assets located abroad which may be targeted for CBAR before initiating recovery actions.

Developments in automatic exchange enables jurisdictions participating in CRS exchanges to receive bulk taxpayer data on financial accounts their taxpayers hold in foreign jurisdictions. This information may be used to identify taxpayers with outstanding tax debts but no assets which may be targeted for recovery but who have financial accounts in foreign jurisdictions which may be targeted for recovery efforts.

#### ii. Service of Documents – Ensuring Tax Notices and Legal Documents Reach Taxpayers Abroad

Notifying tax debtors of their tax obligations is an important part of the tax assessment process. Service of documents enables a tax authority to receive assistance from a foreign tax authority for the purposes of ensuring that its taxpayers who are resident in the foreign jurisdiction are served with relevant documents. Service of documents may be preceded by EOI which enables tax authority to identify the taxpayers address for service in the foreign jurisdiction. Service of documents may also precede conservancy measures and CBAR.

#### iii. Conservancy Measures – Preventing Taxpayers from Shielding Assets from Tax Enforcement

Tax authorities may also provide administrative assistance to each other to take precautionary measures (such as asset freezes) to prevent tax debtors from transferring assets out of reach of the tax authority or liquidating them before a tax debt crystallises and enforcement begins. Measures of conservancy often precede CBAR and may be used to ensure the availability of identified assets for recovery measures once the tax debt has crystallised.

#### *5.1.3. Legal Basis for Cross-Border Assistance in Tax Collection (CBAR)*

Given the territorial limitations on tax administrations, effective participation in CBAR requires a jurisdiction to have an international legal basis and an enabling domestic legal framework that provides the legal basis for seeking and providing this form of administrative

assistance. Without a strong international legal foundation, jurisdictions lack the authority to seek or provide assistance in tax collection. Similarly, in the absence of domestic legal provisions, tax administrations may face significant legal and procedural barriers when attempting to implement CBAR.

### **A. International Legal Framework**

The international legal basis for CBAR may be derived from various legal instruments, including multilateral tax agreements, bilateral tax treaties, and regional tax cooperation frameworks. These agreements provide the formal foundation upon which tax authorities can request and enforce foreign tax claims while ensuring adherence to international legal standards.

The international legal framework:

- Establishes the legal authority for cross-border enforcement of tax claims.
- Defines the conditions under which assistance can be requested and provided.

#### ***I. The Convention on Mutual Administrative Assistance in Tax Matters (MAAC)***

The most comprehensive multilateral agreement facilitating diverse forms of administrative assistance, including CBAR, is the Convention on Mutual Administrative Assistance in Tax Matters (MAAC). To date, it counts 149 participating jurisdictions of which 142 have it in force, making it a key instrument for CBAR.<sup>89</sup>

Key Articles in the MAAC supporting CBAR

- Article 11 – Recovery of Tax Claims
  - Establishes that jurisdictions may recover tax debts on behalf of one another.
  - The requested jurisdiction must apply its domestic laws and procedures as if the tax debt were its own.
  - Example: If a taxpayer in Country A relocates to Country B and holds assets there, Country A can invoke Article 11 of the MAAC to request Country B to enforce collection of the outstanding tax debt.
- Article 12 – Measures of Conservancy
  - Enables jurisdictions to request foreign counterparts to take precautionary measures, such as freezing a taxpayer's assets, before a tax claim becomes final.
  - This is particularly useful where there is a risk of asset dissipation, ensuring tax debts remain recoverable.

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<sup>89</sup> The Status of jurisdictions participating in the MAAC is available at: [https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/convention-on-mutual-administrative-assistance-in-tax-matters/status\\_of\\_convention.pdf](https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/convention-on-mutual-administrative-assistance-in-tax-matters/status_of_convention.pdf)

- Example: A taxpayer in Country C moves substantial funds offshore to Country D. Country C can request Country D to freeze these assets under Article 12 to prevent non-payment.
- Article 15 – Priority of Tax Claims
  - Provides that tax debts subject to CBAR may not be treated as domestic tax debts in the requested jurisdiction in relation to their priority.
- Article 16 – Deferral of Payment and Instalment Agreements
  - Allows a requested jurisdiction to permit instalment payments or deferrals for a foreign tax claim, provided the requesting jurisdiction agrees.
  - Example: A taxpayer struggling with financial hardship in the requested jurisdiction may negotiate an instalment plan instead of immediate full enforcement.
- Article 21 – Limitations on Assistance
  - Outlines the circumstances under which a jurisdiction may refuse assistance, including:
    - If the tax claim is contrary to public policy (ordre public).
    - If the administrative burden outweighs the benefits.
    - If providing assistance would result in discriminatory treatment of a taxpayer.
  - Example: A jurisdiction can decline assistance if the tax claim is relatively minor and the cost of enforcement is disproportionate.

## ***II. Bilateral and Regional Agreements***

Apart from the MAAC, CBAR may also be facilitated through bilateral DTCs and regional tax cooperation agreements with articles providing for CBAR.

### **i. Bilateral Agreements – Double Tax Conventions (DTCs)**

- Many DTCs include Article 27, modelled on the OECD and UN Model Tax Conventions, which provides for assistance in the collection of taxes.
- This article allows tax authorities to request assistance from treaty partners to collect enforceable tax claims.

### **ii. Regional Agreements Facilitating CBAR**

Certain regional tax cooperation agreements provide mechanisms for mutual assistance in tax collection within specific geographical regions.

## **B. Domestic Legal Framework**

While international agreements establish the legal gateway for CBAR, their practical implementation relies on an effective domestic legal framework.

An enabling domestic legal framework for CBAR must among other things provide for the following:

1. Recognition and Enforcement of Foreign Tax Claims
  - Domestic laws must authorize the recognition of foreign tax claims to enable the tax authority to enforce them as if they were domestic tax obligations. This ensures that tax debts originating in one jurisdiction can be lawfully enforced by another.
2. Legal Basis for Intergovernmental Assistance in Tax Recovery
  - National laws must establish a clear legal mandate for tax authorities to provide assistance in recovering tax claims for foreign jurisdictions.
  - This requires specific provisions enabling tax authorities to process and act on requests from foreign counterparts.
  - Legal frameworks should also define conditions and limitations under which assistance may be granted, safeguarding the integrity of the system while maintaining international cooperation.
3. Confidentiality and Data Protection Provisions
  - CBAR involves the exchange of sensitive taxpayer information between jurisdictions, requiring strict confidentiality measures in national laws to protect taxpayer rights.
  - Domestic laws must explicitly regulate the handling, use, and disclosure of exchanged tax information to prevent misuse or unauthorized access.
  - The confidentiality and data safeguards frameworks for other forms of EOI are equally applicable to CBAR.

### **C. The Role of MOUs and Other Agreements in CBAR Implementation**

While international agreements such as the MAAC and DTCs provide a broad legal framework, they often require supplementary administrative agreements (e.g., Memorandums of Understanding (MOUs)) to operationalize CBAR mechanisms. Some international agreements refer parties to use MOUs to finalize CBAR administrative requirements.

These agreements:

- Define administrative procedures for implementing CBAR.
- Clarify enforcement responsibilities between jurisdictions.
- Outline practical details, such as cost-sharing arrangements, communication protocols, and case management processes.

**Annex H** contains practical guides for implementing CBAR with model MOUs which may be used for outlining the conditions for administrative cooperation between jurisdictions.

#### *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)<sup>90</sup> 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, CBAR 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 assistance 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 CBAR:** if a jurisdiction's tax treaties do not have an article which provides for CBAR, it may be prevented from seeking assistance from its treaty partners.
- **Reservations against providing CBAR:** 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

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<sup>90</sup> 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>



and CBAR.<sup>91</sup> When a reservation is entered in respect of CBAR, 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 CBAR 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 CBAR 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 CBAR.
- 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,

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<sup>91</sup> 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](http://www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=127&codeNature=0). A synoptic table of reservations made under the MAAC by countries is also available on demand from the Global Forum Secretariat.

policies and procedures to recover it as if it was its own debt. If 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 CBAR. 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 CBAR 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 CBAR may be fortified by other forms of mutual administrative assistance in tax matters such as:<sup>92</sup>
  - 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 CBAR. A jurisdiction that is unaware of this link may not use this form of assistance effectively.
  - 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,

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<sup>92</sup> 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 and CBAR 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 CBAR, 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.

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

Following calls from African countries<sup>93</sup> and other developing countries to strengthen the international tax co-operation framework by ensuring effective cross-border assistance in tax collection,<sup>94</sup> members of the Africa Initiative identified this as one of the priority areas for the Africa Initiative from the year 2021.<sup>95</sup>

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<sup>93</sup> Statement of the participants to the 5<sup>th</sup> Anniversary dinner of the Africa Initiative available at <https://www.oecd.org/tax/transparency/documents/Statement-10-years-global-forum-Africa-Initiative-ministerial.pdf>

<sup>94</sup> Statement of Outcomes of the Global Forum's 10<sup>th</sup> Anniversary Plenary Meeting available at <https://www.oecd.org/tax/transparency/statement-of-outcomes-global-forum-10-years.pdf>.

<sup>95</sup> Statement of Outcomes of the 8<sup>th</sup> Africa Initiative Meeting, available at <https://www.oecd.org/tax/transparency/documents/8th-meeting-of-the-africa-initiative-statement-of-outcomes.pdf>

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 form of international tax co-operation by African countries. The results are summarised in a note<sup>96</sup>, 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 function<sup>97</sup>. 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 countries<sup>98</sup>.

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.

In November 2024, the Global Forum Secretariat launched a Model Manual on Cross-border Assistance in the Recovery of Tax Claims<sup>99</sup> which provides practical guidance on the processes and procedures necessary for effective participation in cross-border assistance in tax recoveries. It builds on the Toolkit for Establishing a Function for Cross-border Assistance in the Recovery of Tax Claims, which was launched in July 2023 under the framework of the

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<sup>96</sup> 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](http://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>.

<sup>97</sup> 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](http://www.oecd.org/tax/transparency/documents/a-toolkit-for-establishing-a-function-for-cross-border-assistance-in-the-recovery-of-tax-claims.pdf)

<sup>98</sup> 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](http://www.oecd.org/tax/transparency/documents/cross-border-assistance-recovery-of-tax-claims-african-countries.pdf)

<sup>99</sup> OECD (2024), *Model Manual on Cross-Border Assistance in the Recovery of Tax Claims*, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD, Paris, [www.oecd.org/tax/transparency/documents/model-manual-cross-border-assistance-recovery-tax-claims.pdf](http://www.oecd.org/tax/transparency/documents/model-manual-cross-border-assistance-recovery-tax-claims.pdf).

Africa Initiative. The Global Forum Secretariat is supporting tax authorities seeking to make use of these tools to improve their cooperation on recovery of tax claims.

#### **b. OECD’s Forum on Tax Administration**

The OECD’s Forum on Tax Administration (FTA)<sup>100</sup> 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<sup>101</sup>” 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<sup>102</sup>” 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 2025.

#### *5.1.6. Practical and Administrative Steps in Cross-Border Assistance in Tax Collection (CBAR)*

For CBAR to be effective, tax administrations must establish structured operational processes that facilitate efficient coordination domestically and with foreign tax authorities. This section outlines the key administrative steps required for the successful execution of CBAR, including the establishment of dedicated functions, procedures for submitting and processing requests, and integration with other mutual assistance measures.

#### *a. Establishing a Dedicated CBAR Function*

To facilitate efficient handling of CBAR requests, a jurisdiction should consider establishing a dedicated CBAR function within their tax administration. This function should be responsible for managing inbound and outbound requests, liaising with foreign competent authorities, and ensuring compliance with international agreements.

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<sup>100</sup> More information on the OECD’s FTA is available at <https://www.oecd.org/tax/forum-on-tax-administration/>

<sup>101</sup> 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-managment.pdf>

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>

<sup>102</sup>

The Global Forum has published a Toolkit for Establishing a CBAR Function which provides guidance on building the frameworks necessary for this form of assistance with a focus on the establishment and the management of a dedicated function within a tax authority (see Annex H). The Global Forum has also published a CBAR Manual which describes relevant processes and procedures for managing CBAR requests and related forms of administrative assistance (see Annex H).

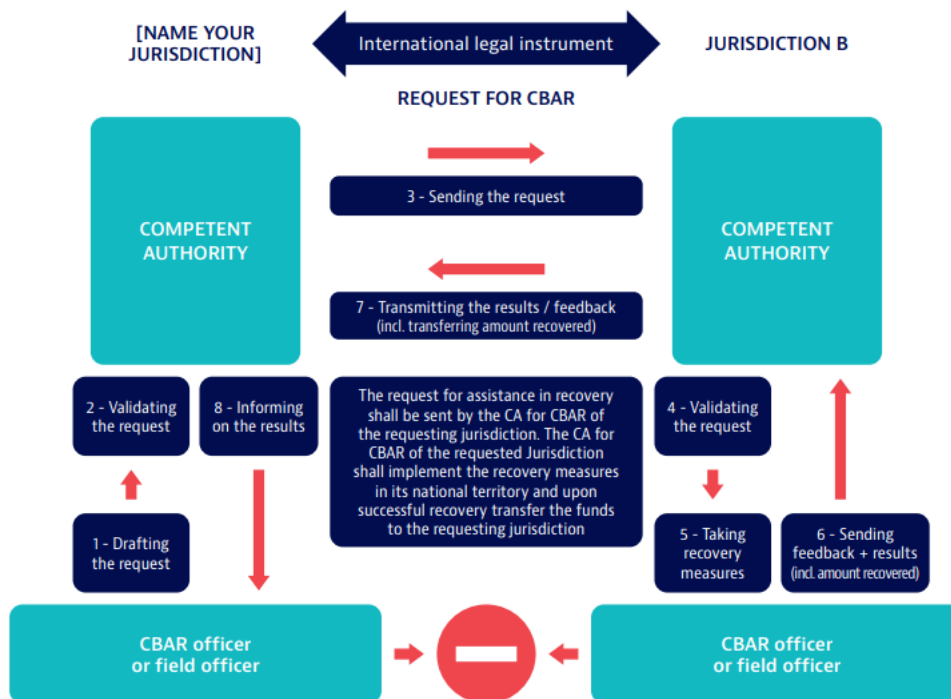
#### Key Steps in Establishing a CBAR Function:

- Appoint a competent authority (CA) to manage CBAR requests
  - The CA is the designated government entity or official responsible for handling CBAR requests.
  - This authority should be empowered to submit and receive requests, coordinate with foreign jurisdictions, and oversee enforcement procedures.
- Develop standard operating procedures (SOPs) to streamline the management of inbound and outbound requests
  - SOPs should define:
    - The step-by-step procedures and processes involved in the sending a CBAR request to foreign partners and handling a CBAR request received from foreign partners as well as other forms of administrative assistance linked to CBAR such as EOI, service of documents and measures of conservancy.
    - Timelines for processing inbound requests and remitting recovered funds.
    - Confidentiality rules, record keeping, statistics and measurement of performance
    - Protocols for inter-agency coordination, ensuring smooth integration with domestic tax enforcement units.
- Train tax officials on international tax recovery procedures and best practices
  - To create awareness and the potential of CBAR, a tax authority should provide awareness raising sessions and training to its tax officials. The training should cover:
    - Legal frameworks governing CBAR (e.g., MAAC, bilateral tax treaties, EU directives).
    - Technical procedures for drafting and processing CBAR requests.
    - Use of other forms of administrative assistance such as EOI, service of documents and measures of conservancy to aid CBAR.

#### ***b. Submitting a Request for Assistance***

Among other conditions, before submitting a CBAR request a tax administration must ensure that domestic enforcement measures have been exhausted and that there is a legal basis for requesting assistance from the foreign jurisdiction. Figure 12 outlines the procedure involved in sending a request for CBAR.

**Figure 12: Sending a request for CBAR**



Source: OECD (2024), *Model Manual on Cross Border Assistance in the Recovery of Tax Claims*, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD, Paris, [www.oecd.org/tax/transparency/documents/model-manual-cross-border-assistance-recovery-tax-claims.pdf](http://www.oecd.org/tax/transparency/documents/model-manual-cross-border-assistance-recovery-tax-claims.pdf).

**Step 1 - Preparing and validating an outbound request:** this step includes establishing whether:

- the tax claim which is subject of the request is valid (e.g. is it enforceable, is its recovery barred by a statute of limitation,
- there is a legal basis for seeking assistance from the requested jurisdiction
- the taxes subject of the request are covered by the legal instrument
- all reasonable measures for recovering the tax claim have been exhausted (except those that would give rise to disproportionate difficulties)
- the debtor and the assets of the debtor which may be subject to recovery measures have been identified in the requested jurisdiction

**Step 2 - Validating and sending the outbound request for CBAR:** this step involves reviewing the details of the request to ensure all conditions are met including whether it is in the form specified by the requested jurisdiction.

Step 3 – Amending, updating or withdrawing the outbound request for CBAR: this step involves updating the request following a partial or full recovery (for example due to voluntary payment by the tax debtor or due to lapse of the recovery period in the statute of limitation).

Step 4 – Obtaining a response from the requested jurisdiction: this step involves tracking the progress of the request with the foreign tax authority.

Step 5 – Closing the request and providing feedback: at this stage, a formal communication would be made to the requested jurisdiction where a decision is made to withdraw the request for example due to partial or full recovery, lapse of statute of limitation or exhaustion of all recovery measures in the requested jurisdiction.

Key considerations before sending a CBAR request:

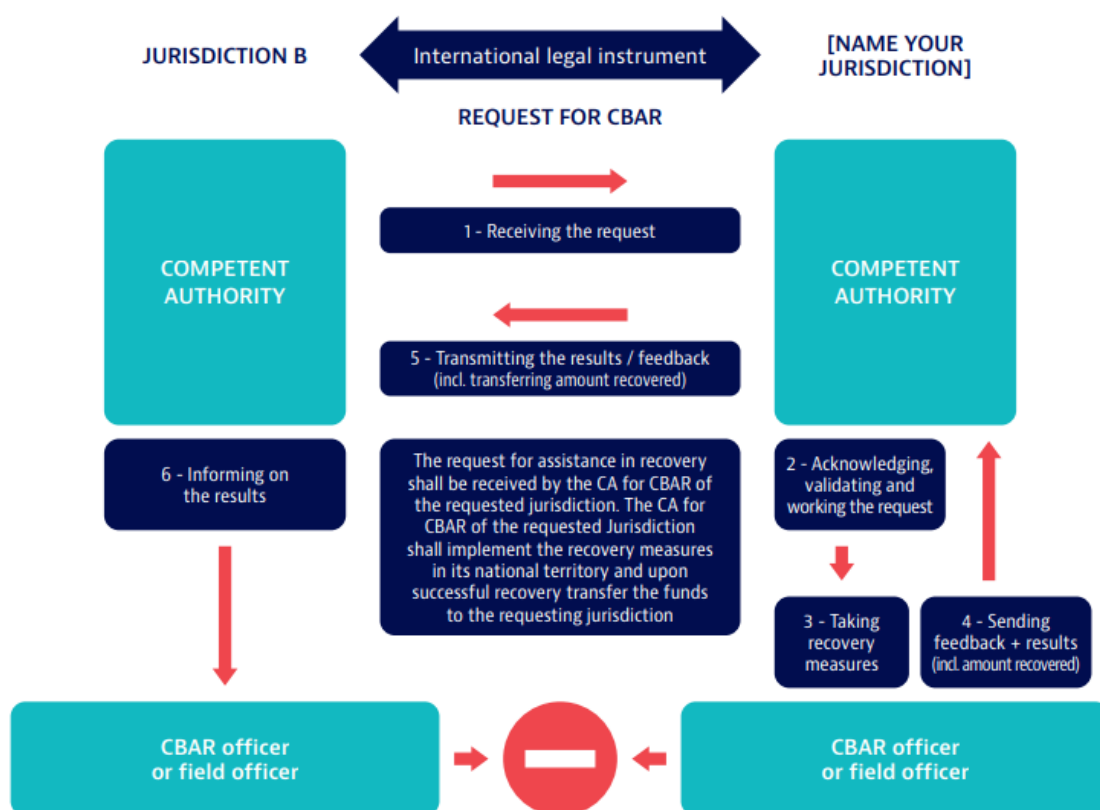
- Exhaust domestic recovery measures before escalating to international assistance
  - Tax authorities must first attempt to recover the debt using domestic legal mechanisms, including:
    - Garnishments and asset seizures.
    - Tax liens and enforcement through courts.
    - Administrative levies on bank accounts and properties.
  - CBAR should be a last resort, used when domestic measures fail due to the taxpayer's relocation or asset transfer abroad.
- Identify taxpayer assets abroad which may be targeted for recovery using EOI tools, either on request or automatically using CRS data
- Ensure that the tax claim is final, enforceable, and non-contested (unless otherwise agreed)
  - The requested jurisdiction can only enforce tax debts that are legally binding and not subject to appeal.
  - If a tax claim is still under litigation, it cannot be pursued through CBAR unless both jurisdictions have agreed to proceed with conservancy measures.

### ***c. Processing an Inbound Request***

When a jurisdiction receives a CBAR request, it must apply its own domestic tax collection procedures to enforce the foreign claim. The requesting jurisdiction should also monitor the progress of collection efforts to ensure compliance. Figure 13 outlines the steps to be followed in processing an inbound request.



**Figure 13: Receiving a request for CBAR**



Source: OECD (2024), *Model Manual on Cross Border Assistance in the Recovery of Tax Claims*, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD, Paris, [www.oecd.org/tax/transparency/documents/model-manual-cross-border-assistance-recovery-tax-claims.pdf](http://www.oecd.org/tax/transparency/documents/model-manual-cross-border-assistance-recovery-tax-claims.pdf).

Step 1- Receiving the request: the CBAR request is received, reviewed to determine whether it is intended for the receiving jurisdiction and then registered in a tracking tool that facilitates the monitoring of all requests from partners. An acknowledgement letter is sent to the requesting jurisdiction.

Step 2 – Validating the inbound request for CBAR: the CBAR function validates the request to determine whether:

- there is an international legal instrument in force between the two jurisdictions that facilitates the recovery assistance
- the tax claims subject of the recovery request are covered by the legal instrument
- the request meets all the conditions of the legal instrument and any administrative agreement between the two jurisdictions e.g. regarding the minimum amount that can be the subject of a recovery request, language of the request as well as accompanying documents etc.
- sufficient information is provided that enables the identification of the tax debtor and assets which may be targeted for recovery efforts.

Step 3 – Accepting or declining the inbound request for CBAR: the request is accepted or declined following the validity check in step 3 and the requesting jurisdiction is informed.

Step 4 – Recovering the foreign tax claim: the CBAR function takes all steps necessary, in accordance with the domestic laws and administrative procedures governing the recovery of domestic tax claims, to recover the foreign tax claim as if it were a domestic tax claim.

Step 5 – Sending the amounts recovered to the foreign jurisdiction: the foreign claims recovered, whether a partial or full recovery, are transferred to the requesting jurisdiction.

Key considerations in processing an inbound CBAR request:

- The requested jurisdiction applies its domestic tax collection laws to recover the claim
  - CBAR requests must be treated as if they were domestic tax claims, meaning:
    - The same enforcement mechanisms used for local taxpayers should apply to foreign requests.
    - Foreign tax claims do not receive the same priority as domestic tax debts.
- The requesting jurisdiction is kept informed on the progress of the collection efforts
  - Regular updates should be provided to the requesting jurisdiction, including:
    - Progress reports on enforcement actions.
    - Details of recovered amounts.
    - Challenges encountered in collection efforts.
- Recovered funds are remitted in accordance with pre-agreed protocols
  - The jurisdictions must have pre-agreed remittance procedures, specifying:
    - Currency conversion and exchange rates.
    - Banking and transfer protocols.
    - Treatment of administrative costs and recovery fees.

## 5.2 Use of Treaty Exchanged Information For Non-Tax Purposes

### Introduction

IFFs 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. IFFs severely undermine a jurisdiction's 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<sup>103</sup> to addressing IFFs through the sharing of information from tax to non-tax authorities, which can 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 may be 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 with these law enforcement authorities is key to achieving successes and gains in investigating and combating IFFs and fighting the underlying criminal activities. Wider use of information exchanged under tax treaties 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 provides guidance to jurisdictions on how they can utilise information exchanged under international tax agreements to combat IFFs 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.

#### 5.2.1 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 purposes other than tax. Tax officials are likely to be in contact with information that leads to suspicion of a crime – other

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<sup>103</sup> In the context of the Oslo Dialogue, the "whole of government approach" refers to a collaborative and multidisciplinary strategy to combat financial crimes. This approach involves coordinated efforts among various domestic agencies, including tax authorities, law enforcement, and regulatory bodies, to enhance transparency and cooperation in fighting financial crimes

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 offences contributing to 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, provided that treaty-conditions are met; training key personnel to identify the typical 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 Auditors*<sup>104</sup> that provides guidance to tax officials in understanding how their contribution can assist criminal investigators and law enforcement authorities in countering 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.

Older international instruments usually do not allow the use of information exchanged for other purposes (non-tax 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

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<sup>104</sup> OECD (2013), *Bribery and Corruption Awareness Handbook for Tax Examiners and Tax Auditors*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264205376-en>.

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 149 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 and obtaining authorisation from the sending jurisdiction.

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<sup>105</sup>, 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.
- Authorisation approaches, which can either be on a case-by-case basis or through a pre-approved authorisation for specific non-tax purpose and non-tax authorities with a post-reporting commitment.
- 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.
- 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 purposes.<sup>106</sup>

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

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<sup>105</sup> 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, <https://www.oecd.org/tax/transparency/documents/facilitating-the-use-of-treaty-exchanged-tax-information-for-non-tax-purposes.pdf>

<sup>106</sup> 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*, op cit.

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 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 IFFs 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 such 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. To date, Argentina, Brazil, Colombia, Costa Rica, Dominican Republic, Paraguay and Peru participate to the Pilot Project. Brazil, Colombia, Costa Rica, Dominican Republic, Paraguay and Peru signed in 2024 the Competent Authority Agreement of the Pilot Project on the Authorised Wider Use of Treaty-Exchanged Information. This agreement has already been activated by Brazil, Colombia, Costa Rica and Paraguay.

## **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.

### 5.3 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 EOI<sup>107</sup> 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),

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<sup>107</sup> Global Forum - <https://www.oecd.org/tax/transparency/documents/documents-available-to-tax-authorities-upon-request.htm>

## **IV: PRACTICAL GUIDANCE FOR JURISDICTIONS NEW TO EXCHANGE OF INFORMATION FOR TAX PURPOSES**

### **CHAPTER 6: PREPARING FOR EFFECTIVE PARTICIPATION IN EOI**

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 Forum<sup>108</sup>, 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 authority. 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 authorities<sup>109</sup>.

### 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.

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<sup>108</sup> 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>

<sup>109</sup> 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>

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 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 an international legal framework for exchanging information with other jurisdictions

An international legal framework provides the legal gateway for information exchange between jurisdictions. 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 automatic exchanges through the CRS-MCAA and CARF-MCAA, activating exchange of CbCR 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 8. 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.

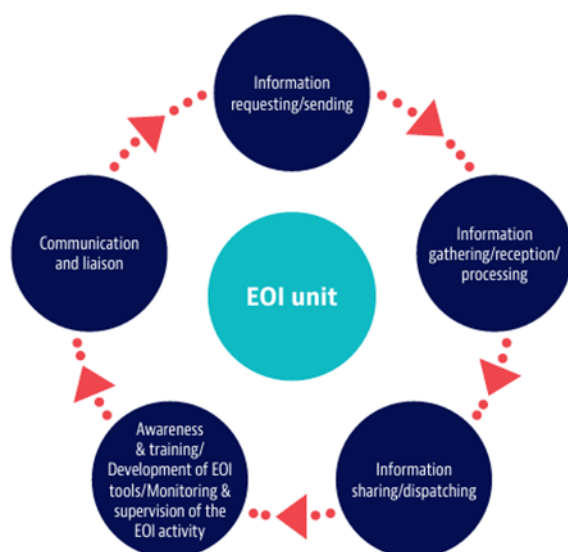
Source: OECD (2023), *New Horizons in Capacity Building for Tax Transparency: 2023 Global Forum Capacity Building Report*, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD, Paris

<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 14.

**Figure 14** 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 9 illustrates, the EOI unit can evolve as the country becomes more involved in the EOI work.

### **Box 9 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 IFFs<sup>110</sup>.

#### **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

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<sup>110</sup> 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](https://www.oecd.org/tax/transparency/documents/EOI-Unit-toolkit_en.pdf).

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 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 information<sup>111</sup>.

### **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

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<sup>111</sup> 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>

agreements, often formalised through MoUs<sup>112</sup>, delineate the methods of access, principles, 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 new to EOI should consider participating in the work on tax transparency to speed up capacity-development.

## **6.7 Preparing for peer review**

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

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<sup>112</sup> 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](https://www.oecd.org/tax/transparency/documents/EOI-Unit-toolkit_en.pdf). Examples of MoUs can be found in the E

EOI, a jurisdiction should adopt a practical, step-by-step strategy focused on compliance with the EOIR and the AEOI standards (CRS and CARF):

- a. **Assessment and gap analysis:** Conduct a thorough review of the current legal and regulatory framework. Compare it against the EOIR and 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.<sup>113</sup>
- b. **Legal framework enhancement:** Amend or introduce legislation to align with the EOIR and the 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 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.
- 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.

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<sup>113</sup> 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>.



## REFERENCES

### Annex A: Practical Guidance on Exchange of Information on Request

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 information.

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

The Global Forum and ATAF have also jointly published a toolkit for establishing and running an effective EOI function that underlines the 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 IFFs.

- 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](https://www.oecd.org/tax/transparency/documents/EOI-Unit-toolkit_en.pdf).

The Centre for Inter-American Taxation (CIAT) has published a manual for the control of international tax planning. Chapter 5.3, drafted by the Global Forum, explains the role of EOI as a tool for combating international tax planning.

- CIAT (2022), *Manual for the Control of International Tax Planning, chapter 5.3 International Cooperation*, CIAT, <https://www.ciat.org/5-3-cooperacion-internacional/?lang=en>

### Annex B: Practical Guidance on the Common Reporting Standard for the automatic exchange of financial account information

The Global Forum published a toolkit to assist developing countries that wish to implement the standard for the automatic exchange of financial account information (CRS standard or Standard) by providing practical guidance on the necessary steps to build a comprehensive implementation strategy and to have in place all the necessary building blocks to effectively participate in CRS exchanges.

- OECD (2021), *A 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 - [https://www.oecd.org/tax/transparency/documents/aeoi-implementation-toolkit\\_en.pdf](https://www.oecd.org/tax/transparency/documents/aeoi-implementation-toolkit_en.pdf)

The OECD has published the CRS Handbook which is aimed at assisting government officials in the implementation of the SCRS and to provide a practical overview of the Standard to both the financial sector and the public at-large.

- OECD (2018), *Standard for Automatic Exchange of Financial Information in Tax Matters - Implementation Handbook - Second Edition*, OECD, Paris. <http://www.oecd.org/tax/exchange-of-tax-information/implementation-handbook-standard-for-automatic-exchange-offinancial-account-information-in-tax-matters.htm>

[please add any relevant practical guidance on implementing the CRS available from other institutions]

## Annex C: Practical Guidance on the Crypto-Asset Reporting Framework

This Global Forum has developed a Step-by-Step Guide that is intended to facilitate further commitments by jurisdictions to implement the CARF to ensure its widespread implementation, as well as to help support the implementation of the CARF thereafter, by raising the awareness of jurisdictions and the private sector in relation to what making such a commitment entails and the steps that must be taken in order to implement the CARF on a consistent basis and in accordance with the requirements

- OECD (2024), *Delivering tax transparency to Crypto-Assets: A step-by-step guide to understanding and implementing the Crypto-Asset Reporting Framework*, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD, Paris, <https://www.oecd.org/tax/transparency/documents/step-by-step-guide-understanding-implementing-crypto-asset-reporting-framework.pdf>.

[please add any relevant practical guidance on implementing the CRS available from other institutions]

## Annex D: Practical Guidance on Spontaneous Exchange of Information

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 SEOI.

- 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/EOImanual.pdf>

The Global Forum and ATAF have also jointly published a toolkit for establishing and running an effective EOI function that underlines the 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 IFFs.

- 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](https://www.oecd.org/tax/transparency/documents/EOI-Unit-toolkit_en.pdf).

The CIAT has published a manual for the control of international tax planning. The chapter 5.3, drafted by the Global Forum, explains the role of EOI as a tool for combating international tax planning.

- CIAT (2022), *Manual for the Control of International Tax Planning, Chapter 5.3 International Cooperation*, CIAT, <https://www.ciat.org/5-3-cooperacion-internacional/?lang=en>

## Annex E: Practical Guidance on Implementing other forms of EOI including Simultaneous Tax Examinations and Tax Examinations Abroad

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 implementing STEs and TEAs.

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

The Global Forum and ATAF have also jointly published a toolkit for establishing and running an effective EOI function that underlines the 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 IFFs.

- 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](https://www.oecd.org/tax/transparency/documents/EOI-Unit-toolkit_en.pdf).

The Centre for Inter-American Taxation (CIAT) has published a manual for the control of international tax planning. The chapter 5.3, drafted by the Global Forum, explains the role of EOI as a tool for combating international tax planning.

- CIAT (2022), *Manual for the Control of International Tax Planning, Chapter 5.3 International Cooperation*, CIAT, <https://www.ciat.org/5-3-cooperacion-internacional/?lang=en>

## Annex F: Practical guidance for joining the convention on mutual administrative assistance in tax matters

The Global Forum has published a toolkit to assist jurisdictions on the process of becoming a party to the MAAC:

- OECD (2020), *A Toolkit for Becoming a Party to the Convention on Mutual Administrative Assistance in Tax Matters*, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD, Paris [www.oecd.org/tax/transparency/documents/MAAC-toolkit\\_en.pdf](http://www.oecd.org/tax/transparency/documents/MAAC-toolkit_en.pdf).

Legal text and commentaries on the MAAC:

- OECD and Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, available at <http://dx.doi.org/10.1787/9789264115606-en>
- The text of the Amended Convention in English, French, German (unofficial translation), Spanish (unofficial translation) and Portuguese (unofficial translation) available at <https://www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm>
- The Revised Explanatory Report to the Convention on Mutual Administrative Assistance in Tax Matters as Amended by 2010 Protocol available at [https://www.oecd.org/ctp/exchange-of-tax-information/Explanatory\\_Report\\_ENG\\_%2015\\_04\\_2010.pdf](https://www.oecd.org/ctp/exchange-of-tax-information/Explanatory_Report_ENG_%2015_04_2010.pdf)

General information on the MAAC:

- Flyer on the Convention on Mutual Administrative Assistance in Tax Matters (also available in French and Spanish) available at [https://www.oecd.org/tax/exchange-of-tax-information/ENG\\_Convention\\_Flyer.pdf](https://www.oecd.org/tax/exchange-of-tax-information/ENG_Convention_Flyer.pdf)
- Chart of participating jurisdictions (signatures and entry into force) available at [https://www.oecd.org/tax/exchange-of-tax-information/Status\\_of\\_convention.pdf](https://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf)
- List of declarations, reservations and other communications available at <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=208>

Information on the process to becoming a Party to the MAAC:

- Rules of Procedure of the Co-ordinating Body of the Convention on Mutual Administrative Assistance in Tax Matters as of June 2015 as at available at <https://www.oecd.org/ctp/exchange-of-tax-information/co-ordinating-body-rules-of-procedure.pdf>
- Process to Become a Party to the Amended Convention available at [https://www.oecd.org/tax/exchange-of-tax-information/Process\\_to\\_Become\\_a\\_Party\\_to\\_the\\_Amended\\_Convention.pdf](https://www.oecd.org/tax/exchange-of-tax-information/Process_to_Become_a_Party_to_the_Amended_Convention.pdf)

## Annex G: Practical guidance on establishing appropriate confidentiality and data safeguards frameworks for exchange of information

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 observed.

- 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>

Taking into account the relevance and importance of establishing a legal and regulatory framework that ensures the confidentiality of taxpayer information, 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 information, including information exchanged under international agreements in line with the requirements of the AEOI standard but which is also relevant to other types of exchange, such as EOIR, SEOI and exchange of tax rulings and Country-by-Country reports under BEPS Action 5 and 13.

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

## Annex H: Practical Guidance on implementing Cross-Border Assistance in the Recovery of Tax Claims

### Global Forum Secretariat

The Global Forum Secretariat has published a toolkit that addresses the specific needs of jurisdictions which want to make use of assistance in tax collection. The toolkit provides guidance on building the legal and administrative frameworks necessary for this form of assistance with a focus on the establishment and the management of a dedicated function within a tax authority.

- OECD (2024), *Model Manual on Cross Border Assistance in the Recovery of Tax Claims*, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD, Paris, [www.oecd.org/tax/transparency/documents/model-manual-cross-border-assistance-recovery-tax-claims.pdf](http://www.oecd.org/tax/transparency/documents/model-manual-cross-border-assistance-recovery-tax-claims.pdf).
- 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](http://www.oecd.org/tax/transparency/documents/a-toolkit-for-establishing-a-function-for-cross-border-assistance-in-the-recovery-of-tax-claims.pdf)

The Global Forum Secretariat has 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 countries.

- 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](http://www.oecd.org/tax/transparency/documents/cross-border-assistance-recovery-of-tax-claims-african-countries.pdf)

### Inter-American Centre of Tax Administrations (CIAT)

In association with the German Agency of International Cooperation (GIZ) and the Inter-American Development Bank (IDB), CIAT has published a manual on tax collection and recovery which draws on the experience of Latin American Countries, Spain and Portugal.

- CIAT/GIZ/IDB (2016), *Manual on Tax Collection and Recovery*, Inter-American Centre of Tax Administrations, German Agency of International Cooperation and Inter-American Development Bank available at [www.ciat.org/Biblioteca/DocumentosTécnicos/Ingles/2016\\_manual\\_tax\\_collection\\_recovery.pdf](http://www.ciat.org/Biblioteca/DocumentosTécnicos/Ingles/2016_manual_tax_collection_recovery.pdf)

### **Organisation for Economic Co-operation and Development**

Working through the Forum on Tax Administration's Tax Debt Management Network, the OECD has published a variety of tools aimed at strengthening domestic and international tax recovery. These include:

- OECD (2020), *Forum on Tax Administration: Enhancing International Tax Debt Management*, Paris, available at [www.oecd.org/tax/forum-on-tax-administration/publications-and-products/enhancing-international-tax-debt-management.htm](http://www.oecd.org/tax/forum-on-tax-administration/publications-and-products/enhancing-international-tax-debt-management.htm)
- OECD (2019), *Tax Debt Management Maturity Model*, OECD Tax Administration Maturity Model Series, OECD, Paris. [www.oecd.org/tax/forum-on-tax-administration/publications-and-products/tax-debt-management-maturitymodel.htm](http://www.oecd.org/tax/forum-on-tax-administration/publications-and-products/tax-debt-management-maturitymodel.htm)
- OECD (2014), *Working Smarter in Tax Debt Management*, OECD Publishing. <http://dx.doi.org/10.1787/9789264223257-en>

The OECD's Committee on Fiscal Affairs has also developed and declassified a Manual on the Implementation of Assistance in Tax Collection based on Article 27 and the Convention on Mutual Administrative Assistance in Tax Matters

- OECD (2007), *Manual on Assistance in the Collection of Taxes* available at <https://www.oecd.org/ctp/exchange-of-tax-information/oecdmanualonassistanceinthecollectionoftaxes.htm>

## Appendix I – International Legal Framework for Exchange of Information: Comparative Table

Legal Basis	EOIR	AEOI	SEOI	Simultaneous Tax Examination	Tax Examination Abroad	Assistance in Recovery	Service of Documents	Confidentiality	Other Purposes
<a href="#">2021 UN DTC Model<sup>1</sup></a>	Art. 26 [Comm. para. 99(12)]	Art. 26 [Comm. para. 99(60)]	Art. 26 [Comm. para. 99(17)]		Art. 26 [Comm. para. 99(23)]	Art. 27		Art. 26.2	Art. 26.2, 3 <sup>rd</sup> sentence (Comm. para. 43)
<a href="#">2017 OECD DTC Model<sup>2</sup> /</a>	Art. 26 (Comm. para. 9)	Art. 26 (Comm. para. 9) + CAA	Art. 26 (Comm. para. 9)	Art. 26 (Comm. para. 9.1)	Art. 26 (Comm. para. 9.1)	Art. 27		Art. 26.2	Art. 26.2, 3 <sup>rd</sup> sentence (Comm. para. 12.3)
<a href="#">2002 TIEA Model<sup>3</sup></a>	Art. 5				Art. 6			Art. 8	Art. 8, last sentence (Comm. para. 97)
<b>2015 TIEA Model Protocol<sup>4</sup></b>		Art. 5A + CAA	Art. 5B						
<a href="#">MAAC as amended by 2010 Protocol<sup>5</sup></a>	Art. 5	Art. 6 + <a href="#">CRS MCAA<sup>6</sup></a> / <a href="#">CbCR MCAA<sup>7</sup></a> /	Art. 7	Art. 8	Art. 9	Art. 11-16	Art. 17	Art. 22	Art. 22.4

<sup>1</sup> [https://financing.desa.un.org/sites/default/files/2023-05/UN%20Model\\_2021.pdf](https://financing.desa.un.org/sites/default/files/2023-05/UN%20Model_2021.pdf)

<sup>2</sup> [https://www.oecd.org/en/publications/model-tax-convention-on-income-and-on-capital-condensed-version-2017\\_mtc\\_cond-2017-en.html](https://www.oecd.org/en/publications/model-tax-convention-on-income-and-on-capital-condensed-version-2017_mtc_cond-2017-en.html).

<sup>3</sup> [https://www.oecd.org/en/publications/agreement-on-exchange-of-information-in-tax-matters\\_9789264034853-en.html](https://www.oecd.org/en/publications/agreement-on-exchange-of-information-in-tax-matters_9789264034853-en.html).

<sup>4</sup> <https://doi.org/10.1787/62b2a21e-en>.

<sup>5</sup> <https://www.oecd.org/ctp/exchange-of-tax-information/ENG-Amended-Convention.pdf>. Status of jurisdictions participating in the MAAC is available at [www.oecd.org/ctp/exchange-of-tax-information/Status\\_of\\_convention.pdf](https://www.oecd.org/ctp/exchange-of-tax-information/Status_of_convention.pdf).

<sup>6</sup> <https://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/multilateral-competent-authority-agreement.pdf>.

<sup>7</sup> <https://web.archive.oecd.org/2020-05-29/385805-cbc-mcaa.pdf>.

		<a href="#">CARF MCAA</a> <sup>8</sup>							
<a href="#">ATAF DTA Model</a> <sup>9</sup>	Art. 26	Art. 26	Art. 26	Art. 26	Art. 26	Art. 27			
<a href="#">ATAF AMATM</a> <sup>10</sup>	Art. 4	Art. 4	Art. 4	Art. 6	Art. 5	Art. 7		Art. 8	Art. 8, last sentence
<a href="#">1999 CIAT Model</a> <sup>11</sup>	Art. 4.5	Art. 4.3	Art. 4.4	Art. 5	Art. 6			Art. 4.9	
<b>2004 Andean Community Decision 578</b> <sup>12</sup>	Art. 19	Art. 19	Art. 19	Art. 19		Art. 21		Art. 19	
<a href="#">CARICOM DTT</a> <sup>13</sup>	Art. 24	Art. 24	Art. 24					Art. 24.1	
<a href="#">Supplementary Act ECOWAS A/SA.3/07/23</a> <sup>14</sup>	Art. 4	Art. 5 + CAA	Art. 6	Art. 7	Art. 8	Art. 9-14	Art. 15	Art. 18	Art. 18.5
<a href="#">2012 SADC Agreement</a> <sup>15</sup>	Art. 4	Art. 4	Art. 4	Art. 6	Art. 5	Art. 7		Art. 8	Art. 8, last sentence
<a href="#">SADC MoU</a> <sup>16</sup>	Arts. 5.3, 5.5, 6.6, 6.8	Arts. 5.3, 5.5, 6.6, 6.8	Arts. 5.3, 5.5, 6.6, 6.8	Arts. 5.3, 5.5, 6.6, 6.8	Arts. 5.3, 5.5, 6.6, 6.8	Arts. 5.3, 5.5, 6.6, 6.8			

<sup>8</sup> [https://www.oecd.org/content/dam/oecd/en/publications/reports/2023/06/international-standards-for-automatic-exchange-of-information-in-tax-matters\\_ab3a23bc/896d79d1-en.pdf](https://www.oecd.org/content/dam/oecd/en/publications/reports/2023/06/international-standards-for-automatic-exchange-of-information-in-tax-matters_ab3a23bc/896d79d1-en.pdf) (page 69-75).

<sup>9</sup> [https://events.ataftax.org/media/events/6/documents/ATAF\\_Model\\_DTA\\_Revised\\_30\\_Nov.pdf](https://events.ataftax.org/media/events/6/documents/ATAF_Model_DTA_Revised_30_Nov.pdf).

<sup>10</sup> [https://events.ataftax.org/index.php?page=documents&func=view&document\\_id=95](https://events.ataftax.org/index.php?page=documents&func=view&document_id=95).

<sup>11</sup> [https://www.ciat.org/Biblioteca/DocumentosTecnicos/Ingles/1999\\_model\\_agreement\\_tax\\_information\\_ciat.pdf](https://www.ciat.org/Biblioteca/DocumentosTecnicos/Ingles/1999_model_agreement_tax_information_ciat.pdf).

<sup>12</sup> <https://www.comunidadandina.org/DocOficialesFiles/Gacetas/Gace1063.pdf>. Decision 578 is applicable to Bolivia, Colombia, Ecuador, and Peru.

<sup>13</sup> <https://www.finance.gov.tt/wp-content/uploads/2019/07/The-Double-Taxation-Relief-CARICOM-Order-1994.pdf>. CARICOM members and signatories include Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Saint Lucia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, and Trinidad and Tobago.

<sup>14</sup> <https://revenue.lra.gov.lr/wp-content/uploads/2024/12/SA.3-MUTUAL-ADMINISTRATIVE-ASSISTANCE-ON-TAX.pdf>.

<sup>15</sup> [https://www.sadc.int/sites/default/files/2021-08/Agreement\\_on\\_Assistance\\_in\\_Tax\\_Matters\\_-\\_2012\\_-\\_English.pdf](https://www.sadc.int/sites/default/files/2021-08/Agreement_on_Assistance_in_Tax_Matters_-_2012_-_English.pdf). SADC Member States include Angola, Botswana, Comoros, Democratic Republic of Congo, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, United Republic of Tanzania, Zambia, and Zimbabwe.

<sup>16</sup> [https://www.sadc.int/sites/default/files/2021-08/Memorandum\\_of\\_Understanding\\_in\\_Cooperation\\_in\\_Taxation\\_Related\\_Matters.pdf](https://www.sadc.int/sites/default/files/2021-08/Memorandum_of_Understanding_in_Cooperation_in_Taxation_Related_Matters.pdf).



<a href="#">EU Directive 2011/16/EU</a> <sup>17</sup>	Art. 5	Art. 8 + Annex	Art. 9	Art. 12	Art. 11		Art. 13	Art. 16	Art. 16.2
<a href="#">EU Directive 2010/24/EU</a> <sup>18</sup>	Art. 5		Art. 6		Art. 7	Arts. 1-4, 10-20	Arts. 8, 9	Art. 23	Art. 23.3
<a href="#">1989 Nordic Mutual Assistance Convention</a> <sup>19</sup>	Arts. 1(b), 10	Art. 11.1	Arts. 1(b), 11.2	Art. 12	Art. 13	Art. 14-18	Art. 9	Art. 21	
<a href="#">2006 Central American Convention</a> <sup>20</sup>	Arts. 11, 14		Art. 11					Art. 9	
<a href="#">CAEU DTC</a> <sup>21</sup>	Art. 27	Art. 27	Art. 27	Art. 27	Art. 27			Art. 27.1	
<a href="#">CAEU Convention on Recovery Assistance in Taxes and Fees</a> <sup>22</sup>						Art. 3			

<sup>17</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02011L0016-20240101/>. EU Member States include Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden.

<sup>18</sup> Official Journal of the European Union L84/1, <http://data.europa.eu/eli/dir/2010/24/oj>. See also European Commission Implementing Regulation NO. 1189/2011 of 18 November 2011 ([https://eur-lex.europa.eu/eli/reg\\_impl/2011/1189/oj](https://eur-lex.europa.eu/eli/reg_impl/2011/1189/oj)) as amended by the Implementing Regulation NO. 2017/1966 of 27 October 2017 ([https://eur-lex.europa.eu/eli/reg\\_impl/2017/1966/oj](https://eur-lex.europa.eu/eli/reg_impl/2017/1966/oj)).

<sup>19</sup> <https://www.yumpu.com/en/document/view/46018014/nordic-convention-on-mutual-assistance-in-tax-matters>. The Nordic Convention was entered into by Denmark, Faroe Islands, Finland, Greenland, Iceland, Norway, and Sweden.

<sup>20</sup> [https://www.congreso.gob.gt/assets/uploads/info\\_legislativo/iniciativas/Registro3665.pdf](https://www.congreso.gob.gt/assets/uploads/info_legislativo/iniciativas/Registro3665.pdf).

<sup>21</sup> [https://www.eta.gov.eg/sites/default/files/2024-09/dwl\\_mjls\\_alwhdt\\_alaqtsadyt\\_alrbytd.pdf](https://www.eta.gov.eg/sites/default/files/2024-09/dwl_mjls_alwhdt_alaqtsadyt_alrbytd.pdf). The Council of Arab Economic Unity (CAEU) includes Egypt, Iraq, Jordan, Kuwait, Libya, Mauritania, Palestine, Saudi Arabia, Sudan, Tunisia, Syria, United Arab Emirates and Yemen.

<sup>22</sup> [https://www.eta.gov.eg/sites/default/files/2024-09/atfaqyt\\_altawn\\_fy\\_thsyt\\_aldrayb\\_walrswm.pdf](https://www.eta.gov.eg/sites/default/files/2024-09/atfaqyt_altawn_fy_thsyt_aldrayb_walrswm.pdf).