

Distr.: General

21 October 2013

Original: English

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**Committee of Experts on International Cooperation in Tax Matters**

**Ninth session**

Geneva, 21-25 October 2013

**NOTE ON AUTOMATIC EXCHANGE OF INFORMATION<sup>1</sup>**

***Summary***

This note was prepared by Mexico following discussions on Exchange of Information at the last Annual Session of the Committee of Experts. The aim of this research is to presents an overview of automatic exchange of information (AEOI) in light of some recent developments.

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<sup>1</sup> Jorge E. Correa Cervera (Tax Administration Service, Mexico), 3 October 2013.

## I. INTRODUCTION

1. At its eighth session, held from 15 to 19 October 2012, the Committee of Experts on International Cooperation in Tax Matters discussed recent developments on exchange of information. The Committee's discussion is summarized in paragraphs 62-63 of the report of the Committee (E/2012/45),<sup>2</sup> as follows:

*“E. Exchange of information*

*62. Robin Oliver, a member of the Committee, provided an update on the exchange of information. After recalling that the Committee had focused its work in this area on updating article 26 of the United Nations Model Convention, he reported on some relevant developments within OECD [the Organisation for Economic Co-operation and Development]. The following three main issues on the exchange of information were highlighted and discussed by the Committee:*

- (a) The meaning of “foreseeably relevant”, in paragraph 1 of the article;*
- (b) Requests for information regarding groups of taxpayers;*
- (c) Automatic information exchange, as opposed to information exchange on request.*

*63. Recognizing that these issues required further analysis, and given that the current members of the Committee will finish their terms on 30 June 2013, the Committee agreed to include the issues in a catalogue of issues recommended for further consideration by the new membership. One Committee member referred, in the context of issue (b) above, to the importance of implementing taxpayer registration in order to take full advantage of the automatic exchange of information. Another Committee member suggested considering the issue of the use of information for purposes other than taxation, and this was added to the list of issues for consideration by the new membership.”*

2. When discussing the topics for the provisional agenda for the ninth session of the Committee, on the last day of the session, Mexico volunteered to prepare a note on issue (c) above (*i.e.* automatic exchange of information).

3. This is the promised note. It presents an overview of automatic exchange of information (AEOI) in light of some recent developments.<sup>3</sup> In particular, it attempts to briefly answer the following questions:

- What is AEOI?

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<sup>2</sup> Available at [http://www.un.org/ga/search/view\\_doc.asp?symbol=E/2012/45&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=E/2012/45&Lang=E)

<sup>3</sup> This note does not include European Union specific developments.

- How does AEOI work?
- Who can engage in AEOI?
- Why engage in AEOI?
- What developments are taking place with AEOI?
- What role could the Committee play in relation to AEOI?

#### **1.1 II. What is automatic exchange of information?**

4. AEOI involves the systematic and periodic transmission of “bulk” taxpayer information by the source jurisdiction to the residence jurisdiction concerning various categories of income (*e.g.* dividends, interest, salaries). It is also known as “routine” exchange of information in some jurisdictions.

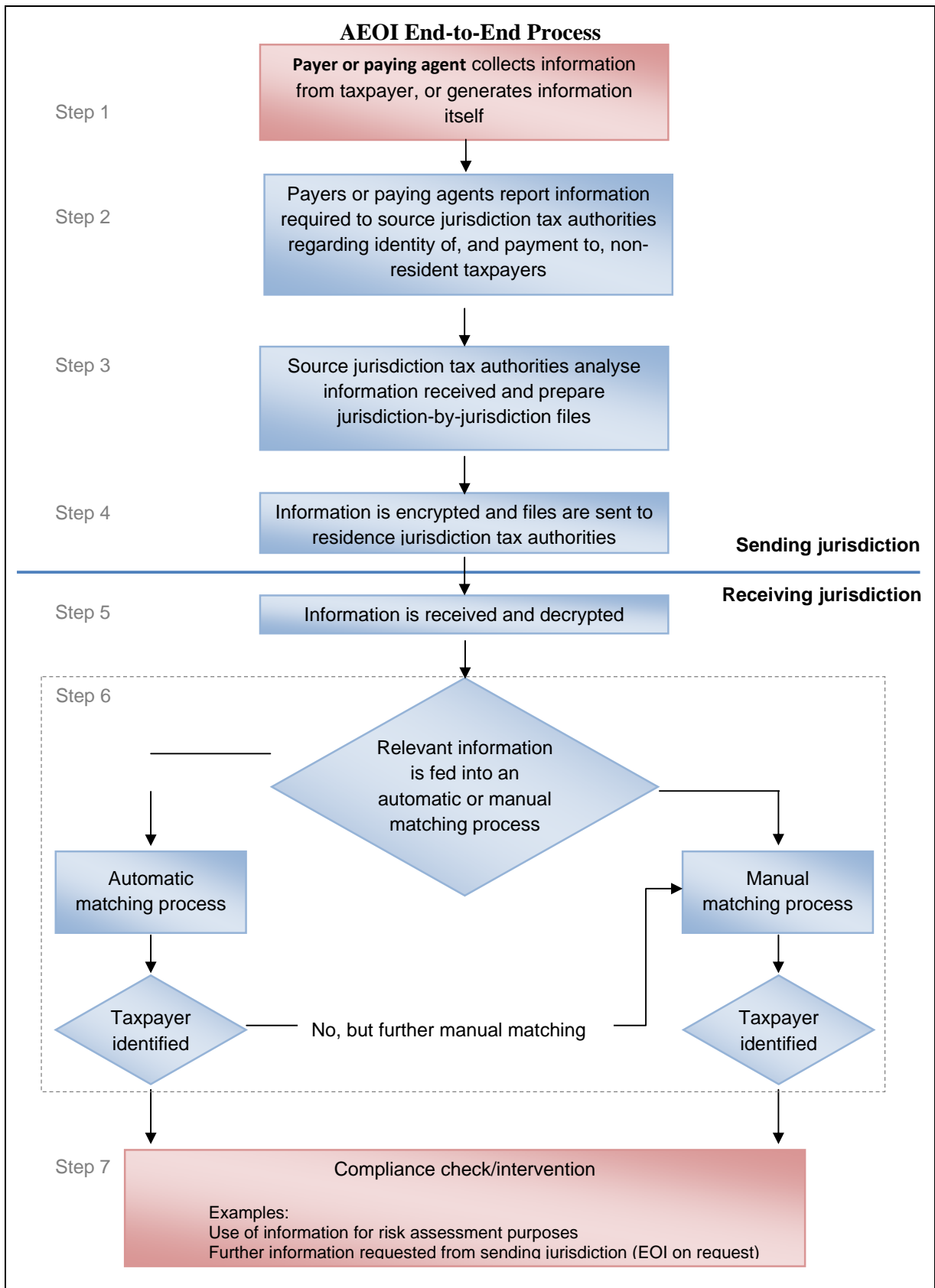
5. The information that is exchanged automatically is normally collected in the source jurisdiction on a routine basis, generally through reporting of the payments by the payer (*e.g.* financial institution, employer).

6. As a result, the jurisdiction of residence can check its tax records to verify that taxpayers have accurately reported their foreign source income.

7. AEOI can also be used to transmit other types of information such as changes of residence, purchase or disposition of immovable property, value added tax refunds, etc.

#### **1.2 III. How does automatic exchange of information work?**

8. The AEOI end-to-end process can be summarized in the following seven steps:



### 1.3 IV. Who can engage in automatic exchange of information?

9. To engage in an effective AEOI relationship, a jurisdiction needs to be able to obtain the information to be exchanged, to exchange such information and, at the same time, to ensure that the information received is adequately safeguarded.

10. From a legal perspective, domestic legislation needs to be in place for information to be reported to the tax administration of the sending jurisdiction, and to guarantee that that jurisdiction, when acting as both sending and receiving jurisdiction, adequately safeguards the information.

11. Also, to exchange the information, a legal basis is needed. Such basis is normally found in the following provisions:

- The exchange of information provision of a double taxation convention based on Article 26 of the United Nations or OECD Model Convention.
- Article 6 of the Convention on Mutual Administrative Assistance in Tax Matters.<sup>4</sup>
- For European Union (EU) Member States, the domestic laws implementing EU directives that provide for automatic exchange.

12. Additionally, some jurisdictions also require an agreement setting forth the terms and conditions of the future AEOI. Article 6 of the Convention on Mutual Administrative Assistance in Tax Matters also requires a mutual agreement between the Parties willing to engage in AEOI. In general, such agreements detail the information to be exchanged, the procedures for sending and receiving such information, and the format to be used.

13. On the practical side, a jurisdiction needs to have in place the infrastructure for an effective AEOI relationship, such as established procedures for ensuring timely, accurate, and confidential information exchanges (*e.g.* information security management systems in relation to employees and consultants, physical security, information systems security and oversight, etc.), effective and reliable communications, and demonstrated capabilities to promptly resolve questions and concerns about exchanges or request for exchanges (*e.g.* those arising after the information is exchanged) and to administer compliance and enforcement (*e.g.* penalties and sanctions for improper use of the information).<sup>5</sup>

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<sup>4</sup> As of 27 August 2013 more than 60 jurisdictions have signed the Convention or have committed to do so. The 56 signatories to the Convention, including all G20 countries, are: Albania, Argentina, Australia, Austria, Azerbaijan, Belgium, Belize, Brazil, Canada, China, Colombia, Costa Rica, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Ghana, Greece, Guatemala, Iceland, India, Indonesia, Ireland, Italy, Japan, Korea, Latvia, Lithuania, Luxembourg, Malta, Mexico, Moldova, Morocco, Netherlands, New Zealand, Nigeria, Norway, Poland, Portugal, Romania, Russia, Saudi Arabia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Tunisia, Turkey, Ukraine, United Kingdom, and United States. See Chart of Signatures and Ratifications, available at [http://www.oecd.org/tax/exchange-of-tax-information/Status\\_of\\_convention.pdf](http://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf)

<sup>5</sup> See, in such regard, OECD (2012), *Keeping it safe*, OECD Publishing, [http://www.oecd.org/ctp/exchange-of-tax-information/Keeping%20it%20Safe\\_EN\\_FINAL\\_forweb.pdf](http://www.oecd.org/ctp/exchange-of-tax-information/Keeping%20it%20Safe_EN_FINAL_forweb.pdf)

#### **1.4 V. Why engage in automatic exchange of information?**

14. As a tool to counter offshore non-compliance, engaging in AEOI could have a number of benefits:

- It can provide timely information on non-compliance where tax has been evaded either on an investment return or the underlying capital sum.
- It can help detect cases of non-compliance even where tax administrations have had no previous indications of non-compliance.
- It has deterrent effects, increases voluntary compliance and encourages taxpayers to report all relevant information.
- It may also help educate taxpayers in their reporting obligations, increase tax revenues and thus lead to fairness – ensuring that all taxpayers pay their fair share of tax in the right place at the right time.
- In a small number of cases, jurisdictions have been able to integrate the information received automatically with their own systems such that income tax returns can be prefilled.

#### **1.5 VI. What developments are taking place with automatic exchange of information?**

15. AEOI is not new, but it has recently gained much political support. The OECD, the EU and some jurisdictions have been involved with AEOI for many years.

##### **1.5.1 FATCA**

16. In 2010, the United States (US) enacted legislation commonly referred to as FATCA (Foreign Account Tax Compliance Act), which requires withholding agents to withhold 30 per cent of certain payments to a foreign financial institution unless it has entered into an agreement with the US tax administration to, among other things, report certain information with respect to US accounts.

17. Recognizing the legal issues that had been raised in connection with FATCA, on June 2012, the US and five European countries (France, Germany, Italy, Spain and the United Kingdom, the so-called G5) developed a model intergovernmental agreement (Model IGA) under which foreign financial institutions would satisfy their FATCA requirements by reporting information about US accounts to their respective tax authorities, followed by the automatic exchange of that information on a government-to-government basis with the US.<sup>6</sup>

18. As a result of that, a number of IGAs have been, and are being, concluded based on the Model IGA and many jurisdictions have committed, and are committing, to work with other jurisdictions, the OECD and where appropriate the EU on adapting the Model IGA and

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<sup>6</sup> See Joint Statement from the US, France, Germany, Italy, Spain and the UK (2-7-2012), available at <http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Joint-Communique-Model-Agreement-to-Implement-FATCA-7-25-2012.pdf>

other agreements “...to a common model for automatic exchange of information, including the development of reporting and due diligence standards for financial institutions”.<sup>7</sup>

### 1.5.2 G5 pilot multilateral exchange facility

19. On April 2013, the so-called G5 announced their intention to work on a pilot multilateral exchange facility among themselves using the Model IGA as the basis for such exchange, and invited other EU member countries to join the pilot.<sup>8</sup>

20. So far, this initiative has been joined by the following jurisdictions:

- In April-May 2013, 12 other European countries.<sup>9</sup>
- In May 2013, the United Kingdom (UK) Overseas Territories (the Cayman Islands, Anguilla, Bermuda, the British Virgin Islands, Montserrat, Gibraltar and the Turks and Caicos Islands) and the Isle of Man.<sup>10</sup>
- In June 2013, Mexico, Norway and Australia.<sup>11</sup>

### 1.5.3 G20 support

21. The G20 has been continuously supporting these developments, *e.g.*, by calling on all countries to join the Convention on Mutual Administrative Assistance in Tax Matters without further delay and by endorsing AEOI as the new, global standard. Since the Committee’s eighth session, that support can be summarized as follows:

- Communiqué of Ministers of Finance and Central Bank Governors of the G20, Mexico City, 4-5 November 2012:

*“21. We commend the signings of the Multilateral Convention [...] We will continue to implement practices of automatic exchange of information and call on the OECD to analyze the safeguards, mechanisms and milestones necessary to increase its use and efficient implementation in a multilateral context. [...]”*

<sup>7</sup> See Article 6, paragraph 3 of the Model 1A IGA Reciprocal, Preexisting TIEA or DTC (August 19, 2013), available at <http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA-Reciprocal-Model-1A-Agreement-Preexisting-TIEA-or-DTC-8-19-13.pdf>

<sup>8</sup> See G5 letter to the European Commission, available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/208068/g5\\_letter\\_to\\_european\\_commission\\_090413.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/208068/g5_letter_to_european_commission_090413.pdf)

<sup>9</sup> See Minute statement on pilot multilateral exchange facility: available at <https://www.gov.uk/government/publications/statement-on-the-pilot-multilateral-automatic-information-exchange-facility>

<sup>10</sup> See <https://www.gov.uk/government/news/chancellor-welcomes-huge-step-forward-in-global-fight-against-tax-evasion>

<sup>11</sup> See for Mexico [http://www.shcp.gob.mx/Biblioteca\\_noticias\\_home/comunicado\\_037\\_2013.pdf](http://www.shcp.gob.mx/Biblioteca_noticias_home/comunicado_037_2013.pdf) and [http://www.hacienda.gob.mx/Biblioteca\\_noticias\\_home/comunicado\\_049\\_2013.pdf](http://www.hacienda.gob.mx/Biblioteca_noticias_home/comunicado_049_2013.pdf); for Norway <https://www.gov.uk/government/news/g8-2013-concrete-action-agreed-on-tax-transparency>, and for Australia <http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2013/009.htm&pageID=003&min=cebb&Year=&DocType>

- Communiqué, Meeting of Finance Ministers and Central Bank Governors, Moscow, 15-16 February 2013:

*“20. [...] We strongly encourage all jurisdictions to sign the Multilateral Convention on Mutual Administrative Assistance. [...] We reiterate our commitment to extending the practice of automatic exchange of information, as appropriate, and commend the progress made recently in this area. We support the OECD analysis for multilateral implementation in that domain.”*

- Communiqué, Meeting of Finance Ministers and Central Bank Governors, Washington, 18-19 April 2013:

*“14. [...] In view of the next G20 Summit, we also strongly encourage all jurisdictions to sign or express interest in signing the Multilateral Convention on Mutual Administrative Assistance in Tax Matters [...] We welcome progress made towards automatic exchange of information which is expected to be the standard and urge all jurisdictions to move towards exchanging information automatically with their treaty partners, as appropriate. We look forward to the OECD working with G20 countries to report back on the progress in developing of a new multilateral standard on automatic exchange of information, taking into account country-specific characteristics. The Global Forum will be in charge of monitoring. [...]”*

- Communiqué, Meeting of Finance Ministers and Central Bank Governors, Moscow, 19-20 July 2013:

*“19. We commend the progress recently achieved in the area of tax transparency and we fully endorse the OECD proposal for a truly global model for multilateral and bilateral automatic exchange of information. We are committed to automatic exchange of information as the new, global standard and we fully support the OECD work with G20 countries aimed at setting such a new single global standard for automatic exchange of information. We ask the OECD to prepare a progress report by our next meeting, including a timeline for completing this work in 2014. We call on all jurisdictions to commit to implement this standard. We are committed to making automatic exchange of information attainable by all countries, including low-income countries, and will seek to provide capacity building support for them. We call on all countries to join the Multilateral Convention on Mutual Administrative Assistance in Tax Matters without further delay. We look forward to the practical and full implementation of the new standard on a global scale. All countries must benefit from the new transparent environment and we call on the Global Forum on Exchange of Information for Tax Purposes to work with the OECD task force on tax and development, the World Bank Group and others to help developing countries identify their need for technical assistance and capacity building. We are looking forward to the Global Forum establishing a mechanism to monitor and review the implementation of the global standard on automatic exchange of information. [...]”*

- G20 Leaders’ Declaration, Saint Petersburg Summit, 5-6 September 2013:



*“51. We commend the progress recently achieved in the area of tax transparency and we fully endorse the OECD proposal for a truly global model for multilateral and bilateral automatic exchange of information. Calling on all other jurisdictions to join us by the earliest possible date, we are committed to automatic exchange of information as the new global standard, which must ensure confidentiality and the proper use of information exchanged, and we fully support the OECD work with G20 countries aimed at presenting such a new single global standard for automatic exchange of information by February 2014 and to finalizing technical modalities of effective automatic exchange by mid-2014. In parallel, we expect to begin to exchange information automatically on tax matters among G20 members by the end of 2015. We call on all countries to join the Multilateral Convention on Mutual Administrative Assistance in Tax Matters without further delay. We look forward to the practical and full implementation of the new standard on a global scale. [...] We also ask the Global Forum to establish a mechanism to monitor and review the implementation of the new global standard on automatic exchange of information.*

*52. Developing countries should be able to reap the benefits of a more transparent international tax system, and to enhance their revenue capacity, as mobilizing domestic resources is critical to financing development. We recognize the importance of all countries benefitting from greater tax information exchange. We are committed to make automatic exchange of information attainable by all countries, including LICs, and will seek to provide capacity building support to them. We call on the Development Working Group in conjunction with the Finance Track, to work with the OECD, the Global Forum and other IOs to develop a roadmap showing how developing countries can overcome obstacles to participation in the emerging new standard in automatic exchange of information, and to assist them in meeting the standard in accordance with the action envisaged in the St Petersburg Development Outlook. The Working Group should report back by our next meeting. [...]”<sup>12</sup>*

#### **1.5.4 Common model**

22. Within the context described previously, the UK, as the Chair of the G8, asked the OECD to report ahead of the G8 Summit (Lough Erne, 18 June 2013) on how to develop effectively a universal standard on AEOL.<sup>13</sup> The OECD responded to that request with a report prepared under the authority of its Secretary General.<sup>14</sup>

23. In summary, the OECD report for the G8 Summit sets out key factors for an effective model for automatic exchange, provides relevant background and outlines four steps needed to put such a model into practice: (i) enacting broad framework legislation to facilitate the expansion of a jurisdiction’s network of partner jurisdictions; (ii) selecting (or where necessary entering into) a legal basis for the exchange of information; (iii) adapting the scope of reporting and due diligence requirements and coordinating guidance, and (iv) developing common or compatible IT standards.

<sup>12</sup> See G20 Official Materials, available at <http://www.g20.org/documents/>

<sup>13</sup> See <https://www.gov.uk/government/news/pm-letter-to-the-eu-on-tax-evasion>

<sup>14</sup> OECD (2013), *A Step Change in Tax Transparency*, OECD Publishing, [http://www.oecd.org/ctp/exchange-of-tax-information/taxtransparency\\_G8report.pdf](http://www.oecd.org/ctp/exchange-of-tax-information/taxtransparency_G8report.pdf)

24. It also provides potential timeframes for each of the action items: (i) a model competent authority agreement could be available as early as the second half of 2013 with the detailed guidance following in the first half of 2014, and (ii) a reporting schema and a first version of the related instructions could also be available in the second half of 2013 and finalised in the first half of 2014.

#### **1.6 VII. What role could the Committee play in relation to automatic exchange of information?**

25. Under its mandate, the Committee could play different roles in relation to AEOI.<sup>15</sup>

##### **1.6.1 International cooperation**

26. The Committee can consider how new and emerging issues could affect international cooperation in tax matters and develop assessments, commentaries and appropriate recommendations.

27. AEOI is, without doubt, one of the most important emerging issues in international tax and could become a step change in tax transparency, comparable *e.g.* to the adoption of exchange on request as the international standard a few years ago.

28. Therefore, when discussing AEOI, the Committee could consider the following proposed actions:

- Endorsing AEOI as a new, global standard on exchange of information.
- Calling on all countries to join the Convention on Mutual Administrative Assistance in Tax Matters.
- In collaboration with G20 countries, the OECD and other concerned multilateral bodies and relevant international organizations, working at developing the common model for AEOI, giving special attention to making AEOI attainable to developing countries and countries with economies in transition.

##### **1.6.2 Capacity-building and technical assistance**

29. The Committee's mandate also includes making recommendations on capacity-building and the provision of technical assistance to developing countries and countries with economies in transition.

30. Therefore, when discussing AEOI, the Committee could consider the following proposed actions:

- Working to help developing countries and countries with economies in transition to identify their need for capacity building and technical assistance on AEOI (including confidentiality), with the OECD, the Global Forum on Exchange of Information for

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<sup>15</sup> See ECOSOC Resolution 2004/69, available at <http://www.un.org/en/ecosoc/docs/2004/resolution%202004-69.pdf>

Tax Purposes and other concerned multilateral bodies and relevant international organizations.

- Conducting technical meetings, seminars and other capacity-building or technical assistance events on AEOI (including confidentiality) for developing countries and countries with economies in transition, with concerned multilateral bodies and relevant international organizations.

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