

## **New Information Exchange Standard on Offshore Accounts**

- Pooja Rangaprasad\*

### **Introduction**

The Special Investigation Team (SIT) on black money set up by the Supreme Court has increased the focus on offshore bank accounts held by Indians. While it is incorrect to assume that all such offshore accounts are illegal, the lack of effective information exchange between authorities on these accounts is a concern. The mechanisms for exchanging this information between countries are governed by international standards and institutions. Until last year, this global standard for information exchange was 'on request'; often time-consuming and counter-productive as a lot of information already needed to be known before making a request. In 2014, G20 countries endorsed a new system of information exchange, automatic exchange of financial information, developed by the Organisation for Economic Cooperation and Development (OECD).

### **Automatic Exchange of Information**

Automatic Exchange of Information (AEOI) is the "routine and periodic transmission of information about non-resident persons, sent by the jurisdiction in which income or assets are located to the jurisdiction in which the person may owe tax" (OECD). It is meant to complement the earlier 'on request' mechanism and is together packaged to be a more effective information exchange system to deter tax evasion. There are two parts to implementing this new standard:

1. Common Reporting Standards (CRS): The CRS provides details on the reporting and due diligence procedures that need to be translated into domestic law and followed by financial institutions.
2. Model Competent Authority Agreement: A model agreement that needs to be signed by interested jurisdictions in order to operationalise automatic information exchange. The legal instruments that permit this exchange are bilateral tax treaties and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

The Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) is the body mandated with monitoring the implementation of information exchange standards and assisting developing countries' participation. The Global Forum has 127 members (including non-OECD countries such as India), with its Secretariat based in the OECD.

### **Recent Developments**

In October 2014, 51 jurisdictions signed a multilateral competent authority agreement to automatically exchange information based on the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. Though India was unable to sign the agreement in October, reportedly due to concerns raised by the Supreme Court around the confidentiality clauses, India committed to undertaking automatic information exchange by 2017 when the first exchanges are scheduled to take place.

A roadmap for developing country participation was submitted to the G20 Development Working Group by the Global Forum in September 2014. One of the main initiatives proposed in this roadmap are 'Pilot Projects' where developing and developed (or G20) countries will be partnered together to assist low capacity tax administrations in implementing this standard.

## **Concerns – Will Developing Countries Benefit?**

Tax Justice Network ([www.taxjustice.net](http://www.taxjustice.net)) has identified a number of loopholes in the reporting standards such as exclusion of entities with information on hard assets (real estate, yachts, planes, jewelry etc), lack of an international confidentiality standard, difficulty in identifying beneficial owners of accounts without public registries, absence of sanctions for non-cooperative jurisdictions etc. The extent to which these loopholes are fixed will determine the effectiveness of the system globally.

According to the standard, this information exchange has to be reciprocal between two countries. This is a concern for poorer countries, with limited resources and capacity, to invest in systems to collect the relevant information. Expectation of reciprocity also does not take into account the reality that wealthy citizens are more likely to hide their assets in rich countries with well-developed financial centers rather than in poor countries. So there is a much higher likelihood of citizens from developing countries hiding their money in Swiss banks (for instance), rather than the other way around. A provision that would allow non-reciprocity in favour of developing countries to first receive information on a temporary basis, without expecting them to send the same information, should be explored.

There are also concerns that jurisdictions would be allowed to choose with whom they want to engage in automatic information exchange. This could leave developing countries at a disadvantage with more powerful countries refusing to share information. The grounds for refusing to engage with a jurisdiction will only be examined in a Global Forum peer review process at a much later stage. More robust provisions are needed to ensure that as long as confidentiality requirements are met, no jurisdiction can refuse to share information.

One of the limitations of the G20 and OECD leading this process has been that automatic information exchange can seem imposed on other developing countries rather than emerging through a process of consensus. Fundamental reforms in the global institutional architecture on tax cooperation are required to ensure that developing countries are able to participate on equal footing. This includes upgrading the current UN Tax Committee to an inter-governmental body with adequate resources, to ensure all countries have a voice in setting the agenda and designing the rules.

## **Conclusion**

India has been a vocal supporter of automatic information exchange in the G20 for many years and was one of the first developing countries to support its adoption as a global standard. India now has an important role to play, through the G20, BRICS, UN, and Global Forum, to make commitments towards capacity building and ensuring that the rules are in favour of poorer countries. India and the BRICS have an opportunity to demand a representative space for cooperation on tax and transparency, under the UN, at the ongoing Financing for Development negotiations leading up to the Post 2015 agenda this year.

Finally, it is important to note that automatic information exchange is mainly a tool to deter tax evasion and will not help ‘bring the money back’, which has been the misguided focus of the black money debate in India. Unless the drive to investigate offshore bank accounts of Indians is situated in a broader framework to curb generation and outflow of black money in the first place, the exercise will yield little result.

\* The author works with Centre for Budget and Governance Accountability (CBGA), New Delhi ([www.cbgaindia.org](http://www.cbgaindia.org)). She can be contacted at [rpooja@cbgaindia.org](mailto:rpooja@cbgaindia.org)