

Mr Michael Lennard  
Chief, International Tax Cooperation Section  
Financing for Development Office  
U.N. Dept. of Economic and Social Affairs  
2 U.N. Plaza (1st Avenue and 44th St)  
Room DC2-2148  
United Nations, New York, N.Y. 10017

By Email: [lennard@un.org](mailto:lennard@un.org)

29 August 2014

**Subject: ICC's perspectives on Automatic Exchange of Information**

Dear Mr. Lennard,

During the Eighth Session of the UN Committee of Experts on International Cooperation in Tax Matters (the "UN Committee"), the International Chamber of Commerce ("ICC") was asked to provide input on the notion of Automatic Exchange of Information ("AEOI") and on Article 26 of the UN Model Convention. ICC, as the world business organization, values the opportunity to engage in an on-going constructive dialogue with the UN Committee and is pleased to respond to the Committee's request for the provision of the wider business' perspective with the following considerations:

**1. Towards one global AEOI-standard**

ICC emphasizes that its members support full compliance with tax laws and the effective exchange of relevant tax information between governments. In this regard, the business community supports AEOI. In implementing AEOI, ICC calls for a coherent and globally consistent standard that would to be accepted and endorsed by all countries. Such a global standard would ensure a consistent approach to AEOI requirements and achieve benefits such as reducing the additional administrative burden and the associated compliance costs. A common standard would also allow countries to benefit from consistent and predictable reporting, thereby reducing their infrastructure costs. The UN could play a key role in helping to ensure that international consensus on such a standard is achieved.

ICC appreciates that countries are increasingly showing a willingness to support AEOI as illustrated by the EU Savings Directive and its Directive on Administrative Cooperation, the US Foreign Account Tax Compliance Act (“FATCA”), and the Organisation for Economic Cooperation (“OECD”) Common Reporting Standard (“CRS”). Furthermore, obstacles to international AEOI have been reduced by far reaching restrictions to the concept of bank secrecy.

However, although there is an opportunity to develop a consistent and coherent global standard for AEOI, business remains concerned that discrepancies among the systems and reporting regimes in place, including those noted above, risk increasing compliance costs for business and governments alike. From a government’s perspective, in particular for developing countries, adherence to different standards would require additional capacity building with regard to equipping tax authorities with technical skills as well as appropriate infrastructure, which ultimately would increase costs and affect economic growth. One common reporting standard will benefit governments greatly since there will be common and compatible Information Technology (“IT”) standards. Consistency would also provide an opportunity to develop and enact one single broad legislative framework to facilitate expansion of a global standard across a wide network of partner jurisdictions. Adopting a common approach for the resolution of issues arising in the context of AEOI would, in ICC’s view, be beneficial for businesses and governments alike. ICC notes that the OECD CRS Commentary, released on 21 July 2014 provides detailed explanation and guidance of the CRS and its implementation, and will be an important basis to improve the consistency of implementation across countries adopting the CRS standard.

Furthermore, ICC observes that the international community seems to be moving towards accepting the CRS as the global standard. With that in mind, ICC would applaud increased synergy among the UN Committee of Experts in Tax Matters and the work currently conducted by the OECD and G20. As the only intergovernmental organization bringing together all states, the UN is in a unique position to call upon its Member States to eliminate inconsistencies in the adoption and implementation of AEOI; for example, by maximizing consistency in applying Anti-Money-Laundering (“AML”) and Know-Your-Customer (“KYC”) rules. ICC appeals to the UN to encourage its Member States to eliminate duplicative reporting regimes.

To the extent that two or more reporting regimes are considered to serve different critical purposes, and must be maintained, application differences should be minimized to the greatest possible extent. In light of the above, ICC also calls upon the UN Committee to encourage UN Member States to join the Convention on Mutual Administrative Assistance in Tax Matters.

If the application of one common standard would require a disproportionate investment from developing countries in IT infrastructure or other resources, such an asymmetric burden could be mitigated by allowing for a “light” version of the one common standard. Such a “light” version should be consistent with the fundamental principles of the “full” version while allowing for simplifications (e.g. requiring only limited and targeted data flows). In order to

guarantee consistency, the “light” version should not ask for different information than the “full” version but only for less information. Therefore it should also easily be extractable from the same IT systems as the “full” version. Finally the “light” version should be regarded as a mean to facilitate the implantation of AEOI and therefore be restricted to a transitional time (e.g. five or ten years at the most).

## **2. Confidentiality safeguards and technical assistance**

Exchange of information raises questions about how the rights of the taxpayers will be respected. As the volume of exchanged information is expected to grow substantially, there are increasing concerns about the use of the collected information for purposes other than the application of tax laws. Governments receiving such information must ensure confidentiality and avoid the misuse of any data which is transmitted. Furthermore, it is important that the information requested and exchanged is both relevant and proportionate.

Considering that Article 26 gives a country the right to hold back or refuse to supply information which constitutes any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy, more clarity should be provided on what constitutes a trade or business secret, and emphasis should be placed on respecting confidentiality of the same. Further, Article 26 protects disclosure of such confidential information if it has substantial value. Countries may have different interpretations of such terms, and therefore, further guidance should be provided on what constitutes substantial value. Tax authorities should also be transparent with taxpayers regarding the exact information that is being exchanged. ICC recommends that AEOI should only take place under the rules and the protection of bilateral tax treaties or Tax Information and Exchange Agreements (“TIEAs”) and respectfully cautions against the exchange of information outside of agreements.

Furthermore, the business community is concerned that, in several countries, domestic legislation and/or binding administrative guidance has not yet been adopted which would allow financial institutions to collect, store, and report tax residence as well as other personal information. ICC believes it is crucial that all three of these privacy issues – collection, storage, and reporting – should be resolved for all customers of a financial institution regardless of whether their country of residence has adopted AEOI. ICC suggests that governments seek to address all legal privacy issues and communicate necessary changes to businesses. Regarding the definition of financial institutions, it is essential to exempt companies’ pension plans. In ICC’s view, the exemption should not be applied to “pension funds” in general, but a reference should be made to exempt pension plans as identified under national law.

In addition to having a legal framework, administrative capacity and processes in place to ensure the confidentiality of the information received, the technical and organizational ability of the participating States to gather information within their own jurisdiction is of utmost importance. This might entail a challenge especially to developing countries and economies

in transition. ICC calls upon the UN to provide capacity building and technical assistance, especially to developing countries and economies in transition, by establishing a technical platform – including meetings, seminars and other capacity building or technical assistance events – to allow for swift implementation of AEOI in a secure and cost effective way.

### **3. Revised Article 26 Model UN Convention – Exchange of Information**

ICC recommends that the following input be taken into consideration while considering the proposed revision of Article 26:

- 1) The current text of Article 26 provides that information received by the Receiving State shall be treated as confidential in the same manner as information obtained under the domestic laws of the Receiving State. Confidentiality of information is a crucial issue; taxpayers need to be able to trust that information provided will remain confidential and will not be used for purposes other than for those endorsed by the treaty. Countries may have different standards of treating information as secret, and some countries may not have adequate data protection laws in place. The issue could have a rippling effect where information is passed on by the Receiving State to another jurisdiction which may not have adequate data protection laws. It is, therefore, recommended that rather than relying on the Receiving State's data privacy laws, the UN should lay down minimum acceptable standards of confidentiality, and access to information should be denied if such standards are not met.
- 2) Transparency in exchange of information should increase. For “on request” exchanges of information, taxpayers should be made aware of the request, provided with the reasons the requesting country is seeking the information, and information should be provided only if the information request meets the standard in the relevant treaty.
- 3) It is recommended that, rather than requiring competent authorities to determine appropriate methods and techniques concerning matters in respect of exchange of information, one universally acceptable reporting standard should be adopted and referred to in the revised Article 26. As discussed above, a globally endorsed standard for the Automatic Exchange of Information would greatly contribute to tax transparency. In this regard, ICC notes that the CRS might serve this purpose and would benefit governments and businesses alike, especially given the recent thorough explanation of the CRS provided by the Commentary.

\* \* \* \*

ICC appreciates the opportunity to comment on AEOI issues as the concept continues to evolve. We hope that ICC comments will facilitate a constructive way forward.

Respectfully submitted.

Yours Sincerely,



Dr Christian Kaeser  
Chair, ICC Commission on Taxation