Tools for Applying Tax Treaties: Exchange of Information

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Exchange of Information: Overview

- **Goals**
  - Provide countries with information necessary to protect their tax base and to respond to base erosion and profit shifting
  - Gain a better understanding of how the taxpayer conducts business and makes investments in the country
  - Open multiple paths for obtaining appropriate and useful information regarding taxpayers

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Exchange of Information: Overview

- **Sources for Information**
  - Article 26 of bilateral treaties (based on UN and OECD Models)
  - Country-by-Country Reporting and the Master/Local Files (BEPS project)
  - Tax Information Exchange Agreements (TIEAs)
  - Automatic Exchange of Information (based on the OECD Common Reporting Standard)
  - Regional Agreements
  - Expanded Use of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters

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Article 26: Introduction

- **Goal:** Establish the framework, duties and obligations regarding the exchange of information relevant to the administration and enforcement of a treaty partner's domestic laws.

- **Purpose:** Allows states to secure information that can assist in combatting *tax evasion and avoidance*, and in addressing *capital flight*, both of which may be important to developing countries. UN Commentary, Article 26, Paragraph 1.1.

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Article 26: Introduction

- **Scope:**
  - Article 26 is intended to provide for exchange of information to the “widest extent possible.” UN Commentary, Art. 26, Paragraph 7.2.
  - The obligation imposed by Article 26 on a contracting state is to provide “effective” exchange of information. UN Commentary, Article 26, Paragraph 9.

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Article 26: Introduction

- **Content of Article 26:**
  1. Outlines duties of the Requested State to exchange information with the Requesting State.
  2. Prescribes the Requesting State’s responsibility to treat information as secret in the same manner as its own tax data.
  3. Details limits on the duty of the Requested State to provide the requested information.
  4. Confirms that the Requested State may not decline to provide information on the grounds that it does not need the information for its *own tax purposes.*

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Article 26: Introduction

➢ **Content of Article 26 continued:**

5. Bars a Requested State from declining to provide information solely because the information is held by a bank, financial institution, or fiduciary. [i.e., no bank secrecy argument].
6. Provides that treaty partners will develop methods for the exchange of information under Article 26(1). [As noted later, there are three anticipated ways to exchange information].

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Article 26: Application

The application of Article 26 raises several important questions:

1. Who can request information?
2. About whom can information be requested?
3. What kind of information can be requested?
4. What kind of taxes are covered by information requests?
5. What are appropriate grounds for objecting to a request for information?
6. What are inappropriate grounds for objecting to a request for information?
7. How is exchanged data protected?
8. What are the actual mechanisms for exchange?

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Article 26: Application

1) **Who can request information?**
   - Competent Authority of the Requesting State to the Competent Authority of the Requested State.
2) **About whom can information be requested?**
   - Information can be requested regarding any person, regardless of whether that person is a resident of either Contracting State, and regardless of whether that person is engaged in economic activity in either State.

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Article 26: Application

3) **What kind of information can be requested?**
   - **Information that is "foreseeably relevant" to carrying out the treaty, or to the administration or enforcement of domestic law.**
     - **Purpose of the current language is to clarify that the Requesting State need not demonstrate its need for the information before the Requested State has a duty to provide it.**
     - **Requested information need not be taxpayer-specific data.**
   - **Examples from the UN Commentary Article 26. States may exchange information regarding:**
     - **"Aggressive or abusive tax avoidance schemes, such as those promoted by some international accounting firms".**
     - **Industry wide data, such as information regarding the oil, fishing, pharmaceutical, or banking sector more generally.**
   - **Supports the efforts among some countries to explore tax evasion and avoidance strategies that may be unique to a particular economic sector.**

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Article 26: Application

4) What kind of taxes are covered by information requests?
   - Information regarding:
     - The proper application of the Convention or the administration or enforcement of domestic taxes mentioned in Article 2,
     - All other domestic taxes including subnational taxes [unless states select drafting option to limit coverage to taxes covered by the convention].

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Article 26: Application

<u>Examples of information that would be exchanged:</u>

1. Financial Intermediaries ("FIs"):

   FI invests money of its account holders in State A (which requires recordkeeping regarding beneficial ownership, but does not request those records for domestic law enforcement).

   State B suspects that some beneficiaries of the account holders of the FI are State B residents. State B may request that State A obtain information on identified taxpayers from the FI.

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Article 26: Application

Examples of information that would be exchanged:

2. Nonresident Foreign Subsidiaries:

A State A corporation has subsidiaries located in State B and State C. State B believes that the State B subsidiary has been skimming or shifting profits into the State C subsidiary. State B may request that State A provide information regarding the profits and expenses of the State C subsidiary. [Domestic law of State A obliges a parent to keep records of foreign subsidiary transactions.].

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Article 26: Application

Examples of information that would be exchanged:

3. Entity Classification:

State A seeks to impose a corporate tax on an entity that is claiming partnership status. State A may request information from State B that would be helpful to State A in appropriately classifying the entity. Such information could include the manner in which the entity is classified for State B tax purposes.

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Article 26: Application

<u>Examples of information that would be exchanged:</u>

4. **Exempt income:**

   A resident of State A holds a bank account in State B. The income is exempt from tax in State B under domestic law. State A may request that State B provide information regarding the amount of income (interest) earned on the account.

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Article 26: Application

5) What are appropriate grounds for objecting to a request for information?

- **Refuse to provide information in specific form.**
- **Refuse to provide information because compliance would conflict with domestic law and/or administrative practice.**
- **Refuse to provide information because it would allow Requesting State to circumvent limitations imposed on the Requesting State by its own law and government. *UN Article 26(3)(a), (b).***

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Article 26: Application

5) **What are appropriate grounds for objecting to a request for information? continued**
   - **Refuse to provide information because it constitutes a "confidential communication" between an attorney or other legal representative acting in that role – to extent that the communication is protected from disclosure under domestic law.** ***UN Article 26(3)(c).***
   - **Refuse to provide information because it constitutes a trade or professional secret, or trade process, or other information the disclosure of which would be "contrary to public policy."** ***UN Article 26(3)(c).***

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Article 26: Application

5) **What are appropriate grounds for objecting to a request for information? continued**

Examples:

- Under its own laws, the Requested State is not permitted to seize private papers from a taxpayer without court permission. The Requested State need not perform a seizure without court permission to meet a treaty information request – even if the Requesting State could seize papers without court permission in its own country.
- Exception for trade secrets etc. not bar disclosure that merely embarrasses, leads to increased taxes, or generates bad publicity. Also, in most cases financial information can be disclosed if Requested State concludes confidentiality rules provide adequate protection.

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Article 26: Application

6) **What are *inappropriate* grounds for objecting to a request for information?**
   - Cannot refuse on the grounds of bank secrecy laws in the Requested State. *UN Article 26(5).*
   - Cannot refuse because the request concerns a person not resident in either contracting State. *UN Article 26(1).*
   - Cannot refuse on the grounds that there is no criminal activity. *UN Commentary, Article 26(1), Paragraph 25.*
   - Cannot refuse on the grounds that the Requested State does not have a similar tax. *UN Commentary, Article 26(1), Paragraph 16.2.*
   - Cannot refuse on the grounds that the Requested State does not have a tax interest in the information. *UN Article 26(4) - on this point, paragraph (4) overrides paragraph (3).*

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Article 26: Application

6) **What are inappropriate grounds for objecting to a request for information?**

Example:

- **State A makes a request for information to State B that would be useful in enforcing State A's value added tax. State B cannot refuse to comply on the grounds that it does not impose a value added tax.**

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Article 26: Application

7) How is exchanged data protected?

– Article 26(2) provides protection for exchanged information by requiring that the Requesting State:

- Treats any information received "as secret in the same manner as information obtained under domestic laws."
- Discloses only to authorities concerned with tax assessment, collection, enforcement, prosecution, appeals, or oversight of the above. [Although information may be disclosed in public court proceedings and in judicial decisions.]

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Article 26: Application

7) How is exchanged data protected?

– UN Commentary to Article 26 offers drafting options regarding data protection:

- <u>More detail</u>: Contracting States which are required under their own domestic law "to observe data protection laws may wish to include provisions in their bilateral conventions concerning the protection of personal data exchanged." *UN Commentary, Article 26, Paragraph 5.2.*
- <u>Made public in court</u>: If Contracting States object to exchanged information being made public in courts (or to other uses of the information once it has been made public in the courts), "they should state this objection expressly in their Convention." *UN Commentary, Article 26, Paragraph 12.2.*

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Article 26: Application

7) How is exchanged data protected?

– UN Commentary to Article 26 offers drafting options regarding data protection:
  - Disclosure to third parties: Disclosure of exchanged information to a third country is not permitted unless there is an express provision in the bilateral treaty of the Requesting and Requested States allowing it. UN Commentary, Article 26, Paragraph 13.2.
  - Additional use of information: Contracting States can broaden the purposes for which exchanged information may be used by adding to the end of Article 26(2) an additional sentence provided in the Commentary. UN Commentary, Article 26, Paragraph 13.3

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Article 26: Application

8) What are the mechanisms for exchanging information?

– UN Article 26(6) directs the competent authorities to develop "appropriate methods and techniques concerning" effective exchange of information.

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Article 26: Application

8) What are the mechanisms for exchanging information?

Three basic ways to exchange information:

1. ***On Request*** (the primary focus of Article 26 – "transmittal on specific request").
2. ***Routine/Automatic exchange*** ("routine transmittal of information" pursuant to a structure developed by the treaty partners).
3. ***Spontaneous exchange*** (discretionary).

Commentary considers all three methods. ***UN Commentary, Article 26, Paragraph 30.***

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Article 26: Application

8) What are the mechanisms for exchanging information?

– **UN Commentary to Article 26 offers drafting options regarding methods of exchange**

- **<u>Explicit reference to automatic and spontaneous exchange</u>: Contracting States may be explicit that the competent authorities are obligated to exchange information on request <u>and</u> to "establish measures for automatic and spontaneous exchanges of information." The Commentary offers a sentence that can be added to the end of Article 26(6) stating their obligation to perform automatic and spontaneous exchanges and to agree on the types of information/documents to be exchanged on a routine basis.** ***UN Commentary, Article 26, Paragraph 29.2.***

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Article 26: Application

8) **What are the mechanisms for exchanging information?**
   - **UN Commentary to Article 26 offers drafting options regarding methods of exchange**
     - **<u>Concern for burden on developing countries/cost shifting</u>: Contracting States may be concerned that requests from "a developed country to a developing country could place excessive burden on the tax department in the developing country, due to the different capacity of their tax administration." This burden could be alleviated by having the Requesting State be responsible for material, extraordinary costs associated with its request. The Commentary provides language that could be added at the end of Article 26(6) to provide for the shifting of such extraordinary costs.** ***UN Commentary, Article 26, Paragraphs 29.3, 29.4.***

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Article 26: Application

8) **What are the mechanisms for exchanging information?**
   - **Practical picture of the steps:**
     - **State designates who in its government (typically tax administration) will serve as its "competent authority".**
     - **The competent authority is the state's representative in working with its treaty partner in implementing the treaty, including exchange of information.**
     - **Requests generally do not originate with the competent authority; rather someone in tax administration (e.g., a tax auditor or examiner) will initiate the request.**

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Article 26: Application

8) What are the mechanisms for exchanging information?
   - Practical picture of the steps: *continued*
     - Each state will design its own domestic process for moving a request from the initial field level up to the competent authority.
     - The competent authority of the Requesting State is the person who then makes the request to the competent authority of the Requested State.
     - The Requested State then works through its own internal domestic process to confirm that the request is appropriate under the treaty, and then secures the information and ultimately transmits it to the Requesting State's competent authority.
     - The Requesting State's competent authority then sends the information to the appropriate tax official who initiated the request.

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Article 26: Application

8) What are the mechanisms for exchanging information?
   - The UN Commentary provides additional guidance on issues that arise including:
     - More detail on implementation of actual exchange methods and transmittal of information
     - Situations with three countries, all treaty partners
     - Periodic consultation to review and address new problems

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Article 26: Application

8) **What are the mechanisms for exchanging information?**

The UN Commentary provides additional guidance on issues that arise including:

- **More detail on implementation of actual exchange methods:**
  - **Example: Issues to be considered in routine/automatic flow of information:**
    - **Transmittal on request may be preferred by some states (or be more realistic).**
    - **Routine transmittal typically covers dividends, interest, compensation, royalties, rents, etc.**
    - **Not all countries' current tax collection procedures gather this data.**
    - **Routine transmittal may also include details of certain taxpayer activity (e.g., treaty claims made, opening or closing of a branch office, opening or closing of bank accounts, etc.).**
    - **Items exchanged need not be reciprocal, and could rotate yearly.**
    - **States may need to consider capacity to exchange in deciding the number and type of items covered.**

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Article 26: Application

8) **What are the mechanisms for exchanging information?**

The UN Commentary provides additional guidance on issues that arise including:

- **More detail on implementation of actual exchange methods:**
  - **Example: Issues to be considered in exchange of information more generally:**
    - **Is it most effective to have an official of one country go in person to receive and discuss the information?**
    - **Is it appropriate to have a representative of its own tax administration stationed in the other treaty country?**
    - **Are joint/team investigations of a particular taxpayer or activity appropriate?**
    - **Different arrangements may work better with different states.**

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Article 26: Application

8) **What are the mechanisms for exchanging information?**

The UN Commentary provides additional guidance on issues that arise including:

- **Situations involving three treaty partner countries:**
  - If three countries are joined in a network of treaties, the competent authorities might decide to hold a joint consultation (even if all three do not have treaties with each other).
  - Whether such consultation has a legal foundation may depend on what the specific treaty provides.
  - In the case in which all three countries have treaties with each other, Article 26 may be sufficient to provide the basis for joint consultation.

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Article 26: Application

8) **What are the mechanisms for exchanging information?**

The UN Commentary provides additional guidance on issues that arise including:

- **Periodic Consultation:**
  - Differences in interpretation and application likely to arise.
  - Unforeseen problems and situations likely to arise.
  - A plan for "efficient and expeditious consultation" between the states' competent authorities should be made in advance.
  - Such periodic review ensures exchange of information is working smoothly and efficiently and meeting the goals of promoting compliance with the treaty and with the states' domestic laws.

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Article 26: Application

8) **What are the mechanisms for exchanging information?**
   - **Practical matters:**
     - **Compatible electronic systems**
       - States encouraged to establish procedures for exchange in electronic form.
     - **Taxpayer identification**
       - Identification of taxpayers particularly in automatic exchange.
     - **Enforcement**
     - **Data reliability and quality**
       - Capacity to collect – underlying administrative procedures, use of information returns, etc.
       - Form and language.
     - **Volume**
       - Capacity to provide information and the burden/cost.
       - Role of reciprocity.
       - Capacity to use information if received.

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BEPS: Country-by-Country Reporting and the Master/Local Files

- **Overview:** Revised standards for transfer pricing documentation
  - **Goal :** Establish rules that would require multinational enterprises (MNEs) to “provide all relevant governments with needed information on their global allocation of the income, economic activity and taxes paid among countries according to a template.”

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BEPS: Country-by-Country Reporting and the Master File

- **Overview:** Revised standards for transfer pricing documentation
  - Reporting template known as "country-by-country reporting" (CbC).
  - October 2015: OECD presented its final report to G20.
  - The new CbC requirements to be implemented for fiscal years beginning on or after 1 January 2016 and apply (subject to later review in 2020), to MNEs with "annual consolidated group revenue equal to or exceeding EUR 750 million."
  - Some jurisdictions may need time to follow domestic legislative process in order to implement needed changes to domestic law.

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BEPS: Country-by-Country Reporting and the Master/Local Files

- **Overview:** three-tiered structure for standardising transfer pricing documentation:
  1. **Master file:** containing standardised information relevant for all MNE group members;
  2. **Local file:** containing information referring specifically to material transactions of the local taxpayer;
  3. **CbC report:** template containing certain information regarding the global allocation of the MNE's income and taxes paid, plus certain measures or indicators of the location of economic activity within the MNE group.

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BEPS: Country-by-Country Reporting and the Master/Local Files

- **The three files:**

1. <u>Master file</u>:

- **Provide a high level overview to help place the group's transfer pricing practices into their broader global economic, legal, financial, and tax contexts.**
- **Not exhaustive list of all assets, activities, etc.**
- **Should include:**
  - Lists of important agreements, intangibles, transactions
  - MNE group's organisational structure
  - Description of MNE's business or businesses
  - MNE's intangibles
  - MNE's intercompany financial activities
  - MNE's financial and tax positions

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BEPS: Country-by-Country Reporting and the Master/Local Files

- **The three files:**

2. <u>Local file:</u>

- **Supplements master file and focuses on information relevant to transfer pricing analysis of material transactions between the local country affiliate and related entities in other jurisdictions.**
- **Should include:**
  - Relevant financial information regarding the key related party transactions between the local affiliate and related parties.
  - Comparability analysis.
  - Selection and application of most appropriate transfer pricing method.

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BEPS: Country-by-Country Reporting and the Master/Local Files

- **The three files:**
  3. **CbC Report:**
  - **Aggregate, per tax jurisdiction information regarding the global allocation of income, taxes paid, and specified indicia of the location of economic activity**
  - **Requires listing of all "Constituent Entities" for which financial information is reported**
  - Tax jurisdiction of residence.
  - Tax jurisdiction of incorporation if different from residence.
  - Main business activities.

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BEPS: Country-by-Country Reporting and the Master/Local Files

- **The three files:**
  3. **CbC Report**: Information (in addition to entity information) to be provided for each tax jurisdiction in which MNE operates:

(1) Revenues
- » Unrelated party
- » Related party
- » Total

(2) Profit (Loss) before Income Tax
(3) Income Tax Paid (on a Cash Basis)
(4) Income Tax Accrued – Current Year
(5) Stated Capital
(6) Accumulated Earnings
(7) Number of Employees
(8) Tangible Assets other than Cash and Cash Equivalents

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BEPS: Country-by-Country Reporting and the Master/Local Files

- **The three files:**

3. <u>CbC Report</u>: Use

- **Help jurisdictions**
  - » Determine areas of greater transfer pricing risk
  - » Assign staff
  - » Allocate audit resources
- **Not a substitute for detailed transfer pricing analysis of individual transactions (which should use full functional analysis and full comparability analysis).**
- **Not constitute conclusive evidence that the MNE's transfer prices are or are not appropriate.**
- **Not to be used by tax administrations to propose transfer pricing adjustments using global formulary apportionment of income.**

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BEPS: Country-by-Country Reporting and the Master/Local Files

- **The three files: Compliance issues for MNEs**
  - Contemporaneous documentation
  - Time frame for preparation of documentation
  - Materiality
  - Document Retention
  - Updates
  - Language
  - Penalties
  - Confidentiality

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BEPS: Country-by-Country Reporting and the Master/Local Files

➢ **The three files: Implementation issues for Countries**

- **CbC Report Preparation:** Legislation requiring the ultimate parent entity of an MNE group to file the CbC Report in its jurisdiction.
- **Exchange of CbC Report:**
- **Mechanism of exchange: Automatic exchange of the CbC Reports under international agreements**
- **Participation and access seems to require such agreements**
  - » Controversial
  - » If no agreement available?
- **CAAs can be based on existing agreements: e.g.,: the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, bilateral tax treaties, TIEAs)**

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BEPS: Country-by-Country Reporting and the Master/Local Files

➢ **The three files: Implementation issues for Countries**

- **Delivery of Master and Local Files:** Master file and local file to be delivered by the MNE directly to local tax administrations.
- **Backup delivery of CbC Report:** Local filing of the CbC report by the MNE can serve as a backup to the exchange of the CbC Report between the MNE parent's jurisdiction and other jurisdictions in which MNE operates.

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BEPS: Country-by-Country Reporting and the Master/Local Files

- **The three files: Implementation issues for Countries**
  - **<u>Confidentiality</u>:**
  - – Countries should have and enforce rules protecting the confidentiality of reported or shared information (rules should satisfy at least the standards of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters standards for information upon request).
  - – Confidentiality rules also adequate if satisfy the standards of TIEAs or tax treaties meeting the standards of the Global Forum on Transparency and Exchange of Information for Tax Purposes ("the Global Forum").

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BEPS: Country-by-Country Reporting and the Master/Local Files

- **The three files: Implementation issues for Countries**
  - **<u>Monitoring</u>:**
  - – Mechanisms will be developed to monitor
    - » Jurisdictions' compliance with these commitments
    - » Effectiveness of the filing and dissemination mechanisms
  - – Outcomes of this monitoring process to be evaluated in the 2020 review.

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Tax Information Exchange Agreements: TIEAs

- **Overview:**
  - **Model Agreement – OECD 2002**
  - **Changing Role and Rapid Growth in Use**
  - **Effectiveness – Global Forum on Transparency and Exchange of Information, and Peer Review Process**
  - **Focus on "exchange upon request"**

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Tax Information Exchange Agreements: TIEAs

- **Similarities to UN Article 26:**
  - **Exchange is mandatory. UN Article 26 (1), OECD Model Agreement on Exchange of Information on Tax Matters [OECD TIEA] Article 5(1).**
  - **Requested States need not have a tax interest in the information. UN Article 26(4), OECD TIEA Art 5(2).**
  - **Tax matters being pursued need not constitute a crime under the laws of the Requested State. UN Commentary, Article 26, Paragraph 25; OECD TIEA Commentary Article 26, Para. 40.**
  - **Use of the language "foreseeable" to characterize the type of information that would be subject to exchange. UN Article 26(1), OECD TIEA Articles 1, 5(5).**

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Tax Information Exchange Agreements: TIEAs

- **Similarities to UN Article 26:**
  - **Bank secrecy not available as reason not to exchange. UN Article 26(5), OECD TIEA Article 4(a).**
  - **Confidentiality of exchanged information. UN Article 26(2), OECD TIEA Article 8.**
  - **Requested State need not obtain information that Requesting State would not be able to obtain in similar circumstances under domestic law. UN Commentary, Article 26, Paragraph 18; OECD TIEA Article 7(1) and Commentary, Article 7, Paragraph 72.**

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Tax Information Exchange Agreements: TIEAs

- **Similarities to UN Article 26:**
  - **Exception for Trade Secrets. UN Commentary, Article 26, Paragraph 18; OECD TIEA Article 7(1) and Commentary, Article 7, Paragraph 72.**
  - **Provide for Contracting States to agree to a cost structure for requests beyond the ordinary. UN Commentary, Article 26, Paragraph 29(3); OECD TIEA Article 9 and Commentary, Article 9, Paragraph 98.**
  - **Coverage not limited to residents of either Contracting State. UN Commentary, Article 26, Paragraph 2; OECD TIEA Commentary. Article 2, Paragraph 7.**

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Tax Information Exchange Agreements: TIEAs

- **Differences with UN Article 26:**
  - **OECD TIEA drafted for both bilateral and multilateral cases (not just bilateral).**
  - **OECD TIEA covers specifically enumerated taxes only.** *OECD TIEA Article 3 and Commentary Article 3, Paragraphs 8, 9; UN Article 26(1), UN Commentary, Article 26, Paragraphs 8, 8.1.*
  - **OECD TIEA more detailed in identifying the type of information that the Requesting State shall provide, OECD TIEA Article 5(5).**
  - **OECD TIEA focus is on "exchange upon request" and "does not cover automatic or spontaneous exchange of information" although Contracting States may agree to expand the coverage of their cooperation. UN Commentary, Article 26, Paragraphs 29.1, 29.2; OECD TIEA Commentary, Article 5, Paragraph 39.**

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Automatic Exchange of Information and the OECD Common Reporting Standard (CRS)

- **Project of the G20 and OECD**
- **July 2014 OECD released:**
  - **Common Reporting Standard (CRS)**
  - **Model Competent Authority Agreement**
  - **Commentary**
- **Relationship to U.S. FATCA**

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Automatic Exchange of Information and the OECD Common Reporting Standard (CRS)

- CRS specifies:
  - Which financial entities must report taxpayer information
  - Which information must be reported
  - Which accounts are subject to reporting
  - What due diligence is required in the collection process
  - The technical standards regarding the preparation, organization, and delivery of information.

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Automatic Exchange of Information and the OECD Common Reporting Standard (CRS)

- **Implementation of the CRS requires:**
  - Domestic law changes (e.g., enactment of laws requiring financial entities to gather and report specified information, along with laws and procedures ensuring appropriate protection of taxpayer data).

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Automatic Exchange of Information and the OECD Common Reporting Standard (CRS)

- **Implementation of the CRS requires:**
  - **Agreement among countries to exchange.**
    - Implemented via Competent Authority Agreement (CAA):
      - States commit under the CAA to implement CRS domestically
      - States agree to exchange information gathered under the CRS
    - CAA exchange process anticipates that the domestic financial intermediaries report the required information to their own tax authority who then exchanges the information with the tax authority in the treaty partner jurisdiction pursuant to the terms of the CAA
    - The OECD's July 2014 Report recommended that a Model CAA be executed under the legal framework of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (to reduce time and resources needed for execution of bilateral CAAs)

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Automatic Exchange of Information and the OECD Common Reporting Standard (CRS)

- **Implementation of the CRS – the Timetable:**
  - October 2014, 51 countries signed a multilateral CAA under the Multilateral Convention, committing themselves to automatic exchange of information.
  - By November 2015, 74 countries have signed the CAA under the Multilateral Convention. Some states have signed as "early adopters" which commits them to begin exchanging by September 2017. Other countries will have a target implementation date of 2018.
  - Approximately 50 countries will begin collecting information as of 1 January 2016.

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Automatic Exchange of Information and the OECD Common Reporting Standard (CRS)

- **CRS Details:**
  - **<u>Reporting entities</u>:** custodial institutions, depository institutions, investment entities, and certain insurance companies (unless there is a low risk of evasion).
    - **See increasing role third parties are required to play in the identification, collection, and reporting of critical information used in tax enforcement**
  - **<u>Information provided</u>:** interest, dividends, account balance or value, income from certain insurance products, sales proceeds from financial assets, other income generated by assets held in the account, and payments made with respect to the account.

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Automatic Exchange of Information and the OECD Common Reporting Standard (CRS)

- **CRS Details:**
  - **<u>Covered accounts</u>:**
    - **The accounts for which reporting must be made by the reporting financial entities ("reportable accounts") include those that are held by individuals and by entities (including foundations and trusts).**
    - **Reporting financial entities must look through passive entities and provide information on their controlling persons.**
    - **The following information must be provided regarding account identification: "name, address, jurisdiction(s) or residence, TIN(s) and date and place of birth (in the case of an individual) of each Reportable Person that is an Account Holder."**

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Automatic Exchange of Information and the OECD Common Reporting Standard (CRS)

- **CRS Details:**
  - **<u>Due diligence</u>:**
    - **Reporting financial entities are required to perform at a specified level of due diligence.**
    - **Different standards of due diligence are applied depending on when the account was created, its contents, its value, and other information known to the reporting financial entity.**

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Automatic Exchange of Information and the OECD Common Reporting Standard (CRS)

- **CRS Details:**
  - **<u>Connection to FATCA and IGAs</u> (Intergovernmental Agreements)**
    - **CRS significantly influenced by the FATCA rules and the resulting IGAs.**
    - **The CRS and IGAs (specifically the reciprocal Model 1 IGA), share many elements in common, including information to be reported, coverage of both individual and entity accounts, and broad list of financial institutions required to report.**

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Automatic Exchange of Information and the OECD Common Reporting Standard (CRS)

- **CRS Details:**
  - **Differences between CRS and IGAs:**
    - reporting under FATCA/IGA also covers citizenship
    - the scope of entities not required to report under FATCA is broader
    - CRS does not impose withholding tax
    - different dates for "new" account status and the related obligations for enhanced due diligence
    - FATCA clearly excludes publicly traded securities from status as a "financial account"
    - CRS generally no deminimis thresholds for when a financial account triggers due diligence and reporting
    - CRS requires birthdate and tax residency information
    - CRS has no registration requirement; report to local tax authority

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Thank you

Diane Ring

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