



EXCHANGE OF INFORMATION:

THE INDIAN EXPERIENCE

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Views expressed are personal

SCOPE OF COUNTRY EXPERIENCE

- **Bilateral**
 - DTAA: OECD & UN Model – Article 26
 - TIEA
- **Multilateral**
 - CMAA in Tax Matters – Articles 4 & 5
 - Regional agreement -SAARC
- **EOIR**
- **Spontaneous**
- **Automatic**
 - FATCA
 - CRS
 - CbCr
- **Concerns of developing countries**

BILATERAL

- **Legal Foundation**

- Article 26
 - Competent Authority
 - “Shall” exchange
 - Foreseeable relevance
 - No fishing expedition
 - Group requests – if sufficiently related to joint & specific pattern of facts
 - Use for non-tax purpose if sender State permits
 - Should not violate trade, professional, commercial etc. secrets
 - Not restricted by Articles 1 & 2

- **Experience**

- Wide network of DTAAs and TIEAs

EOIR

Experience

- More requests sent out than received
- 3 rounds of peer review by Global forum
- No publicly shared data on utility of information received
- Empirical research suggests limited relevance of info for tax assessment – difficult to evidence cases of round tripping of fund
- Reluctance to share info by foreign jurisdictions?
- Quality of request?
- Does unfamiliarity with domestic tax procedures affect information flow from other States?

Spontaneous

- **Legal foundation**

- Article 26 – Model Convention of OECD
- CMAA in Tax Matters – Article 7

- **Experience**

- 2009- Germany – Indian account holders in LGT bank of Liechtenstein
- 2011 – France – 700 Indian account holders in HSBC
- Indian Supreme Court took note – directed for Special Investigation Team
- SIT in 2014
- Tax disputes

AEOL: FATCA

- **Experience**

- Inter Governmental Agreement in 2015- with US IRS – Model 1A - Reciprocal – less so from US side
- Finance Act enabled FFIs to report to Income Tax Dept – penal clauses for delay/ non reporting – banking secrecy laws circumvented
- Confidentiality & use of info for tax purposes alone
- Heavy investment by FFIs - enhance computer systems- ensure due diligence
- Developing countries generally net importer of capital – How does FATCA benefit them?
- Fear of 30% tax withholding?
- Govt of India does not share public information on effectiveness of FATCA data
- Anecdotal evidence – Small sized transactions - Modest tax gains

AEOL : Common Reporting Standards

- **Legal Foundation**

- OECD framed Standard for reporting & Due diligence rules for FIs to report financial accounts
- Model Competent Authority Agreement – for source jurisdictions to collect information from their FIs – send to country of residence of account holder
- Creating appropriate IT and administrative structures to facilitate data transfer & confidentiality
- Hidden bilateralism within multilateralism

AEOI : CRS... *contd*

- **Experience**

- India amongst “early adopters”- signed Model CAA in June 2015 – First exchange Sept 2017
- Switzerland ratified AEOI with India June 2017- info exchange 2019
- Scope- investment income, account balance, sale of financial assets
- Passive accounts & Beneficial owner info
- Confidentiality is critical – can impact utilization of information
- Risk analysis – Good gains
- Govt does not share info on quality of CRS data & effectiveness in tackling tax evasion
- Anecdotal
 - Quality of due diligence of FFIs?
 - Non-actionable intelligence?
 - Bottleneck of strict confidentiality in wider utilization of info?

Country by Country reporting

- **Experience**

- Amendment in Income Tax Act in 2016 to facilitate CbCr – group threshold of turnover prescribed Euro 750 – first due date March 2019
- 3 levels of additional Transfer Pricing documents- CbCr, Master File, Local File
- Multilateral Agreement between Competent Authorities on exchange of CbCr – India signatory – most exchange relationships activated
- Some exception – USA, Saudi Arabia, Taiwan
- CbC reporting enforced at local level for MNE constituent units – demonstrates seriousness for getting info to counter BEPS

Developing country concerns

- Political will
- Putting multi dimensional legal framework in place – mindful of local concerns and thresholds
- Need for strong IT backbone - Choice of appropriate technology solutions
- Information use for non-tax purposes
- Using actionable intelligence non intrusively for voluntary compliance
- Need for public CbCr
- Legal & administrative capacity – sharing resources – Strength through alliance
- More aggregated , anonymized data to evaluate effectiveness of exchange

QUESTIONS?

