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# Policy Implementation Review: the Role of the Asian Development Bank in Relation to Tax Integrity

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Asian Development Bank

## ABBREVIATIONS

ADB	–	Asian Development Bank
AEOI	–	automatic exchange of information
ASEAN	–	Association of Southeast Asian Nations
ATAF	–	African Tax Administration Forum
BEPS	–	base erosion and profit shifting
CIAT	–	Inter-American Center of Tax Administrations
DMC	–	developing member country
DRM	–	domestic resource mobilization
DRMTF	–	Domestic Resource Mobilization Trust Fund
DTT	–	double taxation treaty
EOI	–	exchange of information
EOIR	–	exchange of information on request
EU	–	European Union
IDD	–	integrity due diligence
IMF	–	International Monetary Fund
IOTA	–	Intra-European Organisation of Tax Administrations
MAC	–	Multilateral Convention on Mutual Administrative Assistance in Tax Matters
MRPT	–	material related party transaction
NCJ	–	noncooperative jurisdiction
OAI	–	Office of Anticorruption and Integrity
OECD	–	Organisation for Economic Co-operation and Development
PITAA	–	Pacific Islands Tax Administrators Association
PSOD	–	Private Sector Operations Department
SDCC	–	Sustainable Development and Climate Change Department
SGATAR	–	Study Group on Asian Tax Administration and Research
TA	–	technical assistance
UBO	–	ultimate beneficial owner

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## I. BACKGROUND

1. The Board of Directors of the Asian Development Bank (ADB) adopted an amendment to the Anticorruption Policy (1998, as amended to date)—*Enhancing the Role of the Asian Development Bank in Relation to Tax Integrity* (the tax integrity policy) in December 2016.<sup>1</sup> The tax integrity policy calls on ADB to take actions to promote tax integrity at a country, project, and institutional level.
2. At a country level,<sup>2</sup> ADB committed to
  - (i) support and promote international tax integrity, including the work of lead organizations in this area, such as the Global Forum on Transparency and the Exchange of Information for Tax Purposes (Global Forum) and the Organisation for Economic Co-operation and Development (OECD);<sup>3</sup>
  - (ii) increase ADB's support for tax integrity initiatives in ADB's developing member countries (DMCs) by building on and developing the technical assistance (TA) program it has already undertaken,<sup>4</sup> with the aim of assisting DMCs to (a) promote their domestic resource mobilization (DRM) by enhancing their ability to protect themselves against tax evasion and base erosion and profit shifting (BEPS); (b) develop the capacity of DMCs to become members of and participate in the work of the Global Forum; and (c) support DMC participation in the BEPS initiatives proposed by lead organizations;<sup>5</sup> and
  - (iii) encourage the inclusion of tax integrity issues in the policy dialogue with DMCs where necessary and appropriate, including in country partnership strategies and their updates.<sup>6</sup>
3. At a project level, ADB committed to implement updated internal procedures for tax integrity due diligence (tax IDD).<sup>7</sup>

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<sup>1</sup> ADB. 2016. *Anticorruption Policy: Enhancing the Role of the Asian Development Bank in Relation to Tax Integrity*. Manila.

<sup>2</sup> The tax integrity policy acknowledges that the role of ADB (as an international financial institution with a development mandate) in relation to tax integrity is primarily to assist its developing member countries (DMCs) at the country level and that strengthening developing countries' tax systems is a priority to achieve the post-2015 development agenda. See paras. 3 and 15 of the tax integrity policy.

<sup>3</sup> Para. 27 (ii) of the tax integrity policy.

<sup>4</sup> Para. 13 of the tax integrity policy. The aims of ADB's tax integrity initiatives include helping DMCs to broaden and protect their domestic tax base, enhancing the capacity of DMCs' tax administrations, and improving domestic tax compliance.

<sup>5</sup> Para. 27 (iii) of the tax integrity policy. BEPS initiatives include joining the Inclusive Framework on BEPS (Appendix 1).

<sup>6</sup> Para. 27 (iv) of the tax integrity policy.

<sup>7</sup> Para. 29 of the tax integrity policy. ADB's internal procedures incorporate the tax integrity principles (set out in para. 28 of the tax integrity policy), which include the following: ADB is required to (i) seek to obtain reasonable assurance that the projects it finances do not facilitate tax secrecy, tax evasion, and tax fraud; or material related party contracts that inappropriately transfer assets to a related party in an offshore jurisdiction; (ii) carry out enhanced vigilance where its client or its significant shareholders are established in an intermediate jurisdiction; (iii) obtain reasonable assurance of tax transparency where such intermediate jurisdiction is a jurisdiction of concern; and (iv) apply additional safeguards where it is a noncompliant jurisdiction. They require ADB to disclose tax integrity and other significant integrity risks to the Board.

4. At an institutional level, ADB committed to
- (i) engage an international tax expert to (a) assess ADB's exposure to tax evasion and BEPS issues in the Private Sector Operations Department (PSOD) portfolio, (b) recommend ways to mitigate such concerns, (c) advise on best practices to obtain an assurance of tax transparency in different project structures, and (d) strengthen ADB's tax IDD procedures where gaps are identified (tax review);<sup>8</sup>
  - (ii) update ADB's IDD procedures to incorporate any revisions thereto that may be recommended upon the conclusion of the tax review;<sup>9</sup>
  - (iii) supplement resources within PSOD and the Office of Anticorruption and Integrity (OAI) to implement tax IDD<sup>10</sup> and provide ongoing tax integrity advice to PSOD;<sup>11</sup>
  - (iv) support relevant staff by providing training in tax IDD, informing staff of the latest developments, and maintaining working contacts with relevant agencies;<sup>12</sup> and
  - (v) monitor the implementation of the policy and report to the Board.<sup>13</sup>
5. OAI engaged the tax expert to conduct the tax review, which included assessing ADB's tax integrity initiatives at a country level, PSOD's conduct of tax IDD in its transactions (reviewed transactions) for 2017 and the first quarter of 2018 (review period), and the institutional matters described above. OAI endorses the tax expert's findings as set out in this report.

## II. IMPLEMENTATION OF INTERNATIONAL TAX STANDARDS

6. The tax integrity policy aligns ADB with internationally accepted standards of the Global Forum and OECD on tax transparency and BEPS. Since the date of the tax integrity policy, a number of jurisdictions have committed to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC) and have commenced implementing automatic exchange of information (AEOI), making the ultimate objective—global implementation of AEOI—seem attainable.<sup>14</sup> Efforts to encourage participation in the Inclusive Framework on BEPS (footnote 4) have continued,<sup>15</sup> and the OECD has commenced peer reviews of the implementation of the BEPS minimum standards.

<sup>8</sup> The Office of Anticorruption and Integrity (OAI) engaged international tax expert Peter D. Byrne (Appendix 5).

<sup>9</sup> Para. 30(ii) of the tax integrity policy. Thereafter, ADB is required to update such procedures as required to take into account global developments and lessons learned, and to adopt appropriate approaches and strengthen its ability to identify and mitigate tax integrity risks (para. 30(iii) of the tax integrity policy).

<sup>10</sup> Paras. 32–38 of the tax integrity policy.

<sup>11</sup> Para. 31(iv)(a) of the tax integrity policy.

<sup>12</sup> See para. 31 (ii) and (iii) of the tax integrity policy.

<sup>13</sup> Para. 31(v) of the tax integrity policy requires OAI to prepare a report for the Board 1 year after the policy becomes effective and thereafter every 3 years or as appropriate in light of international developments. Such report is required to include any changes made to the internal procedures described in Appendix 3 of the tax integrity policy (para. 29 of the tax integrity policy).

<sup>14</sup> The MAC and AEOI are explained in Appendix 1. The objective of AEOI is to leave tax evaders “no place to hide.” OECD, Global Forum on Transparency and Exchange of Information for Tax Purposes. 2014. Countries commit to automatic exchange of information in tax matters. News release. 6 May. <http://www.oecd.org/tax/transparency/automatic-exchange-of-information/implementation/countries-commit-to-automatic-exchange-of-information-in-tax-matters.htm>

<sup>15</sup> The Platform for Collaboration on Tax held its first global conference in February 2018, and outlined a 2017–2018 timetable for eight platform “toolkits” to support developing countries to address BEPS-related issues.

7. DMCs continue to participate in the above global tax initiatives. Further details are set out in Appendix 1.

### III. ADB INITIATIVES AT THE COUNTRY LEVEL

8. ADB's objective under the tax integrity policy is to build on the TA program to promote national and international tax reform among DMCs, which was initiated by the Sustainable Development and Climate Change Department (SDCC) in 2014. The DRM Trust Fund (DRMTF) and regional TA on Enhancing Tax Transparency of ADB Developing Member Countries<sup>16</sup> were both approved following Board approval of the tax integrity policy. Both initiatives cover tax transparency and BEPS measures, and extend to all DMCs. The scope of each of these initiatives is set out in Appendix 2.

9. Adopting a "One ADB" approach, OAI has worked with SDCC and regional departments to gain a deep understanding of the DMCs' priorities by proactively engaging with DMCs<sup>17</sup> and relevant stakeholders,<sup>18</sup> including the Global Forum<sup>19</sup> and the OECD.<sup>20</sup> Activities conducted under the ADB initiatives during 2017 and up to October 2018 are described in Appendix 2.<sup>21</sup> They include (i) seminars, workshops, and training—primarily to increase capacity, motivate needed reforms (to the extent possible), and assist (when such reforms are adopted) in their implementation; and (ii) focused activities, either at the regional or country level, aimed at the implementation of reforms.<sup>22</sup>

10. The tax review<sup>23</sup> concluded that ADB has (i) engaged well-qualified tax experts to undertake its tax initiatives at the country level; (ii) adopted a coherent strategy to ensure its initiatives are correctly focused;<sup>24</sup> (iii) provided assistance in a steady and professional manner, taking into account the needs of DMCs and the contributions of other stakeholders; and (iv) collaborated with these stakeholders to identify priorities, avoid duplication, and leverage resources.

11. The tax review noted that several DMCs have committed to the European Union (EU) to implement BEPS and other reforms. The priorities of these DMCs regarding tax reform are likely

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<sup>16</sup> ADB. 2017. *Enhancing Tax Transparency of ADB Developing Member Countries*. Manila. <https://www.adb.org/projects/51320-001/main>

<sup>17</sup> ADB has had discussions with the high-level management of tax administrations in Cambodia, Mongolia, Papua New Guinea, Viet Nam, and Thailand.

<sup>18</sup> ADB has liaised with the Study Group on Asian Tax Administration and Research (SGATAR), the Pacific Islands Tax Administrators' Association (PITAA), bilateral agencies, and counterparts at the World Bank.

<sup>19</sup> ADB agreed to a framework with the Global Forum that sets out the basis on which both organizations will collaborate to assist DMCs in promoting tax transparency measures. The Global Forum's *Tax Transparency 2017: Report on progress* highlights the Global Forum's strengthened relationship with ADB. See OECD, Global Forum on Transparency and Exchange of Information for Tax Purposes. 2017. *Tax Transparency 2017: Report on progress*. <http://www.oecd.org/tax/transparency/global-forum-annual-report-2017.pdf>.

<sup>20</sup> ADB and the OECD Centre for Tax Policy and Administration are finalizing the terms of a framework for collaboration in BEPS-related activities, including a plan of action for 2019 and beyond.

<sup>21</sup> The tax expert reviewed the activities carried out during the review period. Appendix 2 includes details of activities carried out up to October 2018 to provide further information to the Board.

<sup>22</sup> ADB's initiatives could, if required, assist any DMCs wishing to implement reforms to avoid the European Union (EU) list of noncooperative jurisdictions (NCJs).

<sup>23</sup> The tax expert carried out a high-level review that did not analyze the outputs or outcomes of each initiative.

<sup>24</sup> Although outside the scope of the tax integrity policy, the tax expert noted the need for ADB assistance to its DMCs regarding domestic reform related initiatives, including value-added tax, and deficiencies in tax audit and collection.

to focus on such measures to avoid being listed by the EU as noncooperative jurisdictions (NCJs).<sup>25</sup> If requested, ADB will provide TA support to these DMCs.

12. The tax review identified the lack of a permanent, proactive tax administration organization in Asia as a key contributor to delays in pursuing important tax reforms in the region.<sup>26</sup> Its main recommendation was that ADB should consider, as a priority, promoting the establishment of such an institution or supporting an existing organization to cover Asia.<sup>27</sup>

#### IV. ADB INITIATIVES AT THE PROJECT LEVEL

##### A. Implementation of the Tax Integrity Principles

13. ADB introduced new internal procedures for tax IDD in May 2017 (tax IDD guidelines).<sup>28</sup>

14. The tax review concluded that the tax IDD guidelines reflect the tax integrity principles, and that the benchmarks and requirements for conducting tax IDD are appropriate.

15. It recommended that the tax IDD guidelines (i) clarify certain requirements,<sup>29</sup> (ii) reflect the experience gained by ADB during the review period,<sup>30</sup> and (iii) incorporate good practices<sup>31</sup> (some of which PSOD is already undertaking)<sup>32</sup> to strengthen ADB's ability to identify and mitigate tax integrity risks.

16. Global tax transparency is likely to decrease the risk of tax evasion on ADB projects. It remains to be seen how countries will implement anti-BEPS measures and how these will impact ADB's loans and equity investments. The tax IDD guidelines are sufficiently flexible to respond to such global developments across complex, non-repetitive transaction structures.<sup>33</sup>

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<sup>25</sup> In December 2017, the EU published a list of NCJs comprising those non-EU countries that the EU determines do not comply with EU and international tax standards. Since that date, this list has undergone significant change. Appendix 1 includes details of the status of ADB's DMCs in relation to the EU list.

<sup>26</sup> By providing a platform for regional cooperation and TA, proactive regional tax administration organizations (operating with international and regional organizations) play a pivotal role in enhancing the policy dialogue among countries and building the capacity of tax administrations to implement such reforms.

<sup>27</sup> In Asia and the Pacific, the main associations are SGATAR, PITAA, and the recently formed Association of Southeast Asian Nations (ASEAN) Forum on Taxation. SGATAR does not perform the function of a strong regional association of tax administration, lacking a permanent secretariat and organization. PITAA only comprises a minority of DMCs. The ASEAN Forum on Taxation is not set up as a regional tax administration (its main objective is to reduce tax barriers in order to support intra-ASEAN trade and investment).

<sup>28</sup> The Tax Integrity Due Diligence Guidelines for Nonsovereign Operations (May 2017).

<sup>29</sup> For example, it is recommended that material related party transactions (MRPTs) include all international transactions, whether or not they involve an intermediate jurisdiction.

<sup>30</sup> For example, it is recommended that the tax IDD guidelines include examples of instances where concerns regarding tax secrecy, tax evasion, or tax fraud may arise.

<sup>31</sup> For example, guidance on circumstances in which ADB should ascertain reasonable assurance of legality and obtain its own independent tax advice; and recommendations to make tax IDD on MRPTs more robust.

<sup>32</sup> For example, PSOD already implements the tax expert's recommendation that checks to ascertain whether there is an adequate mechanism for exchange of information (EOI) should apply to all jurisdictions in the shareholding structure (not just residence and source countries).

<sup>33</sup> The tax IDD guidelines take into account new sources of information as they become available.

## B. ADB Implementation of Tax Integrity Due Diligence during the Review Period<sup>34</sup>

17. The tax review found that (i) the screening process (to identify transactions that are subject to tax IDD) is appropriate; (ii) ADB identified tax integrity issues and worked with clients to obtain reasonable assurance that transactions financed by ADB are, from a tax perspective, legal and transparent, and avoid aggressive tax planning in relation to material related party transactions (MRPTs); and (iii) in some cases, following tax IDD, ADB's clients modified aspects of their corporate structure or undertook other commitments to reduce tax integrity risk.

18. The tax review concluded that, in carrying out tax IDD: (i) ADB navigated a moderate course in accordance with the tax IDD guidelines, focusing on a proactive, risk-based approach set forth in the tax integrity policy, to establish that the reviewed transactions did not present significant integrity risks; (ii) the tax IDD conducted during the review period was effective in reducing the tax integrity risk; (iii) any oversights or inaccuracies identified had no material consequences; and (iv) ADB presented a fair assessment of the tax integrity risks to the Board in an annex to the report and recommendation of the President, with no cases found where a noteworthy tax risk was omitted.

19. Notable tax risks identified in the reviewed transactions are outlined in the box.

### Box: Notable Tax Risks in the Reviewed Transactions

- **Artificial and/or complex shareholding structures.** PSOD recommended to the client to make structural changes. Such changes reduced risks in several cases, leading to eventual low and acceptable tax integrity risk ratings.
- **“Treaty shopping.”**<sup>a</sup> Many DMCs have anti-treaty shopping laws, but some do not and are still using old DTTs that may not be as robust and transparent as the global tax transparency standards. This increases the risks of tax evasion, tax fraud, and tax secrecy. However, PSOD's assessment correctly concluded that for the ADB-financed transactions, the risks were low and acceptable.
- **Use of intermediate jurisdictions to obtain other tax benefits.** In cases where DTTs played no significant role, PSOD considered all mitigants in its assessment, including tax EOI mechanisms, and correctly concluded that the risks were low and acceptable.
- **Circumvention of blacklists<sup>p</sup> and other anti-abuse rules.** A particularly complex case correctly concluded that, while tax integrity risks were not low, ADB had reasonable assurance that the transaction did not facilitate tax secrecy, tax evasion, or tax fraud.
- **Tax holiday and/or incentives.** PSOD ascertained that tax incentives involved were transparent and granted in a manner consistent with published tax laws.
- **“Round-tripping.”**<sup>c</sup> In several cases, UBOs had legitimate non-tax related reasons for their offshore structures. PSOD correctly concluded that there was no increased risk of tax evasion since UBOs were disclosed.
- **Material Related Party Transactions (MRPTs).** In several (relatively straightforward) cases, PSOD used a series of checks to ensure plausible pricing and transparency, which enabled it to assess the tax integrity risks correctly.

ADB = Asian Development Bank, DMC = developing member country, DTT = double taxation treaty, EOI = exchange of information, PSOD = Private Sector Operations Department, UBO = ultimate beneficial owner.

<sup>a</sup> Treaty shopping refers to a situation in which a UBO in the country of residence uses an entity “resident” in an intermediate jurisdiction which avails of the benefits under a DTT to achieve a better tax outcome than a direct investment by such UBO from the country of residence. Such tax benefit may take the form of reduced taxation, avoidance of double taxation, or double non-taxation (which may occur legally).

<sup>34</sup> During the review period, PSOD processed 87 transactions. The tax expert reviewed 28 transactions. The intermediate jurisdictions used in PSOD's transactions are shown in Appendix 4.

<sup>b</sup> Countries may discourage other countries from engaging in negative tax practices by placing them onto lists, which may be subject to retaliation of various sorts, e.g. higher tax rates.

<sup>c</sup> An investment in a country that involves UBOs from that same country which structure their investments through an offshore entity is referred to as a round-trip investment (or round-tripping).

Source: Asian Development Bank

## V. IMPLEMENTATION AT AN INSTITUTIONAL LEVEL

20. PSOD engaged an international tax specialist from January 2017. From November 2017, OAI engaged the tax expert to conduct an independent review of the tax IDD conducted by PSOD. To expand ADB's support to member countries in the area of tax integrity and ensure that OAI monitors and reviews PSOD projects adequately, OAI is recruiting a tax specialist as staff.

21. With the experience and lessons learned from the reviewed transactions, OAI is creating bespoke tax IDD training materials for PSOD's investment officers, introducing them to key tax integrity concepts. The training materials will cover the role of an investment officer in ensuring that tax issues are addressed early and proactively. OAI will make such training materials available on an interactive platform for all relevant staff. It was considered premature to roll out such training before the tax review, particularly since PSOD's investment officers had access (from January 2017) to specialist tax advice from PSOD's own tax specialist.

22. PSOD and OAI staff have diligently attended key events and reported back to the office on the key issues learned.<sup>35</sup> In addition, ADB staff or consultants have attended various training events that have been sponsored by ADB under the ADB initiatives described in Appendix 2. Knowledge gathered from such training events has been disseminated internally and has informed the discussions on any needed changes in procedures or approaches to tax IDD, to maximize the benefit for all relevant staff.

## VI. FURTHER IMPLEMENTATION OF THE POLICY

23. OAI endorses the tax review's conclusion that ADB has demonstrated a proactive approach at both country and project levels. This approach will continue and ADB will maintain flexibility in adapting to a rapidly changing global tax environment.

24. At the country level, ADB will continue its close liaison with tax administrators in its DMCs and key stakeholders.<sup>36</sup> This will ensure that ADB's initiatives are effective, timely and focused to meet DMCs' priorities, which may alter in the light of global developments. ADB will consider internally whether it is feasible to adopt the tax expert's recommendation that it should, as a priority, promote the establishment of a permanent, proactive, tax administration organization for Asia or support an existing organization to fulfil such a role.<sup>37</sup>

25. At the project level, ADB will update its internal procedures (summarized in Appendix 3 of the tax integrity policy) to include the changes shown in Appendix 3 of this report to address tax

<sup>35</sup> These include private sector integrity meetings, ad hoc meetings of international financial institutions convened specifically to discuss tax integrity issues, and meetings of the Global Forum.

<sup>36</sup> ADB will review the country performance assessments conducted by ADB every two years for all DMCs with access to concessional resources. The assessments examine the quality of a DMC's governance and public sector management and serve as a good source of information on tax integrity and resource mobilization to inform policy dialogue with DMCs.

<sup>37</sup> The Inter-American Center of Tax Administrations (CIAT) is supported by Inter-American Development Bank, the African Tax Administration Forum (ATAF) is supported by the African Development Bank, and the Intra-European Organisation of Tax Administrations (IOTA) is supported by the EU and the International Monetary Fund (IMF).

and regulatory environment changes and ensure the incorporation of best practices. It will continue to review such procedures as envisaged in the tax integrity policy.

26. At the institutional level, PSOD will continue to engage a tax specialist. OAI will develop its capacity on tax IDD and will initiate training on tax IDD. Both departments will keep staff updated on tax integrity issues.

## OVERVIEW OF DEVELOPING MEMBER COUNTRIES

The tables below chart the position of Asian Development Bank (ADB) developing member countries (DMCs) in relation to the international tax standards as at October 2018.<sup>1</sup>

- (i) **Membership of the Global Forum on Transparency and Exchange of Information for Tax Purposes.**<sup>2</sup> The Global Forum has 154 members and is considered the premier international body for ensuring the implementation of the internationally agreed standards of transparency and exchange of information (EOI) in the tax area. Through an in-depth peer review process, the Global Forum monitors that its members fully implement the standard of transparency and EOI they have committed to implement. It also works to establish a level playing field, even among countries that have not joined the Global Forum.
- (ii) **Global Forum ranking for exchange of information on request.** Exchange of information on request (EOIR) is the internationally agreed tax transparency standard which requires a competent tax authority to provide to another competent tax authority (which has committed to EOIR) “foreseeably relevant information” for the administration or enforcement of the domestic tax laws of such other competent tax authority. A competent tax authority’s obligation to provide such information is triggered by the request of the other competent tax authority.  
Following Global Forum peer reviews, an overall rating is given to each jurisdiction for its general level of compliance with the standard of EOIR. Jurisdictions are rated *compliant*, *largely compliant*, *partially compliant*, or *noncompliant*. Certain jurisdictions were reviewed under a fast-track review procedure and were assigned a *provisional* overall rating. These jurisdictions have been scheduled to undergo a full review (under the current strengthened assessment criteria) in the near future.
- (iii) **Multilateral Convention on Mutual Administrative Assistance in Tax Matters status.**<sup>3</sup> The Multilateral Convention on Mutual Administrative Assistance in Tax Matters is considered the most effective way for jurisdictions to implement automatic exchange of information (AEOI), since it negates the need for jurisdictions to enter into bilateral treaties to implement AEOI. A total of 125 jurisdictions currently participate in the convention, including 17 jurisdictions covered by territorial extension.
- (iv) **Commitment to automatic exchange of information.** AEOI is the internationally agreed tax transparency standard for AEOI in accordance with the Common Reporting Standard (CRS). It requires competent tax authorities to disclose financial account information of nonresidents automatically with the competent tax authorities of the account holders’ country of residence, in accordance with the CRS. Thus, competent tax authorities send and receive pre-agreed information each year with no need for a specific request.
- (v) **Membership in the Inclusive Framework on Base Erosion and Profit Shifting.**<sup>4</sup> The Inclusive Framework on Base Erosion and Profit Shifting (BEPS) brings together over 118 countries and jurisdictions to collaborate on the implementation of anti-

<sup>1</sup> This includes the new tranche of peer review reports released by the Global Forum on Transparency and Exchange of Information for Tax Purposes on 15 October 2018.

<sup>2</sup> Organisation for Economic Co-operation and Development (OECD). Global Forum on Transparency and Exchange of Information for Tax Purposes. <http://www.oecd.org/tax/transparency/>

<sup>3</sup> OECD and Council of Europe. 2011. *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*. Paris. <http://www.oecd.org/ctp/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm>.

<sup>4</sup> OECD. Members of the Inclusive Framework on BEPS. <http://www.oecd.org/tax/beps/inclusive-framework-on-beps-composition.pdf>

BEPS measures. Members are required to implement the four BEPS minimum standards: (i) countering harmful tax practices more effectively taking into account transparency and substance, (ii) preventing the granting of treaty benefits in inappropriate circumstances, (iii) transfer pricing documentation and country-by-country reporting, and (iv) making dispute resolution mechanisms more effective.

Table A1.1 also charts the status of DMCs in relation to the **European Union list of noncooperative and committed jurisdictions**. The EU selected a total of 92 jurisdictions to assess. Those jurisdictions that the EU assessed as noncompliant with EU and international standards were either classified as committed jurisdictions (if they gave a commitment to the EU to comply with such standards) or as noncooperative jurisdictions (NCJs) if they did not provide such a commitment. If requested, ADB will provide technical assistance support to DMCs listed by the EU.

The table does not chart the status of DMCs in relation to the **G20 list of noncooperative jurisdictions**.<sup>5</sup> In 2016, the G20 established objective criteria for listing jurisdictions (by reference to tax transparency standards) and determined (in July 2017) that only one country (Trinidad and Tobago) was a noncooperative jurisdiction. A new G20 list of NCJs is expected for the G20 Leaders' Summit in 2019. The G20 list of NCJs should not be confused with the EU List of NCJs.

**Table A1.1: Status of ADB DMCs in relation to Global Forum and BEPS international standards and the EU List of Noncooperative and Committed Jurisdictions**

Jurisdiction	Global Forum Member?	Global Forum Ranking (EOIR)	MAC Status <sup>a</sup>	AEOI Commitment? By specific date? <sup>b</sup>	BEPS Inclusive Framework Member?	EU Assessed/ Classification/ By Specific Date? <sup>c</sup>
Afghanistan	No	Not reviewed	Not signed	No	No	Not assessed
Armenia	Yes	Not reviewed	Signed	Yes – no date	No	Committed jurisdiction – actions required by 2018 and 2019
Azerbaijan	Yes	Largely compliant	In force	Yes – 2018	No	Not assessed
Bangladesh	No	Not reviewed	Not signed	No	No	Not assessed
Bhutan	No	Not reviewed	Not signed	No	No	Not assessed

<sup>5</sup> OECD. 2018. *OECD Secretary-General Report to the G20 Finance Ministers and Central Bank Governors*. Buenos Aires. <http://www.oecd.org/g20/oecd-secretary-general-tax-report-g20-finance-ministers-july-2018.pdf>

Jurisdiction	Global Forum Member?	Global Forum Ranking (EOIR)	MAC Status <sup>a</sup>	AEOI Commitment? By specific date? <sup>b</sup>	BEPS Inclusive Framework Member?	EU Assessed/ Classification/ By Specific Date? <sup>c</sup>
Brunei Darussalam	Yes	Largely compliant	Signed	Yes – 2018	Yes	Not assessed
Cambodia	Yes	Not reviewed	Not signed	Yes – no date	No	Not assessed
China, People's Republic of	Yes	Compliant	In force	Yes – 2018	Yes	Yes – passed
Cook Islands	Yes	Largely compliant	In force	Yes – 2018	No	Committed jurisdiction – actions required by 2018
Fiji	No	Not reviewed	Not signed	No	No	Committed jurisdiction – actions required by 2018 and 2019
Georgia	Yes	Largely compliant	In force	Yes – no date	Yes	Yes – passed
Hong Kong, China	Yes	Largely compliant	In force <sup>d</sup>	Yes – 2018	Yes	Committed jurisdiction – actions required by 2018
India	Yes	Largely compliant	In force	Yes – 2017	Yes	Yes – passed
Indonesia	Yes	Largely compliant	In force	Yes – 2018	Yes	Yes – passed
Kazakhstan	Yes	Partially compliant	In force	Yes – 2020	Yes	Not assessed
Kiribati	No	Not reviewed	Not signed	No	No	Not assessed
Korea, Republic of	Yes	Compliant	In force	Yes – 2017	Yes	Committed jurisdiction – action required by 2018

Jurisdiction	Global Forum Member?	Global Forum Ranking (EOIR)	MAC Status <sup>a</sup>	AEOI Commitment? By specific date? <sup>b</sup>	BEPS Inclusive Framework Member?	EU Assessed/ Classification/ By Specific Date? <sup>c</sup>
Kyrgyz Republic	No	Not reviewed	Not signed	No	No	Not assessed
Lao People's Democratic Republic	No	Not reviewed	Not signed	No	No	Not assessed
Malaysia	Yes	Largely compliant	In force	Yes – 2018	Yes	Committed jurisdiction – action required by 2018
Maldives	Yes	Not reviewed	Not signed	Yes – 2020	Yes	Committed jurisdiction – actions required by 2018 and 2019
Marshall Islands	Yes	Provisionally partially compliant	In force	Yes – 2018	No	Committed jurisdiction – actions required by 2018
Micronesia, Federated States of	No	Provisionally largely compliant	Not signed	No	No	Not assessed
Mongolia	Yes	Not reviewed	Not signed	Yes	Yes	Committed jurisdiction – action required by 2019
Myanmar	No	Not reviewed	Not signed	No	No	Not assessed
Nauru	Yes	Provisionally largely compliant	In force	Yes – 2018	No	Committed jurisdiction – action required by 2019
Nepal	No	Not reviewed	Not signed	No	No	Not assessed

<b>Jurisdiction</b>	<b>Global Forum Member?</b>	<b>Global Forum Ranking (EOIR)</b>	<b>MAC Status<sup>a</sup></b>	<b>AEOI Commitment? By specific date?<sup>b</sup></b>	<b>BEPS Inclusive Framework Member?</b>	<b>EU Assessed/ Classification/ By Specific Date?<sup>c</sup></b>
Pakistan	Yes	Largely compliant	In force	Yes – 2018	Yes	Not assessed
Palau	No	Not reviewed	Not signed	No	No	Committed jurisdiction – actions required by 2018 and 2019
Papua New Guinea	Yes	Not reviewed	Not signed	Yes – no date	Yes	Not assessed
Philippines	Yes	Largely compliant	Signed	Yes – no date	No	Not assessed
Samoa	Yes	Provisionally largely compliant	In force	Yes – 2018	No	Noncooperative jurisdiction
Singapore	Yes	Compliant	In force	Yes – 2018	Yes	Yes – passed
Solomon Islands	No	Not reviewed	Not signed	No	No	Not assessed
Sri Lanka	No	Not reviewed	Not signed	No	Yes	Not assessed
Taipei,China	No	Not reviewed	Not signed	No	No	Committed jurisdiction – actions required by 2018
Tajikistan	No	Not reviewed	Not signed	No	No	Not assessed
Thailand	Yes	Not reviewed	Not signed	Yes – no date	Yes	Committed jurisdiction – actions required by 2018 and 2019
Timor-Leste	No	Not reviewed	Not signed	No	No	Not assessed
Tonga	No	Not reviewed	Not signed	No	No	Not assessed
Turkmenistan	No	Not reviewed	Not signed	No	No	Not assessed

Jurisdiction	Global Forum Member?	Global Forum Ranking (EOIR)	MAC Status <sup>a</sup>	AEOI Commitment? By specific date? <sup>b</sup>	BEPS Inclusive Framework Member?	EU Assessed/ Classification/ By Specific Date? <sup>c</sup>
Tuvalu	No	Not reviewed	Not signed	No	No	Not assessed
Uzbekistan	No	Not reviewed	Not signed	No	No	Not assessed
Vanuatu	Yes	Provisionally largely compliant	In force	Yes – 2018	No	Committed jurisdiction – actions required by 2018
Viet Nam	No	Not reviewed	Not signed	No	Yes	Committed jurisdiction – actions required by 2018 and 2019

AEOI = automatic exchange of information, BEPS = base erosion and profit shifting, EOIR = exchange of information on request, EU = European Union, MAC = Multilateral Convention on Mutual Administrative Assistance in Tax Matters

<sup>a</sup> If a jurisdiction has ratified the convention and it is now legally in effect in such jurisdiction, its status is shown in this column as “in force”; if it has signed but not yet ratified the convention, its status is shown as “signed.”

<sup>b</sup> Jurisdictions made a commitment to undertake the first exchanges under AEOI on a specific timeline. Developing countries that do not host a financial center were not asked to commit to 2018 but some jurisdictions have done so voluntarily.

<sup>c</sup> Committed jurisdictions made a commitment to implement specific measures within an agreed timeline. Where two dates are shown in this column, the jurisdiction agreed to a different timeline for specified measures.

<sup>d</sup> Extension by the People’s Republic of China.

Source: Asian Development Bank (consolidated based on available information from the Global Forum, OECD and EU websites).

**Table A1.2: Developments since the Adoption of the Tax Integrity Policy**

	<b>DMC Global Forum Members</b>	<b>EOIR Noncompliant</b>	<b>Joined MAC</b>	<b>Made AEOI Commitment</b>	<b>Joined Inclusive Framework on BEPS</b>	<b>EU Classification</b>
As at October 2018 <sup>a</sup>	24	0	19	17	17	One noncooperative jurisdictions and 15 committed jurisdictions
Progress since prior analysis for the purposes of the tax integrity policy	Cambodia, Maldives, and Thailand have become members of the Global Forum.	Second round of reviews is under way. Rankings of jurisdictions may alter.	Armenia, Brunei Darussalam, Hong Kong, China (by territorial extension), Marshall Islands, and Vanuatu have joined the convention.	Azerbaijan, Kazakhstan, Maldives, and Pakistan have made a commitment to AEOI by a specific date	Kazakhstan, Malaysia, Maldives, Mongolia, Thailand, and Viet Nam have joined the Inclusive Framework on BEPS.	Not applicable
	21 DMCs are not members	One DMC (Marshall Islands) is provisionally partially noncompliant. One DMC (Federated States of Micronesia) is not a member of the Global Forum but is being assessed.	26 DMCs have not joined the convention	28 DMCs have not made a commitment to AEOI by a specific date.	28 DMCs have not joined the Inclusive Framework on BEPS.	One DMC needs to commit to the EU to implement reforms in order to cease being an NCJ. 15 DMCs need to implement actions within the agreed timeline to avoid becoming NCJs.

AEOI = automatic exchange of information, BEPS = base erosion and profit shifting, DMC = developing member country, EOIR = exchange of information on request, EU = European Union, MAC = Multilateral Convention on Mutual Administrative Assistance in Tax Matters, NCJ = noncooperative jurisdiction

<sup>a</sup> This includes the new tranche of peer review reports released by the Global Forum on Transparency and Exchange of Information for Tax Purposes on 15 October 2018.

Source: Asian Development Bank (consolidated based on available information from the Global Forum, OECD and EU websites).

## ADB'S INITIATIVES AT THE COUNTRY LEVEL<sup>1</sup>

### A. Scope of ADB's Existing Initiatives

**Table A2.1: Summary of Ongoing ADB Tax Integrity Initiatives**

Initiative	Focus	Period Covered	Implementing Department	Amount
Strengthening Tax Policy and Administration Capacity to Mobilize Domestic Resources (RETA 9235) <sup>2</sup>	<p>Strengthening Tax Policy and Administration Capacity to Mobilize Domestic Resources</p> <p>The objectives of the TA are to enhance the capacity and regional cooperation of tax authorities by</p> <ul style="list-style-type: none"> <li>a. implementing BEPS actions;</li> <li>b. improving domestic tax compliance; and</li> <li>c. improving tools and procedures to stem both cross-border and domestic tax evasion and avoidance.</li> </ul> <p>The DMCs eligible to benefit from this TA are Cambodia, Indonesia, Malaysia, Mongolia, Papua New Guinea, the Philippines, Thailand, and Viet Nam.</p>	November 2016 to October 2019	SDCC	\$1 million grant from the Japan Fund for Poverty Reduction
Domestic Resource Mobilization Trust Fund (DRMTF)	<p>The DRMTF is a multiparty trust fund with the aim to support sustainable tax revenues through better tax policy, more efficient tax administration, and effective international cooperation in tax matters.</p> <p>The trust fund covers EOI and BEPS measures, and extends to all DMCs.</p>	From July 2017 (and ongoing)	SDCC (Governance Thematic Group Committee)	<p>\$2 million initial grant from the Government of Japan</p> <p>The DRMTF seeks financing from other sources to sustain its mission</p>

<sup>1</sup> The tax expert reviewed the activities carried out during the review period. This appendix includes details of activities to October 2018, to provide further information on activities carried out since the completion of the tax expert's review.

<sup>2</sup> ADB. 2016. *Technical Assistance on Strengthening Tax Policy and Administration Capacity to Mobilize Domestic Resources*. Manila. <https://www.adb.org/projects/50060-001/main>

Initiative	Focus	Period Covered	Implementing Department	Amount
Enhancing Tax Transparency of ADB Developing Member Countries (RETA 9433) <sup>3</sup>	<p>Enhancing Tax Transparency of DMCs</p> <p>The TA aims to help DMCs</p> <ol style="list-style-type: none"> <li>join the Global Forum, implement EOIR, and prepare for the Global Forum's peer review process;</li> <li>commit to AEOI, and support AEOI implementation;</li> <li>join and participate in the Inclusive Framework on BEPS.</li> </ol> <p>The TA extends to all DMCs.</p>	January 2018 to January 2021	OAI	\$2 million grant from TASF

AEOI = automatic exchange of information, BEPS = base erosion and profit shifting, DMC = developing member country, DRMTF = Domestic Resource Mobilization Trust Fund, EOI = exchange of information, EOIR = exchange of information on request, OAI = Office of Anticorruption and Integrity, SDCC = Sustainable Development and Climate Change Department, TA = technical assistance, TASF = Technical Assistance Special Fund.  
Source: Asian Development Bank

## B. Activities Carried Out

**Table A2.2: Strengthening Tax Policy and Administration Capacity to Mobilize Domestic Resources**

Date	RETA 9235: Activities and Stakeholders	Participants	Partners
March 2017	Global Forum Seminar on Beneficial Ownership, Manila	50 (16 DMCs)	OECD, Global Forum, World Bank
April 2017	Strategic Workshop on Strengthening Tax Policy and Administration Capacity to Mobilize Domestic Resources, Tokyo	20 (8 DMCs)	National Tax Agency Japan, SGATAR, OECD, Global Forum, Inland Revenue Department New Zealand
May 2017	Tax and Corruption, Sydney	50 (4 DMCs)	Australian Taxation Office, ADBI, University of New South Wales
June 2017	Seminar on Tax Audit for Financial Transactions, Ulaanbaatar, Mongolia	20 Mongolia Tax Administration officials	
August 2017	Workshop on Taxation of the Digital Economy, Tokyo	25 (11 DMCs)	OECD, National Tax Agency Japan, SGATAR, Inland Revenue

<sup>3</sup> ADB. 2017. *Technical Assistance on Enhancing Tax Transparency of ADB Developing Member Countries*. Manila. <https://www.adb.org/projects/51320-001/main#project-pds>

Date	RETA 9235: Activities and Stakeholders	Participants	Partners
			Department New Zealand
Date not specified	Information gathering regarding status and priorities in various countries, including Thailand and Viet Nam	Consultations with key personnel	

ADB = Asian Development Bank Institute, DMC = developing member country, IMF = International Monetary Fund, OECD = Organisation for Economic Co-operation and Development, SGATAR = Study Group on Asian Tax Administration and Research.

Source: Asian Development Bank

**Table A2.3: Building Tax Administration and Policy Capacity in Developing Member Countries and Regional Organizations**

Date	DRMTF: Activities and Stakeholders	Participants	Partners
November 2017	Seminar: Train the Trainers BEPS and Transfer Pricing, Manila	25 (9 DMCs)	OECD, JICA, SGATAR
December 2017	BEPS Induction Workshop on Transfer Pricing, Phnom Penh	36 (3 DMCs)	OECD
December 2017	Medium-Term Revenue Strategy, Manila	32 (13 DMCs)	IMF, SGATAR, National Tax Agency Japan
February 2018	Workshop on Tax Policy for DRM and Property Tax, Tokyo	40 (15 DMCs)	OECD, SGATAR, National Tax Agency Japan
March 2018	Training on Transfer Pricing, Viet Nam	40 (8 DMCs)	World Bank, SGATAR, Viet Nam's General Department of Taxation
April 2018	OECD/IMF/ADB workshop on the International Survey on Revenue Administration (ISORA)	20 (8 DMCs)	OECD, IMF, Inland Revenue Board of Malaysia
October 2018	Workshop on enhancing value-added tax	30 (9 DMCs)	OECD, IMF, SGATAR

ADB = Asian Development Bank, BEPS = base erosion and profit shifting, DMC = developing member country, DRM = domestic resource mobilization, DRMTF = Domestic Resource Mobilization Trust Fund, IMF = International Monetary Fund, JICA = Japan International Cooperation Agency, OECD = Organisation for Economic Co-operation and Development, SGATAR = Study Group on Asian Tax Administration and Research.

Source: Asian Development Bank

**Table A2.4: Country Capacity Support Programs for Domestic Resource Mobilization**

Date of Approval	Scope	Country
January 2018	Supporting Tax Review	Solomon Islands
March 2018	Strengthening Domestic Resource Mobilization and Revenue Modeling	Lao PDR
May 2018	Enhancing Real Property Tax Reform Implementation	Philippines
June 2018	Strengthen Tax Administration Efficiency	Maldives
July 2018	Benchmark Study for Enhanced Revenue Performance of Recurrent Property Taxes	Cambodia, Philippines, Thailand, and Viet Nam
August 2018	Strengthen Efficiency of the Tax and Customs Incentives	Azerbaijan

Lao PDR = Lao People's Democratic Republic.

Source: Asian Development Bank

**Table A2.5: Enhancing Tax Transparency of Developing Member Countries**

Date	RETA 9433: Activities	Participants	Partners
Apr 2018	EOIR "Last Mile" Training Seminar for Pacific Island Countries – Suva, Fiji	12 DMCs (out of 14 PITAA members)	Global Forum PITAA
May 2018	On-site mission to assist the Federated States of Micronesia prepare for the second round EOIR peer review – Pohnpei, Federated States of Micronesia	13 FSM officials	Global Forum
May 2018	On-site mission to assist the Marshall Islands prepare for the second round EOIR peer review – Majuro, Marshall Islands	9 RMI officials	Global Forum
May 2018	On-site mission to assist Samoa prepare for the second round EOIR peer review – Apia, Samoa	30 Samoan officials	Global Forum
Jul 2018	High-Level Regional Event on Developments in International Tax Cooperation – Tbilisi, Georgia	19 jurisdictions (5 DMCs)	OECD, Global Forum, Revenue Service of Georgia, National Bank of Georgia, Georgian Parliament
Jul 2018	On-site mission to assist PNG prepare for the second round EOIR peer review – Port Moresby, PNG	30 PNG officials	Global Forum, Australian Taxation Office
Jul 2018	Workshop on Advancing BEPS and AEOI Priorities in APEC – Port Moresby, PNG	12 APEC economies (6 DMCs)	OECD, Australian Taxation Office, PNG Internal Revenue Commission
Aug 2018	On-site mission to assist Maldives undertake preliminary	15 Maldives officials	Global Forum

Date	RETA 9433: Activities	Participants	Partners
	evaluation of confidentiality and data safeguards (information security) arrangements for AEOI		
Sep 2018	Seminar on Exchange of Information as a Tool to Combat Offshore Tax Evasion – Jeju Island, Republic of Korea	15 jurisdictions (13 DMCs)	Global Forum, OECD Korea Policy Centre
Oct 2018	Seminar on Beneficial Ownership and EOIR Assessors Training – Manila, Philippines (ADB headquarters)	27 jurisdictions (19 DMCs)	Global Forum, Philippines' Department of Finance
Oct 2018	Technical meeting to assist the Philippines to obtain a better understanding of AEOI	20 Philippine officials	Philippines' Department of Finance

ADB = Asian Development Bank, AEOI = automatic exchange of information, APEC = Asia-Pacific Economic Cooperation, BEPS = base erosion and profit shifting, DMC = developing member country, EOIR = exchange of information on request, FSM = Federated States of Micronesia, OECD = Organisation for Economic Co-operation and Development, PITAA = Pacific Islands Tax Administrators Association, PNG = Papua New Guinea, RMI = Republic of the Marshall Islands.

Source: Asian Development Bank

## ADB'S INTERNAL PROCEDURES FOR IMPLEMENTING THE TAX INTEGRITY PRINCIPLES

**This appendix sets out Appendix 3 of the Tax Integrity Policy, marked to show proposed changes to make the Tax Integrity Due Diligence Guidelines more robust, in line with the recommendations of the tax expert.**

The following illustrates how the Asian Development Bank (ADB) will implement the Tax Integrity Principles.<sup>1</sup>

### 1. Reasonable assurance that ADB's financing does not facilitate tax secrecy, tax evasion, and tax fraud

- (i) At a project level and as part of ADB's general integrity due diligence (IDD), ADB seeks to ascertain the ultimate beneficial owners (UBOs) of ADB's client. For the purposes of this appendix, ADB's client includes, in the case of an ADB investment in a private equity fund, the general partner and fund manager, as well as any carry vehicle.
- (ii) ADB assesses public disclosures in relation to ADB's client, its shareholders (including UBOs), and key persons and entities involved in the proposed transaction to ascertain whether tax integrity issues arise in relation to such entities and persons.
- (iii) When assessing tax integrity risks, ADB considers the exchange of information on request (EOIR) ratings of the project host country and intermediate jurisdictions issued by the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum), and considers whether such jurisdiction has committed to implement the automatic exchange of information (AEOI) in (or before) 2018. ADB will consider the list of uncooperative jurisdictions ~~to be~~ published by the Organisation for Economic Co-operation and Development (OECD); and will also consider any ratings issued by the Global Forum in relation to AEOI (anticipated after 2018).
- (iv) ADB recognizes the greater tax integrity risks posed by transactions involving intermediate jurisdictions.<sup>2</sup>
- (v) When obtaining reasonable assurance that ADB's financing does not facilitate tax secrecy, tax evasion, and tax fraud, ADB will consider attempts to circumvent tax law.

### 2. Where there are intermediate jurisdictions

- (i) ADB carries out tax IDD on ADB's client if it is established in an intermediate jurisdiction and/or on any significant shareholders of ADB's client that are established in an intermediate jurisdiction.<sup>3</sup>

<sup>1</sup> This is a summary and is not intended to be exhaustive.

<sup>2</sup> ADB acknowledges that, while there are numerous legitimate reasons for the use of intermediate jurisdictions, their use may pose higher risks because they provide greater potential to obscure beneficial ownership and sources of funds, and thereby facilitate corruption, tax evasion, money laundering, financing of terrorism, and other illicit purposes (main text, para. 2).

<sup>3</sup> ADB recognizes that it is not always feasible to identify—and therefore to carry out tax or other IDD on—all shareholders. ADB discloses unidentified ownership to its Board of Directors in the report and recommendation of the President with an explanation of the reasons why ADB is comfortable proceeding in the absence of such information.

- (ii) The objective of this tax IDD is to consider whether the ownership structure of ADB's client is transparent.
- (iii) Indicators of transparency are described in paragraph 1(iii).

### 3. Where there are Intermediate jurisdictions of concern

- (i) ADB requires enhanced tax IDD to be carried out if ADB's client or any of its significant shareholders is established in an intermediate jurisdiction that (a) has not been assessed by the Global Forum in relation to EOIR, (b) is not rated as either compliant or largely compliant by the Global Forum for EOIR, (c) is listed as a ~~an un~~noncooperative jurisdiction by the OECD ~~(when its list of uncooperative jurisdictions is published)~~, or (d) has a poor rating for the implementation of AEOI (when such ratings are published).
- (ii) ADB will adjust the indicators of high tax risk that trigger enhanced IDD according to the changing global tax transparency environment. For example, when AEOI is implemented, some indicators of high risk may need to be revised to focus on instances where AEOI does not apply.
- (iii) If a proposed transaction is within paragraph 3(i), ADB's client will be required to explain to ADB the sound business reasons for the use of any entity in its shareholding structure in an intermediate jurisdiction (this assessment will not be limited to the intermediate jurisdiction/s of concern).
- (iv) Sound business reasons will vary from transaction to transaction and may include the following:
  - (a) establishing a common investment vehicle in a stable, investor-friendly jurisdiction that (where investors are of different nationalities) also provides a neutral platform for the investment (thereby attracting capital from numerous sources);
  - (b) establishing a common investment vehicle in a jurisdiction with a robust legal system that recognizes and enforces investment agreements and the creation and enforcement of security; and
  - (c) the lawful avoidance of double taxation, but will not include aggressive means of tax planning referred to in para. 5 or attempts to circumvent tax law.

### 4. Noncompliant intermediate jurisdictions

- (i) If ADB's client is either established in, or controlled by an entity established in, an intermediate jurisdiction classified as noncompliant for EOIR by the Global Forum, ADB will not finance such a transaction unless (a) ADB is satisfied that there is a sound business or policy objective for ADB to finance the transaction that should take priority over the rationale for not financing, and (b) ADB has conducted enhanced tax IDD to ascertain that the tax integrity risks are low and acceptable to ADB.
- (ii) An example of a sound business or policy objective justifying ADB's decision to finance the transaction might be that no other entity is operating in the relevant sector or jurisdiction, and if the transaction does not proceed, valuable developmental outcomes could not be achieved, thereby thwarting ADB's development mandate.

## 5. Material related party contracts

ADB will review and assess international material related-party contracts (whether or not they involve an intermediate jurisdiction) from an integrity perspective, to obtain reasonable assurance that they ensure are entered into on an arm's length basis, ~~consistent with the current practice of the Private Sector Operations Department (PSOD) relating to material related party contracts in its commercial due diligence.~~

## 6. Reporting to the Board of Directors

- (i) ADB discloses integrity issues to the Board of Directors in an appendix to the report and recommendation of the President (RRP) for nonsovereign operations;<sup>4</sup> the Office of Anticorruption and Integrity must clear this appendix.
- (ii) The appendix shall explain, in relation to the transaction under approval, whether tax IDD has been conducted and, if so, the outcome of such tax IDD.
- (iii) If para. 4 applies, the RRP will set out in detail the sound business or policy objective for ADB to finance the transaction that should take priority over the rationale for not financing the transaction. The appendix will explain the basis upon which ADB (having carried out enhanced tax IDD) has reasonable assurance that the tax integrity risks of the transaction are low and acceptable to ADB.

## 7. Tax integrity during project approval

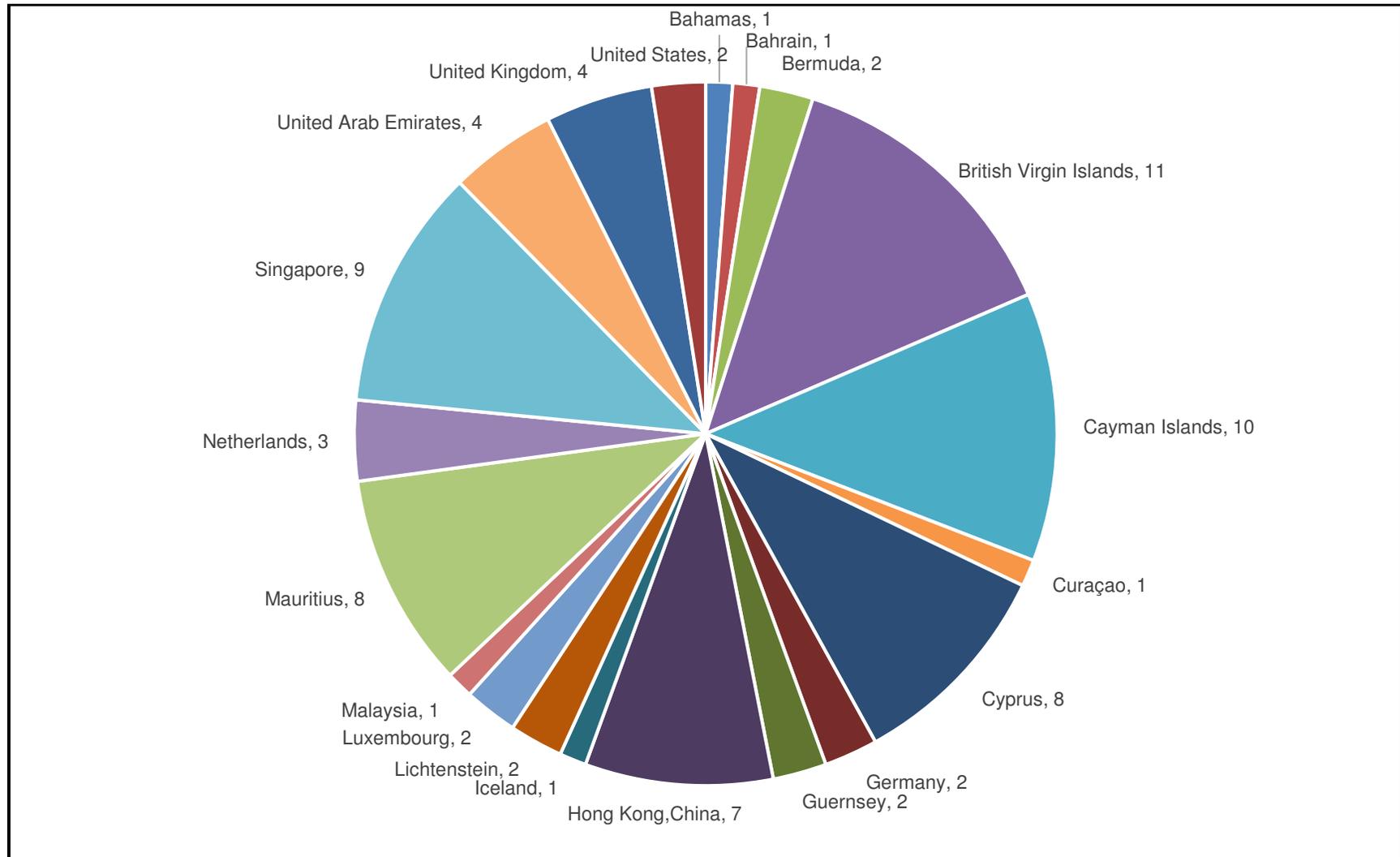
- (i) Integrity (including tax integrity) issues should be addressed at each key project processing stage.
- (ii) Changes in the ADB client's shareholding structure should be monitored during project administration.

## 8. Legal documentation

ADB includes in its financing documents integrity representations, warranties, and covenants addressing issues such as fraud, corruption, money laundering, and the financing of terrorism. ADB should also include provisions on identified tax integrity risks where appropriate. A breach of any of these provisions should give rise to appropriate remedies for ADB.

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<sup>4</sup> The integrity appendix is a linked document to the RRP. References to an RRP also refer to a report to the President.

**INTERMEDIATE JURISDICTIONS IN THE REVIEWED TRANSACTIONS**

Source: Asian Development Bank

## SUMMARY OF INTERNATIONAL TAX EXPERT'S RÉSUMÉ PETER BYRNE

### Professional Experience

- Senior fellow, Duke Center for International Development, and attorney specializing in international investment (current).
- Co-founder and vice-president, Lataxnet, a network of leading tax practitioners in Latin America (2002-2014).
- Adjunct professor, Georgetown Law School (comparative international taxation, 1998-2011)
- Deputy director of the International Tax Program, Harvard Law School (1993-1996) adjunct lecturer in Public Policy, John F. Kennedy School of Government; research associate, Harvard Institute for International Development; member of Law School Committee on Latin America.
- Attorney-Advisor, Office of Tax Policy (International Tax Counsel), Department of the Treasury (August 1989 - March 1992)
- Tax associate, Gibson, Dunn & Crutcher (Washington, D.C. and London offices (1986 -1989)

### Education

Harvard Law School, Cambridge, MA: J.D. 1986; Developments Editor, International Law Journal

Fulbright Scholar- Universidad de los Andes, Bogota, Colombia (August 1981 - August 1982)

Columbia University, New York, NY: B.A. 1981, summa cum laude in comparative literature

### Select Publications

"Deferral: Considerations for Developing Countries", chapter included in *From Public Finance Law to Tax Law: Studies in Honor of Andrea Amatucci*, 2011

"The Future of the Income Tax in Open Economies" United Nations Commission on Latin American Economic Development, January 1999

"Developing Countries, Tax Treaties, and the United Nations Model Tax Convention" ILSA Law Journal, Summer, 1996

"Tax Reform as a Component of Economic Modernization" (in Spanish), published in *Desafios y Beneficios de la Modernización Económica*, Caracas, July 1995

"Privatization Of Tax Administration: An Overview," International Bureau of Fiscal Documentation, January, 1995. Reprinted in the Harvard University Development Discussion Papers, March, 1995. Reprinted in the South African Tax Law Review.

### Select Speaking Engagements

"Transparency in action: FATCA and CRS, Where are we headed? Toward a prevailing model or passive coexistence" Asociación Argentina de Estudios Fiscales, Buenos Aires, September 2017

"Information Exchange and Protection of the Source Country Tax Base", 15° Congreso Tributario, Consejo Profesional de Ciencias Económicas, Buenos Aires, Argentina, October 2015

"Tax Treaties: international models, recent trends and impacts on international integration" Brazilian National Confederation of Industry Conference, Brasilia, June 2009

United Nations Commission on Latin American Economic Development (co-sponsored by the Inter-American Development Bank, IMF and the World Bank) Annual Seminar on Fiscal Policy (Brasilia, Brazil, January 1999) "The Future of the Income Tax in Open Economies"