Exchanging Information to Combat Tax Evasion

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Key points

- Globalization has increased cross-border transactions and created opportunities for tax evasion.
- Exchange of information (EOI) is paramount to countering tax evasion.
- Asian countries need to upgrade the capacity of the tax authority and strengthen cooperation arrangements.
- The Global Forum provides international standards for EOI between tax authorities.
- The peer review process and automatic EOI will greatly enhance efforts to combat tax evasion.

Tax evasion is a global concern that reduces government revenue and undermines trust in the tax system. International cooperation among national tax authorities, through the exchange of information (EOI) on taxpayer-related information including cross-border transactions and taxpayers' foreign assets, is an important tool for combatting the problem. Many Asian countries are upgrading their capacity to handle EOI by meeting the international standards set by the Global Forum on Transparency and Exchange of Information for Tax Purposes.

Cross-border tax evasion

Taxpayers (individuals and businesses) may try to evade taxes by conducting international transactions or by transferring funds out of the country so that the national tax authority may not be able properly to scrutinize income which should be included in a taxpayer's taxable calculation. Moreover, tax officials do not have the authority or the means to directly obtain information from the other countries. The illegal activity of cross-border tax evasion costs countries millions of dollars each year in forgone tax revenue, which is needed to fund public goods such as health, education, and infrastructure (Miyaki 2015).

As a result, there have been increased efforts in recent years by national tax authorities to cooperate with each other to combat the problem. The chief means is to share information on the funds that a citizen or business from one country may have deposited in a bank in another. This so-called “exchange of information” (EOI) lies at the heart of efforts to combat cross-border tax evasion and has resulted in the development of an international cooperation regime with a peer review process and established mechanisms.

The problem of cross-border tax evasion and the mechanisms to address it were discussed at “Cooperating to Combat Tax Evasion: Workshop on Enhancing Transparency and Exchange of Information for Tax Purposes.” The 4-day event took place in February 2015 at the Asian Development Bank Institute (ADBI) in Tokyo and was co-organized with the Asian Development Bank. Speakers from the Organisation for Economic Co-operation and Development (OECD), the National Tax Agency of Japan, and other national tax authorities shared their expertise. Participants comprised tax
officials from nine members of the Study Group on Asian Tax Administration and Research (SGATAR). Key issues and policy suggestions from the event are the basis for the analysis provided in this brief.

A global and regional priority

The increase in cross-border transactions, made possible by advances in information and communication technology, has provided opportunities for aggressive cross-border tax evasion. Ensuring that international tax evasion schemes are countered requires tax authorities in Asia to strengthen their international networks and capacity to obtain and exchange with foreign tax authorities relevant information, including information from financial institutions.

SGATAR was founded in 1970 and comprises 17 members in Asia and the Pacific with the goal of fostering cooperation and an exchange of ideas on tax issues. At the 2013 meeting in Jeju, Republic of Korea, the members agreed to enhance EOI in an effort to counter tax evasion. The global initiative to tackle the proliferation of tax evasion has been led since 2000 by the Global Forum on Transparency and Exchange of Information for Tax Purposes, and is associated with the OECD. It currently has 126 members including many non-OECD countries.

In the midst of the global financial crisis and in response to the Group of Twenty (G20) leaders’ call for higher standards of tax transparency and EOI, in 2009 the Global Forum was restructured and its member base broadened. A 3-year program was adopted for the rapid implementation of its standards through a peer review system. The G20 Leaders’ Declaration in 2013 again stressed that “… in many countries ensuring that all taxpayers pay their fair share of taxes is more than ever a priority. Tax avoidance, harmful practices and aggressive tax planning have to be tackled” (G20 2013, p. 12).

Methods for exchange of information

Most of the current effort to combat evasion focuses on EOI on request. This is the practice whereby a tax authority requests information about one of its citizens or businesses from a foreign tax authority. The taxpayer may have deposited funds in a foreign bank account and the foreign tax authority has the power to access that information and send it to the requesting tax authority. Two other types of EOI are emerging (Fig. 1). Spontaneous EOI is the practice whereby a tax authority has information about an individual or business that it feels might be useful to a foreign tax authority. This exchange is becoming more common, notably among OECD countries. The third type is automatic EOI whereby countries automatically send bulk information mostly from financial institutions to each other. Other types of tax cooperation include conducting industry-wide EOI, undertaking simultaneous tax examinations or joint

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**Fig. 1** Types of exchange of information

<table>
<thead>
<tr>
<th>EOI on Request</th>
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<tbody>
<tr>
<td><strong>Tax Authority</strong></td>
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<tr>
<td>1. Examination to identify taxation issues</td>
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<tr>
<td>2. EOI request</td>
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<tr>
<td>Foreign Tax Authority</td>
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<tr>
<td>3. Collect information</td>
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<td>4. Provide requested information</td>
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<tr>
<th>Spontaneous EOI</th>
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<tr>
<td><strong>Tax Authority</strong></td>
</tr>
<tr>
<td>1. Obtain useful information about taxation for foreign tax authority</td>
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<tr>
<td>2. Spontaneously provide information</td>
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<tr>
<td>Foreign Tax Authority</td>
</tr>
<tr>
<td>3. Evaluate received information and initiate new tax examinations</td>
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<th>Automatic EOI</th>
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<tr>
<td><strong>Tax Authority</strong></td>
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<tr>
<td>1. Collect standard financial information relevant to taxation</td>
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<tr>
<td>2. Mutually provide bulk information</td>
</tr>
<tr>
<td>Foreign Tax Authority</td>
</tr>
<tr>
<td>1. Collect standard financial information relevant to taxation</td>
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</tbody>
</table>

audits of persons or companies operating in two or more countries, and carrying out a tax examination abroad.

EOI activity has risen greatly in recent years, based on a rapid expansion of the number of EOI bilateral and regional/multilateral agreements that has been signed. In 2005, only 82 agreements were signed by Global Forum members but by 2014 the number had risen to over 3,000 (Fig. 2). Most, but not all, agreements meet the Global Forum standards, suggesting the generally high quality of agreements in place.

Countries often upgrade their understanding and systems in preparation for, or as part of, the Global Forum’s peer review process. In Malaysia, the government began by committing to the international standards in 2009 and reviewed its existing double taxation agreements (DTAs) and relevant domestic laws (Koisin 2015). The review process revealed that most DTAs did not contain an obligation to exchange information. The government then began reforming domestic laws to meet the standards and since mid-2013 has been able to exchange information as prescribed by international norms.

High-level commitment: EOI requires commitment from the highest levels of government to implement the new international standards on EOI called for by the G20. Implementation can involve revising legislation, negotiating DTAs, and setting up a dedicated unit to manage the exchanges. This commitment can involve adopting an EOI strategy, road map, and/or implementation plan.

For some countries, following through on the high-level commitment can be a challenge as parliamentarians and sections of the business community may resist additional information powers for the tax authority. Successful EOI implementation often requires explaining the benefit of combating tax evasion.

Fig. 2 Expanding exchange of information networks

Source: Godfrey (2015a).

Domestic exchange of information structures and commitment

International cooperation on tax evasion requires that national tax authorities have the requisite understanding, commitment, and mechanisms at the domestic level. The following elements are important.

Understanding of EOI: Tax authorities must be aware of the process of international EOI and their role in making the process work. For this, the Global Forum has created international standards and detailed Terms of Reference on EOI that explain the three key aspects of availability, access, and exchange (Fig. 3). This and other information can allow countries to learn and understand what they need to do to become active members of the EOI process. Assistance in improving the knowledge and understanding of tax authorities is available from bilateral and multilateral donors.
evasion (i.e., increased tax revenue). In 2014, the Philippines recovered more than $1 million through just two cases as a result of EOI with other countries. Likewise, in 2013 Australia was able to recover A$459 million as a result of over 400 EOI requests—an average of over A$1 million per request (Godfrey 2015a).

Legal framework: Building the legal framework and the authority of the tax agency is critical for EOI (Johansson 2015). Domestic legislation must support the availability of information, access to that information, and the exchange of information. The OECD has been spearheading EOI support through the Global Forum’s Terms of Reference. Other international guidelines that assist tax authorities include Article 26 of the OECD Model Tax Convention, the Joint Council of Europe/OECD Convention on Mutual Administrative Assistance on Tax Matters (MAC), and the Model Agreement on Tax Information Exchange Agreements (TIEA).

Japan has developed a robust EOI legal framework under the National Tax Agency (NTA). In 2003, the government adopted legal provisions to grant the “authority of inquiry” for the inspection of information requested by a treaty partner, and in 2006 it expanded the legal purview to providing tax crime investigation information to requesting countries and to allow for domestic seizure of necessary information for a tax crime. Further legal reform in 2010 stipulated that the requirement to provide information encompasses information reciprocity, information confidentiality, protection of national interests, and use of all available means for pursuing information. The NTA has an International Operations Division with two specialized teams that are trained in sending and receiving EOI requests.

The NTA has liaison officers that are sent on 2–3-year postings to countries in Asia and Europe and to the United States. The role of the officers is to act as contact persons for EOI requests and explain the details regarding cases, along with arranging meetings and providing the status on unanswered cases. NTA liaison officers research each country’s tax system, laws, and business practices to help build effective understanding and cooperation between Japan and other countries (National Tax Agency 2015).

Training and education: Successful capacity building and skill training of officials is essential. The approaches vary by country depending on the size of the country and the number of taxpayers, logistics and resources of the tax authority, organization of the tax administration, and the number of EOI requests received.

Global Forum peer review process

The Global Forum’s peer review process is a mechanism to assess the ability of national tax authorities to engage in high-quality EOI. The key aspects entail meeting the Global Forum’s Terms of Reference.

Fig. 3 Three pillars of exchange of information

- Ownership and identity information
- Reliable accounting records
- Banking information for all account holders
- Power to obtain and provide information
- Rights and safeguards to persons in the requested jurisdiction
- Exchange of information mechanisms for effective EOI
- EOI network
- Confidentiality of information received
- Rights and safeguards of taxpayers and third parties
- Providing information in a timely manner

Source: Adapted from OECD (2015a).
Reference and consist of two phases although these are now often combined. Phase 1 assesses a country’s legal and regulatory framework across 3 pillars and 10 elements (Fig. 3). Phase 2 assesses the ability to provide EOI in practice. Assessments are made and feedback is given to help improve the tax authority’s capacity. Progression between phases can be blocked if results are weak, but implementing improvements and continuous monitoring via follow-up reports and supplementary reports every 6–12 months can allow for progress and for an upgrading of the compliance assessment.

Countries in Asia and the Pacific are at different phases of the peer review process. Australia, the People’s Republic of China, Japan, the Republic of Korea, and New Zealand concluded combined reviews and were deemed compliant.

Other countries have completed separate Phase 1 and 2 processes, while still others are at more preliminary states as shown in Table 1.

For example, the Philippines underwent Phase 1 and Phase 2 review in 2010–2013 (Bandon 2015). The Peer Review Group assessed the Philippines in Phase 1 and noted that it met four elements, five elements were satisfactory but needed improvement, and one element would be reviewed in Phase 2. In November 2013, the country was assessed largely compliant in Phase 2. Throughout the process, the Philippines discovered that getting high-level political support and commitment was essential for reform and implementation. Engagement with other agencies (e.g., Securities and Exchange Commission, Insurance Commission, and Department of Trade and Industry) was required to complete the Phase 1 questionnaire and build support for EOI implementation throughout the government. Equally important were efforts to strengthen coordination between the Department of Finance and tax administration officials, creating permanent contact points in the Philippines with the Global Forum Secretariat, and defining clearly the roles and responsibilities of EOI officials. The Philippines learned best practices and adopted effective policies by reviewing previous peer review reports, using the Global Forum Assessors’ Handbook, and requesting assistance from the Global Forum and World Bank in conducting a gap analysis of the Philippines’ EOI practices.

Indonesia also underwent Phase 2 and was assessed partially compliant with the Global Forum standard (Gafur 2015). In preparation for the Phase 2 peer review, Indonesia adopted the guidelines from the OECD and learned from best practice, and benchmarked its progress against other countries, including Japan, India, and the Philippines. Improvements

### Table 1 Global Forum peer review compliance, Asia and the Pacific

<table>
<thead>
<tr>
<th>Member</th>
<th>Phase</th>
<th>Status</th>
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<tbody>
<tr>
<td>Australia</td>
<td>Combined</td>
<td>Compliant</td>
</tr>
<tr>
<td>China, People’s Republic of</td>
<td>Combined</td>
<td>Compliant</td>
</tr>
<tr>
<td>Japan</td>
<td>Combined</td>
<td>Compliant</td>
</tr>
<tr>
<td>Korea, Republic of</td>
<td>Combined</td>
<td>Compliant</td>
</tr>
<tr>
<td>New Zealand</td>
<td>Combined</td>
<td>Compliant</td>
</tr>
<tr>
<td>India</td>
<td>Phase 1 + 2</td>
<td>Compliant</td>
</tr>
<tr>
<td>Hong Kong, China</td>
<td>Phase 1 + 2</td>
<td>Largely compliant</td>
</tr>
<tr>
<td>Macau, China</td>
<td>Phase 1 + 2</td>
<td>Largely compliant</td>
</tr>
<tr>
<td>Malaysia</td>
<td>Phase 1 + 2</td>
<td>Largely compliant</td>
</tr>
<tr>
<td>Philippines</td>
<td>Phase 1 + 2</td>
<td>Largely compliant</td>
</tr>
<tr>
<td>Singapore</td>
<td>Phase 1 + 2</td>
<td>Largely compliant</td>
</tr>
<tr>
<td>Indonesia</td>
<td>Phase 1 + 2</td>
<td>Partially compliant</td>
</tr>
<tr>
<td>Cook Islands</td>
<td>Phase 1 – concluded</td>
<td>Phase 2 – underway</td>
</tr>
<tr>
<td>Georgia</td>
<td>Phase 1 – concluded</td>
<td>Phase 2 – underway</td>
</tr>
<tr>
<td>Samoa</td>
<td>Phase 1 – concluded</td>
<td>Phase 2 – underway</td>
</tr>
<tr>
<td>Brunei Darussalam</td>
<td>Phase 1</td>
<td>Blocked</td>
</tr>
<tr>
<td>Marshall Islands</td>
<td>Phase 1</td>
<td>Blocked</td>
</tr>
<tr>
<td>Micronesia, Federated States of</td>
<td>Phase 1</td>
<td>Blocked</td>
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<tr>
<td>Nauru</td>
<td>Phase 1</td>
<td>Blocked</td>
</tr>
<tr>
<td>Vanuatu</td>
<td>Phase 1</td>
<td>Blocked</td>
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</tbody>
</table>

Source: Adapted from OECD (2015b).
to the legal framework continue with a review and amendments to existing regulations (e.g., Ministry of Finance Regulation No. 60 was changed in 2014), the preparation of more detailed guidelines, and the ratification of the MAC and TIEA. The review encouraged Indonesia to proceed with organizational reform, including hiring additional EOI staff, forming an international tax directorate, and creating a dedicated EOI unit. Administration capacity has been enhanced through a nationwide EOI dissemination initiative, visits and consultations to units of the Directorate General of Taxes (DGT), a more proactive DGT, and the creation of an information database. Indonesia learned that active engagement both domestically and internationally with EOI officials, auditors, accountants, and government officials produces better EOI performance.

Automatic EOI represents a big step forward that will enable the discovery of formerly undetected tax evasion. The automated nature acts as a deterrent since noncompliant taxpayers will not be able to hide and the practice will further boost transparency, cooperation, and accountability among financial institutions and tax administrations. Synergies exist for governments and also cost savings for financial institutions who must comply with the Model 1 Intergovernmental Agreement to meet the United States Foreign Account Tax Compliance Act (FATCA). Account holder information of foreigners (balances, interest, dividends, and sales proceeds from financial assets) at domestic financial institutions will be provided to tax authorities who will send the information automatically to other governments.

The new standard has three facets: (i) information reported, (ii) financial institutions required to report, and (iii) account holders subject to reporting. The information reported for personal data consists of name, address, tax residence, and tax identification number (TIN). Financial data reported include account balance and all income, including sales proceeds. The types of institutions that are required to report are banks, custodians, and other financial institutions (brokers, certain collective investment vehicles, and certain insurance companies). The accounts subject to report are those of individuals, entities (including trusts and foundations), and controlling

“Tax avoidance, harmful practices and aggressive tax planning have to be tackled”

~ G20 Leaders’ Declaration (2013)
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Notes

1. The nine SGATAR members that sent officials as participants were Cambodia, the People’s Republic of China, Indonesia, Malaysia, Mongolia, Papua New Guinea, the Philippines, Thailand, and Viet Nam.

2. The United States has indicated that it will be undertaking automatic information exchanges pursuant to FATCA from 2015 and has entered into intergovernmental agreements (IGAs) with other countries.

Technical assistance is being provided by the Global Forum to developing countries to help them implement the standard. Pilot projects are currently under way involving the pairing of a developing country and a developed country to assess feasibility of the current capacity of the developing country and the steps necessary for full implementation. In 2015, the Philippines is partnering with Australia and the process will produce feedback and reports to apply lessons for future partner projects (Godfrey 2015b).

In total, 93 members of the Global Forum have committed to implementing the new standard by 2017 or 2018. In Asia, this group includes the People’s Republic of China, Indonesia, Japan, the Republic of Korea, and Singapore.

Conclusion

Effective mitigation of tax evasion through EOI brings immediate benefits for tax authorities and positive ripple effects for the local and regional economies. Sending and receiving information on taxpayers helps countries fight illicit outflows, foster sustainable institutions, and enhance cooperation. Continued improvements and implementation of EOI mechanisms will grow government coffers, build trust, fight corruption, and help engender a level playing field for companies and individuals.
References


