



Developing Countries and International Institutional Architecture on Financial Transparency:

Global Forum on Transparency and
Exchange of Information for Tax Purposes

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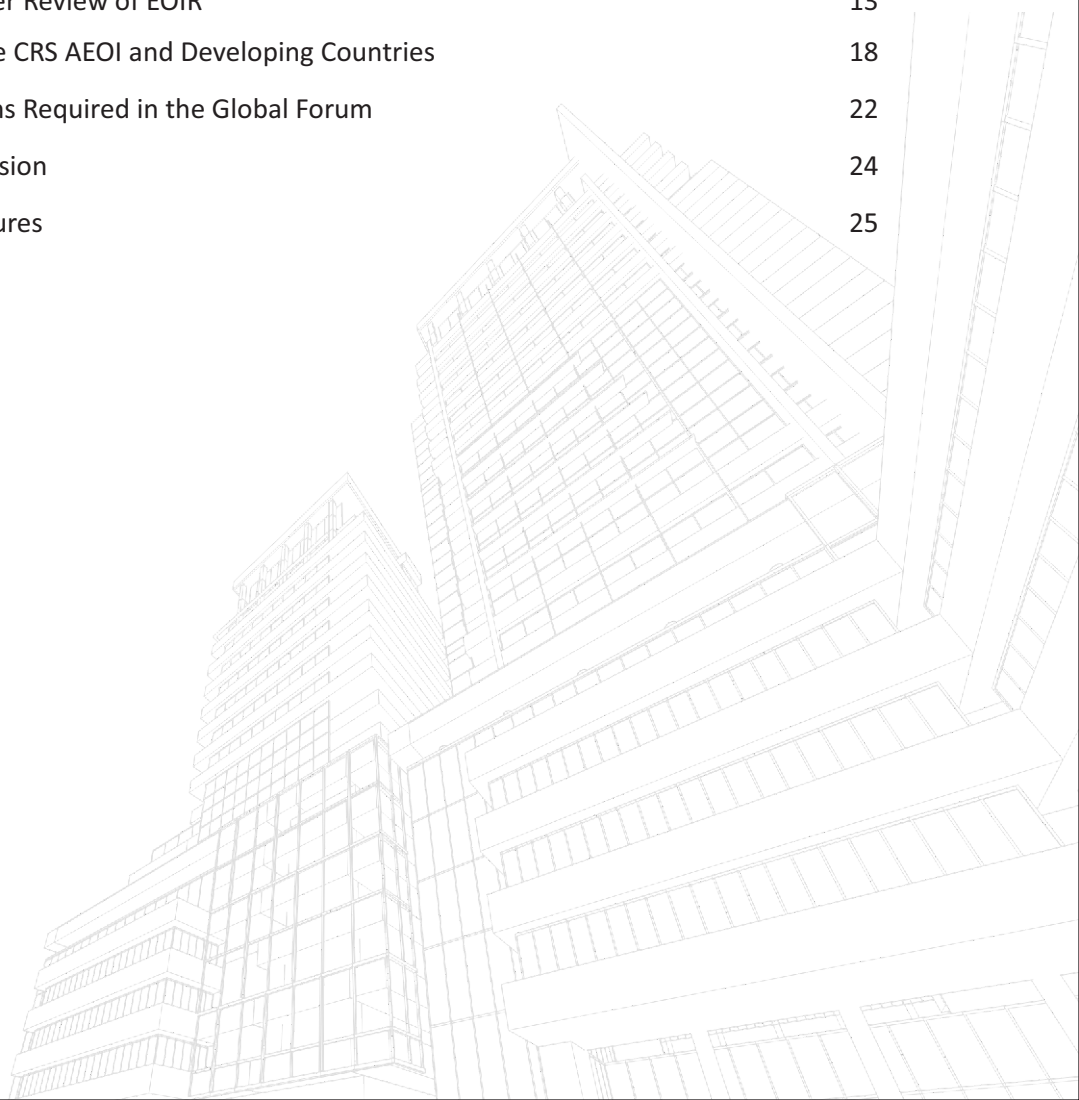
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I. Introduction

There have been concerted global efforts to curb the generation of Illicit Financial Flows¹ (or IFFs), but with limited success. This could be attributed to the fact that IFFs are not confined to the narrow underbelly of illegal activities; they are integrated in the mainstream global financial system. These funds flow through legal banking systems aided by an extremely efficient industry of bankers, lawyers and accountants. The transnational nature of IFFs implies that crucial information needed to determine the nature of fund flows is dispersed across jurisdictions. The inadequacy of information with domestic authorities has proved to be one of the biggest hurdles in efforts to curb IFFs. Exchange of tax information (EOI)² between jurisdictions has emerged as a preferred tool to address this weakness. Though many countries have been engaging in bilateral arrangements to exchange information, the effort to create a global framework is recent.

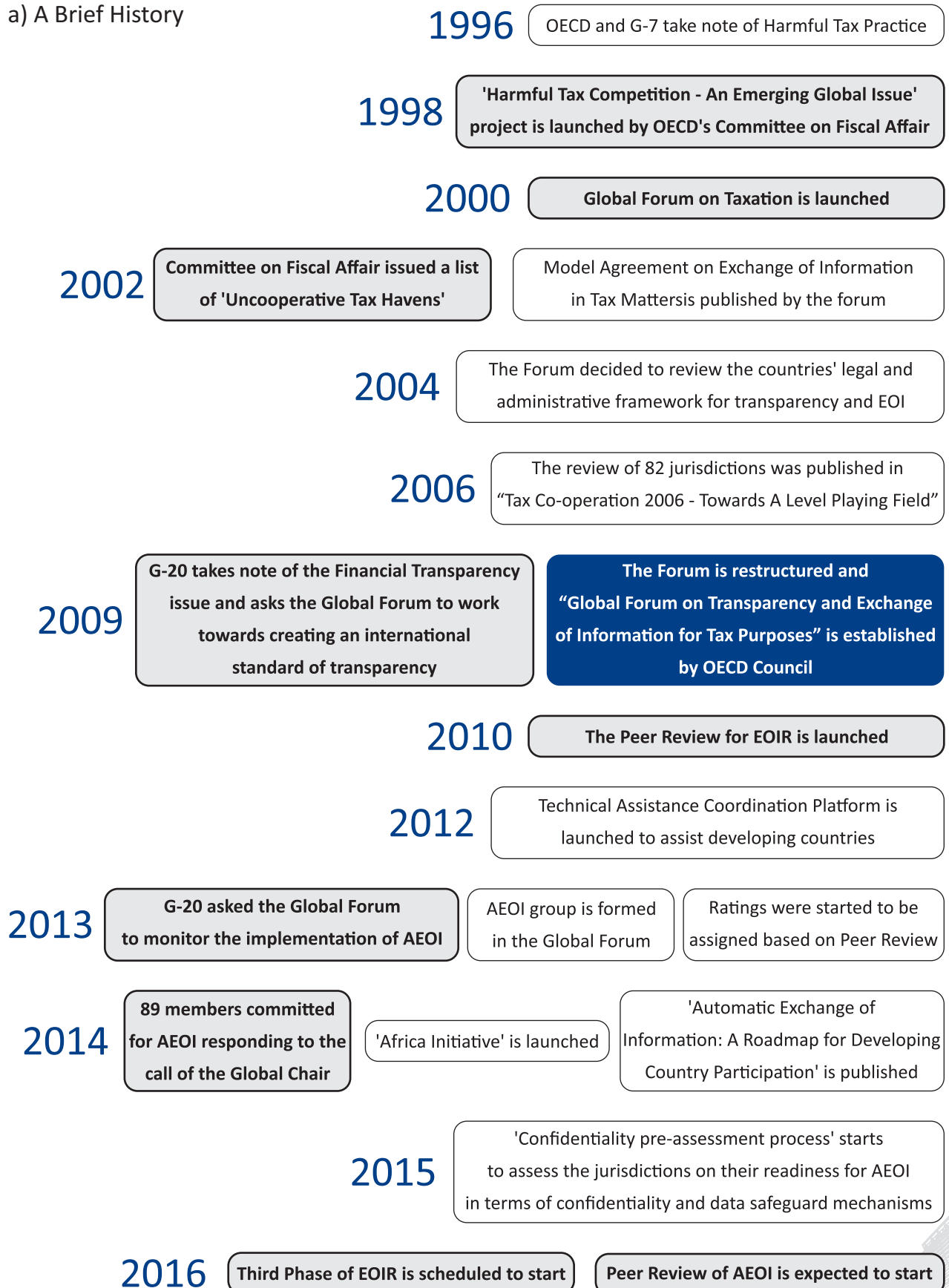
The Global Forum on Transparency and Exchange of Information for Tax Purpose(hereafter, Global Forum) is currently the largest organisation, in terms of member jurisdictions, working on the exchange of information issues. It was established by the Organisation for Economic Co-operation and Development (OECD) in 2000 and was restructured in 2009, after which its membership was opened for all jurisdictions. Since it was created and is being hosted by the OECD, there are arguments that the Global Forum does not serve the interests of developing countries on equal footing due to conflicting interest of developed countries and developing countries. Even when there is convergence of interests, the methods adopted may not be suitable for all jurisdictions, especially developing countries. In this context, this paper attempts to assess the Global Forum on its organisational structure, decision-making process and initiatives, along with its implications for developing countries. In the process, we reached out to tax officials and government authorities from developing countries in Africa, Asia and Latin America for accounts of their experience with the Global Forum and its initiatives. The responses received were incorporated in the assessment of the Global Forum and an attempt has been made to find out if the body needs reform.

¹ Illicit Financial Flows (or IFFs) are defined as movements of money or capital from one country to another that is illegally earned, transferred, or utilised.

² EOI is the process through which jurisdictions exchange tax/financial information of foreigners available within their jurisdiction with the resident countries' authorities.

II. The Global Forum - An Overview

a) A Brief History



b) Membership

After the restructuring of the Global Forum in 2009, its membership consisted of OECD and G20 countries, and jurisdictions covered in the report 'Tax Co-operation 2009: Towards A Level Playing Field'.³ It was provisioned that all members will participate on an equal footing. For the membership of new countries, it was noted:

"The Global Forum may invite other jurisdictions to participate in its work with the possibility to become members if they commit to implement the standards and accept to be reviewed".⁴

As of September 2016, the requirements for joining the Global Forum are as follows:⁵

1. Commit to implement the standards on transparency and exchange of information (exchange of information on request and automatic exchange of information);
2. Participation and contribution to the Peer Review Process; and
3. Contribute to the Global Forum budget as it is a self-funded body.⁶

Over the last six years the membership of the Global Forum has increased to include 135 countries and jurisdictions.

c) Organisational Structure and Functioning

The Global Forum Plenary, which is attended by all the members, is the only decision making body in the Global Forum. The plenary appoints the Chair and the Vice-Chair of the Global Forum, who by default also serve as the Chair and Vice Chair of the Steering Group. The Steering Group consists of 18 members, including the Chair and the Vice-Chairs, and the remaining members are also selected by the Plenary. The Steering Group is the executive guiding body, tasked with overseeing and reviewing the mandate of the Global Forum along with strategy and resourcing responsibilities. The Peer Review Group is also an important body in the Global Forum, which is responsible for the peer review process. It has one Chair and four Vice-Chairs, who are also members of the Steering Group. In 2013, a new group was formed with voluntary membership to focus on Automatic Exchange of Information (AEOI), which now consists of 69 members. This group too has one Chair and four Vice-Chairs who are also member of The Steering Group. This group is tasked with various aspects of overseeing the implementation of AEOI.

Between 2009 and 2012, the members of the Steering Group and the Peer Review Group were decided when the Global Forum was formed, and was revisited when the mandate for the Global Forum was extended from 2012 to 2015. Since 2013, it has been decided that membership of the Steering Group and the Peer Review Group will be rotated among the Global Forum members. It was agreed that from 2016 a fixed schedule of membership rotation for next five years will be decided, where the Global Forum members will be invited to express their interest in the membership of the Steering Group and the Peer Review Group.⁷

All the three groups are supported in their legal, technical and procedural functioning by the Global Forum secretariat. It is a self-standing institution, with 27 members, hosted by OECD's Centre for Tax Policy and Administration (CTPA) in Paris. The secretariat staff includes both directly hired staff and secondees provided by Global Forum members, consisting of legal and policy experts, media communicators, and technical experts.

³ For full list see Annex A

⁴ OECD. 2009. *Decision of the Council Establishing the Global Forum on Transparency and Exchange of Information for Tax Purposes*

⁵ <http://www.oecd.org/tax/transparency/about-the-global-forum/members/whyandhowtojointheglobalforum.htm>

⁶ The annual fee is either flat (EUR 15 300) or progressive for countries whose GNP is above USD 35 billion

⁷ Global Forum. 2015. *Statement of Outcome*

d) Major Initiatives

To ensure an effective global implementation of the transparency standards and exchange of information, the Global Forum has taken two major initiatives. To ensure an effective global implementation of the transparency and exchange of information standards, the Global Forum has taken two major initiatives. The first concerns with the existing regulations and practices in jurisdictions. To ensure that jurisdictions are adhering to the transparency standards recommended by the Global forum, it has devised 'Peer Review of Exchange of Information upon request (EOIR)'.

Second initiative is related to the 'Automatic Exchange of Information (AEOI)'. In 2013, the G20 endorsed AEOI to be the new standard for exchange of information between countries, and the Global Forum is mandated with the responsibility of overseeing the implementation of AEOI standards."

1. Peer Review of EOIR

The Global Forum in 2009 decided that it would set up *"...a Peer Review Group to develop the methodology and detailed terms of reference for a robust, transparent and accelerated process."*⁸

Towards this goal, the Global Forum published the 'Terms of Reference' and 'Note on Assessment Criteria' in 2010, which lay down the details of the Peer Review process. The Peer Review process examines whether a particular jurisdiction's existing arrangements regarding EOIR are meeting the standard recommended by the Global Forum in terms of its legal framework and practices prevailing in that jurisdiction.

The Peer Review process consists of two phases. In Phase I, the assessment attempts to appraise whether the legal and regulatory framework in the jurisdiction is sufficient to meet the EOI standards recommended by the Global Forum; and in Phase II, the practical implementation of the legal framework compared to the recommended standard is evaluated. In each phase, the jurisdictions are assessed on three broad aspects of EOI, which are subdivided further, as follows:⁹

- A. Availability of Bank, Ownership, Identity and Accounting Information
 - 1. Ownership and identity information:
 - 2. Accounting records
 - 3. Banking information
- B. Access to Bank, Ownership, Identity and Accounting Information
 - 4. Competent Authority's ability to obtain and provide information
 - 5. Notification requirements and rights and safeguards
- C. Exchanging Information
 - 6. Existence of EOI mechanism
 - 7. EOI arrangements with all relevant partners
 - 8. Confidentiality
 - 9. Rights and safeguards of taxpayers and third parties
 - 10. Timeliness of response to requests of information

⁸ OECD. 2009. *Decision of the Council Establishing the Global Forum on Transparency and Exchange of Information for Tax Purposes*

⁹ Ibid

With respect to each of the 10 essential elements, a determination is made in both the phases and a rating is assigned to the jurisdiction reviewed. For Phase I of the Peer Review, there are three ratings as follows:

1. The element is in place
2. The element is in place but certain aspects need improvement
3. The element is not in place

Phase II of the Peer Review process evaluates the same aspects of a particular jurisdiction, and accords one of the following ratings:

1. Compliant
2. Largely compliant
3. Partially compliant
4. Non-compliant

These assessments are followed by a rating which is a reflection of the jurisdiction's adherence to the standard; and wherever required, recommendations are also provided for improving the legal framework and practice according to the standard. Jurisdictions are expected to act on recommendations in the review and to report back the same to the Global Forum.¹⁰ The two phases are done in sequential basis, and admission into Phase II is dependent on the results of Phase I. In case a particular jurisdiction is found not to have the elements in place in Phase I, then Phase II review process is put on hold. In such cases the jurisdiction can ask for supplementary review after it had made improvement based on the recommendations. If the results of supplementary review are found to be compliant with the recommended standard, then the Phase II review process can be started. For some countries, both the phases of review were conducted at once; however, the selection criteria for this process is not in the public domain.

2. Automatic Exchange of Information

The OECD defines Automatic Exchange of Information (AEOI) as¹¹

"...the systematic and periodic transmission of "bulk" taxpayer information by the source country to the residence country concerning various categories of income (e.g. dividends, interest, royalties, salaries, pensions, etc.)."

For AEOI, countries can either enter into bilateral agreements or the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (CRS CAA) on mutual basis with other signatories of Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MCMAA).¹² Common Reporting and Due Diligence Standard (CRS)¹³ refers to the terms of reference which dictates the implementation of AEOI. It provides the details of financial account information to be exchanged, the financial institutions required to report, types of accounts and owners to be covered, requirements and guidelines for financial institutes to maintain the confidentiality, authenticity and safeguarding of information. CAA refers to the agreement between the jurisdictions; it spells out the detailed terms of engagement which will actually determine the nature and extent of AEOI.

As of September 2016, 84 jurisdictions have signed CRS CAA on AEOI;¹⁴ while 101 jurisdictions¹⁵ have committed

¹¹ OECD. 2012. *Automatic Exchange of Information. What It Is, How It Works, Benefits, What Remains to Be Done*

¹² <http://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/>

¹³ OECD. 2014. *Standard for Automatic Exchange of Financial Account Information – Common Reporting Standard*.

¹⁴ OECD. 2016. *Signatories of The Multilateral Competent Authority Agreement On Automatic Exchange of Financial Account Information And Intended First Information Exchange Date*

¹⁵ For complete list of countries, see Annex B



to starting AEOI beginning in 2017 or 2018.¹⁶ The countries who have not signed the CRS CAA yet, will need to do so before they start the AEOI in 2017 or 2018 according to their commitments. The Global Forum has two main aspects of work with regard to AEOI:¹⁷

a. Monitoring the Implementation of AEOI

To ensure the timely and effective implementation of AEOI CRS, the Global Forum created the Automatic Exchange of Information Group in 2013 with voluntary membership. As of September 2016, the AEOI Group has 69 member jurisdictions and three observers.¹⁸

The group is assigned to create a mechanism for monitoring and reviewing the implementation of the AEOI CRS. Towards this goal, the AEOI group is currently preparing the Terms of Reference and Methodology for the Peer Review process for AEOI.¹⁹ It is expected that the first AEOI under MCAA will start in late 2016 or early 2017, after which the AEOI group is expected to provide information on whether an effective exchange relationship under the MCAA exists between two signatories' jurisdictions, which will be verifiable by an outside observer.²⁰

b. Helping Developing Countries Benefit from AEOI

The implementation and use of AEOI requires a country to have sufficient technical capacity along with skilled human resources, technological infrastructure, etc. which may be a concern for many developing countries.

A Global Forum report notes these concerns:²¹

“For successful implementation of AEOI, the requirements include knowledge, political will, information technology, human resources, legal frameworks, rigorous confidentiality and data protection safeguards and resources dedicated to ensuring the information received is put to effective use. Many developing countries currently lack capacity in these areas.”

To address these issues, the Global Forum has taken some initiatives, which focus on:²²

- Pilot Projects: In a pilot project, a developing country (called the pilot country) is partnered with a developed country (called the partner country), based on economic, cultural and historical ties as well as regional proximity. The partner country along with the Global Forum secretariat will develop an Implementation Plan to bring the legal framework and practices of the pilot country for AEOI closer to the recommended standard.²³ Partner countries are expected to assist pilot countries by way of transfer of technology, capacity building, and sharing information on a non-reciprocal basis for a trial period.
- Skill support activities to strengthen the member jurisdictions' staff skill set, such as training session, sensitisation regarding various guidelines.
- Peer-to-peer learning among members through meetings or seminars between regional members
- Development tools, such as guidelines, manuals, technological assistance systems, etc.

¹⁶ Global Forum. 2016. AEOI: *Status of Commitments*

¹⁷ <http://www.oecd.org/tax/transparency/automaticexchangeofinformation.htm>

¹⁸ www.oecd.org/tax/transparency/about-the-global-forum/AEOI-group-members.pdf

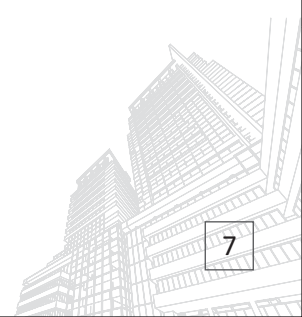
¹⁹ <https://www.oecd.org/tax/transparency/about-the-global-forum/>


²⁰ For detail, See Annex C

²¹ Global Forum. 2014. *Automatic Exchange of Information - A Roadmap for Developing Country Participation*

²² <https://www.oecd.org/tax/transparency/technical-assistance/>

²³ Global Forum, 2015, *Automatic Exchange of Information: Pilot Project Outline*





This assistance is carried out in collaboration between the Global Forum, member jurisdictions and international organisations, such as African Tax Administration Forum (ATAF), Inter-American Center of Tax Administrations (CIAT) and World Bank. Starting in 2010, more than 30 workshops have been held in different countries.²⁴

One major initiative on this front is The Africa Initiative. It is a three year programme, launched in October 2014, and aims to tackle the problem of illicit financial flows in Africa by enhanced transparency and exchange of information throughout Africa.

²⁴ <http://www.oecd.org/tax/transparency/technical-assistance/events/>

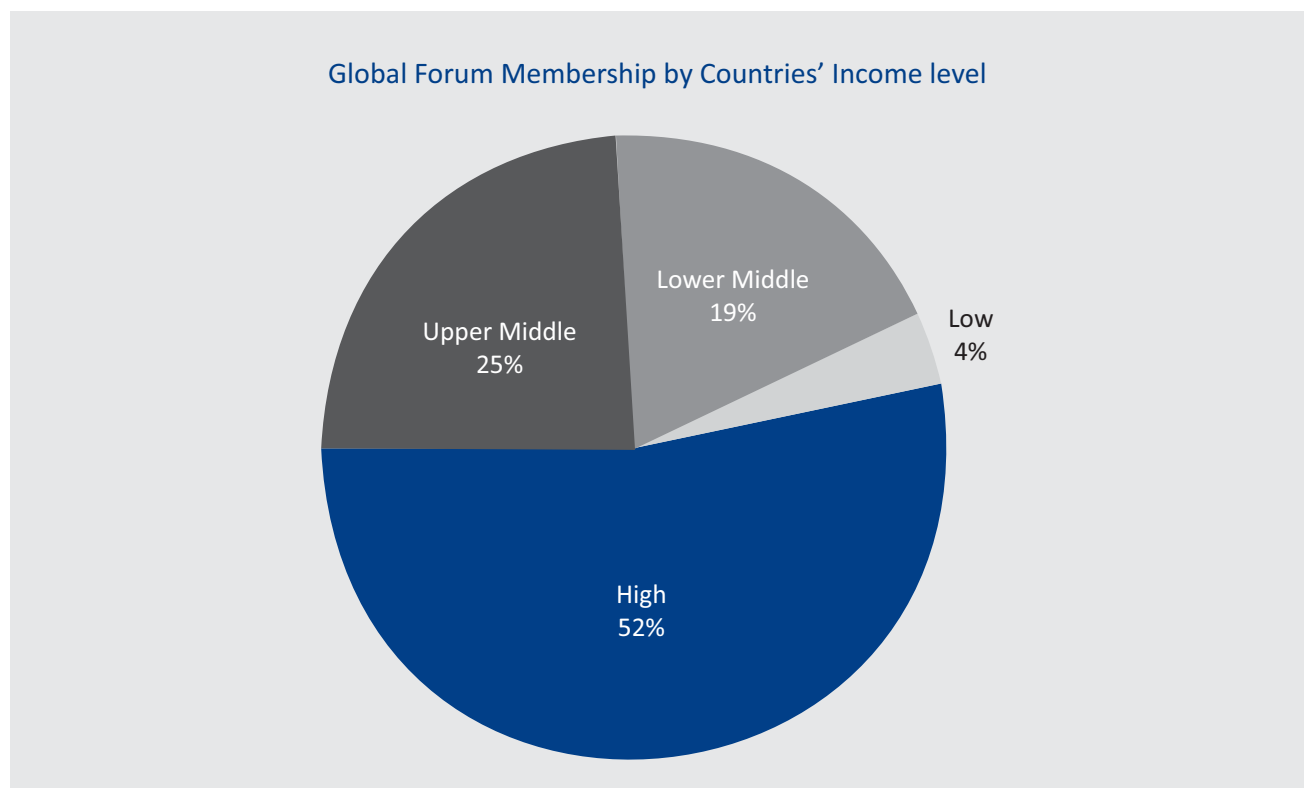
III. An Assessment of the Institutional Design of the Global Forum

The Global Forum started as a result of OECD's work on harmful tax competition. Gradually, its scope has widened significantly with respect to membership and initiatives taken. The current membership is constituted by countries across the globe; and both initiatives taken by the Global Forum are also aimed at creating a global standard. In this context, concerns have been raised regarding the appropriateness of the Global Forum to take such initiatives, and whether the concerns of all member countries are addressed on an equal footing. Some of the concerns raised by developing countries have been analysed critically in the following section:

a) Hurdles for Developing Countries in Joining the Global Forum

The Global Forum started with 89 members, which consisted of OECD countries, G20 countries and other jurisdictions covered in the report 'Tax Co-operation 2009: Towards A Level Playing Field'. Since 2009, 46 more countries, many of them developing and low income countries, have joined the Global Forum, increasing the membership count to 135. The following chart represents member countries as per their income group:

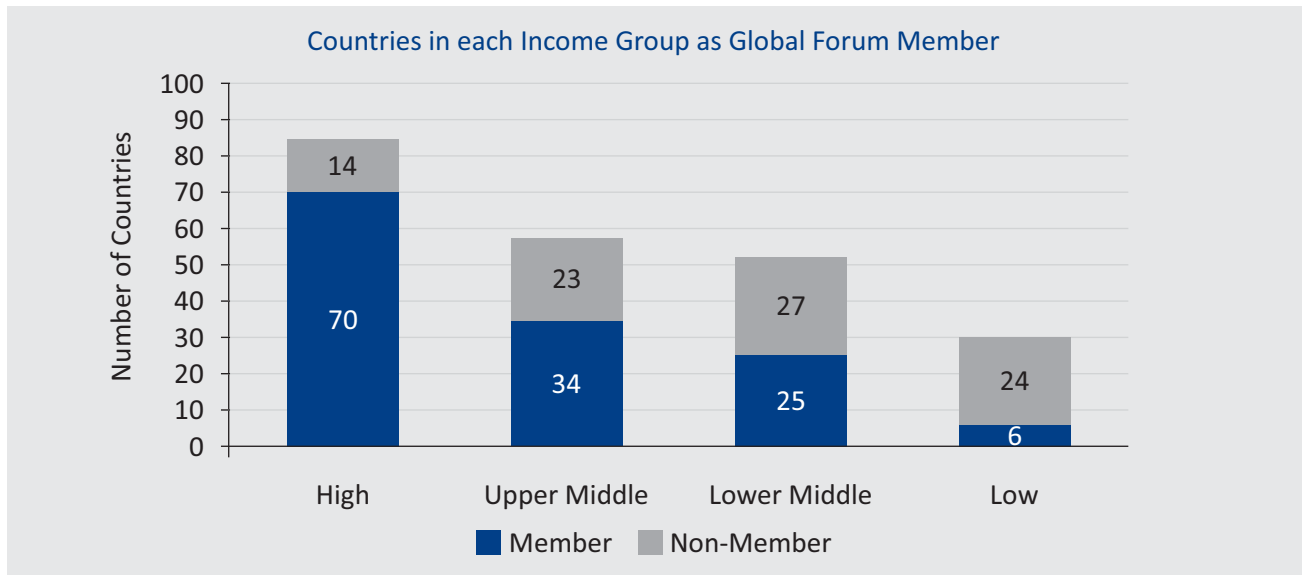
CHART-1



(Source: Income group classification is taken from the World Bank)

Low income countries have disproportionately low representation in the membership of the Global Forum. Out of the 135 members, only 6 jurisdictions are low income countries compared to 70 from the high income group. Even the combined number of upper middle, lower middle and low income countries together is less than the number of high income countries. This disproportionate representation however, is not due to fewer number of countries in the lower income group at the global level. This can be seen in the following chart, which portrays the membership distribution in each income group:

CHART-2



(Source: Income group classification is taken from the World Bank)

It is evident that more high income countries are members of the Global Forum, and exactly the opposite is true for low income countries, which only have 6 members against 24 non-members. There is a strong correlation between the income level of countries' and the Global Forum membership.

For this study, we interviewed several government officials from developing countries on various aspects of the Global Forum.²⁵ We came to the conclusion that there are a number of hurdles for developing countries to join the Global Forum, most notably:

- **Human resources:** The membership and participation in the working of the Global Forum requires jurisdictions to have skilled and expert individuals, along with resources to assist them, which is difficult for many low income countries.
- **Infrastructure:** There is a need to have an efficient physical and technical infrastructure in accordance with the recommended standard, which is expensive for developing and low income countries.
- **Technical or institutional capacity:** Institutional and organisational practices evolve gradually. For many jurisdictions, there is a lack of effective institutions, which proves to be a constraint in their engagement with the Global Forum.
- **Requirements to go through Peer Review:** The Peer Review process assesses a jurisdiction on three aspects related to information – availability, access and exchange. While jurisdictions that benefit from financial inflows have an incentive to create and follow regulations which do not adhere to the Global Forum standards, many developing countries' regulations do not meet the standard primarily because of a lack of resources, expertise and efficient institutions. This puts them in the danger of being classified as either 'the element not being in place' or 'non-compliant' in the Peer Review process, which may have adverse impacts on their economic and international trade environment.
- **Commitment to AEOI CRS:** Developing countries face three challenges related to AEOI:
 - o The technical infrastructure requirements are expensive and will need skilled human resources to operate;

²⁵ For the details of interview, see Annex D

- o Security and confidentiality guidelines, especially if the partner jurisdiction has very strict guidelines for the same; and
- o Conditions for reciprocity.

These findings are in accordance with other studies. Highlighting the nature of the difficulties faced by developing countries, a Global Forum report notes:

*"...the key challenges faced by developing countries in implementing AEOI (are): the urgency of other basic domestic reforms; high costs of information technology infrastructure; human resources needs for analysing and using received data efficiently; difficulty of making legislative changes; and limited awareness of exchange of information practices."*²⁶

It is noteworthy that countries which are not members of the Global Forum are not only small and low income countries – even relatively large countries (in terms of population and economy) such as, Bangladesh, Jordan, Sri Lanka, Venezuela, Vietnam and Zimbabwe are not members of the Global Forum yet. A global initiative, which aims to make the world more transparent in terms of taxation and financial flows, cannot exclude almost two-fifths of the world's countries that are home to 20% of the world's population.²⁷

b) The Association with OECD

The Global Forum was established by the OECD's Committee on Fiscal Affairs and the Secretariat is hosted by the OECD Centre for Tax Policy and Administration (CTPA). Since the OECD is an organisation of 35 rich and developed countries, essentially designed to work towards furthering the interests of its member countries, there are concerns regarding the suitability of the OECD leading a global initiative such as Automatic Exchange of Information. Dries Lesage, a professor at Ghent University, Belgium and an expert on tax policy and global governance, remarks:²⁸

"...an OECD-centred regime cannot be a valid substitute for this, even if the OECD continues to intensify its dialogue with non-members in the developing world."

Commenting on the lead that OECD has taken in the global tax cooperation issues, Robert Kudrle, a public policy and law expert observes:²⁹

"An organization comprised of only thirty-four countries lacks prima facie legitimacy as an organ of global governance."

This claim is refuted by the OECD and the Global Forum. A self-standing secretariat, funded by the Global Forum and the membership of more than 130 countries, are cited as the proof of the Global Forum's non-partisan character. Out of 27 staff members at the Secretariat, many are from non-OECD countries, and mostly have been nominated by the member countries; and the secretariat is being headed by Monica Bhatia from India since 2012. The Plenary being the only decision-making body, which works on consensus, seems to provide other countries with the space to design the functioning of the Global Forum. Within the organisational structure too, non-OECD countries are represented – the Steering Group, for instance, is currently chaired by South Africa, with China and Barbados as Vice-Chairs, while the Peer Review group has India and Cayman Islands as the Vice-Chairs.

²⁶ Global Forum. 2014. *Automatic Exchange of Information - A Roadmap for Developing Country Participation*

²⁷ World Bank lists total of 218 countries. <https://datahelpdesk.worldbank.org/knowledgebase/articles/906519>

²⁸ Dries Lesage. 2008. *Global Taxation Governance after the 2002 UN Monterrey Conference*

²⁹ Robert T. Kudrle. 2012. *Governing Economic Globalization-The Pioneering Experience of the OECD*

However, the concerns raised regarding the body are not unfounded. The Global Forum was established by the OECD council in adherence to the OECD's convention, rules of procedure and financial regulations which make the claim of Global Forum being completely independent from the OECD susceptible. Commenting on the relationship of the Global Forum and the OECD, Markus Meinzer, a researcher working on the financial transparency issues, highlights many discrepancies, such as:³⁰

"The term 'dedicated self-standing' does not have a legal meaning or precedent at OECD, while clearly the location of a secretariat as a division within a directorate of the OECD does have a legal meaning. Indeed, CTPA represents the Global Forum as one of its divisions in its activity report of 2011."

The Global Forum was based in the CTPA so that "it can benefit from the technical expertise of the organisation", which is worrying given the approach of OECD on many global policy issues, where its stand has been directly against the interests of the Global South,³¹ such as supporting residence based taxation against source based taxation, as well as against the use of tax as a redistributive tool. Taking note of the conflict and the divergence of interests of Global North and South, Mahon and McBride observe that:³²

"It is in its relation to the global South that the OECD especially stands out as a rich nations' club. In contrast to UN agencies, the OECD has offered its member states a "safe" forum to explore common interests of the (capitalist) North vis-à-vis the South".

Countries across the globe differ from each other significantly on various aspects such as economic development, maturity of institutions, resource constraints and composition of the economy. This leads to differences in the priorities, interests and approaches to a certain problem among different countries. The differentiated needs of developing countries were re-emphasized by the respondents in our interview. In this context, for the Global Forum to rely on an OECD body for technical expertise, especially in the spheres of taxation and financial flows where the interests of developing and low income countries can conflict with those of developed countries, makes it prone to situations where it becomes difficult to serve the interests of all member countries in a fair and just manner.

Intergovernmental institutions need to be non-partisan, transparent and accountable in their functioning. Many standards adopted and recommended by the Global Forum were first developed solely by the OECD without the participation of non-OECD members and were made available publicly only post-hoc; the process of framing them is not made public either. The guidelines and regulations which ultimately affect citizens across countries need to be scrutinised and evaluated by civil society, researchers, academics, the media and the public at large, before being implemented. This exclusion of important stakeholders from the process runs contrary to the democratic logic which allows for equal participation of all the stakeholders.

³⁰ Tax Justice Network. 2012. *The Creeping Futility of the Global Forum's Peer Reviews*

³¹ Dries Lesage. 2008. *Global Taxation Governance after the 2002 UN Monterrey Conference*

³² Mahon and McBride. 2008. *The OECD and Transnational Governance*

IV. Peer Review of EOIR & Implementation of AEOI: An Assessment

The Global Forum has taken two major initiatives – Peer Review of EOIR and monitoring the implementation of AEOI. This section is a critical evaluation of both these initiatives to analyse how effective they have been, and if any reforms are needed, especially from the point of view of developing countries.

a) Peer Review of EOIR

The aim of the Peer Review process is to assess a jurisdiction's ability to cooperate with other jurisdictions in the sphere of tax and financial transparency in accordance with standards recommended by the Global Forum.³³ This is done by assessing the regulatory framework and prevailing practices within a jurisdiction. The regulatory framework includes the domestic regulations as well as EOI agreements with other jurisdictions. It is noteworthy that between 2005 and 2014, the number of bilateral agreements for exchange of information among the Global Forum members increased from 62 to 3340.³⁴ This tremendous increase in the EOI agreements can be attributed to the initiatives of the Global Forum, the worldwide increased focus on the tax avoidance issues in the wake of the 2008 financial crisis and the increase in the membership of the Global Forum.

As of September 2016, 235 Peer Reviews, including 36 supplementary reviews and 101 Phase II Peer Reviews, have been completed and published. The 101 jurisdictions, which have been reviewed through phases I and II, have been assigned a rating reflecting their level of adherence to the recommended transparency standards.

The use of Peer Review to qualitatively assess the legal framework and their practical implementation marks an improvement over the previous requirement when signing a minimum number of DTAA's and TIEAs was considered an acceptable step toward transparency. Noting this change from quantitative to qualitative assessment, Adrian Sawyer, professor at University of Canterbury working on tax compliance and related areas, writes:

*“While it is clear that the initial focus of the TIEA initiative has been a 'numbers game' (both in terms of the number of agreements signed and the minimum requirement of twelve agreements for a country to come off the OECD's blacklist), the intent behind the peer review process suggests it is more than a numbers game.”*³⁵

Notwithstanding the improvement, several loopholes in the Peer Review process have been highlighted on grounds of its design, inconsistencies, and effectiveness. Markus Meinzer points out following drawbacks:³⁶

- An absence of independent experts as is the case with other global committees creates the possibility of conflict of interest among reviewers.
- The Peer Review process assesses EOI agreements but their effectiveness itself is doubtful, as shown by Johannesen and Zucman.³⁷

³³ <https://www.oecd.org/tax/transparency/exchange-of-information-on-request/peer-review/>

³⁴ Global Forum. 2014. *Tax Transparency: Report on Progress*

³⁵ Adrian Sawyer. 2011. *Peer Review of Tax Information Exchange Agreements: Is it More than just about the Numbers?* *Australian Tax Forum* 397, 418.

³⁶ Tax Justice Network. 2012. *The Creeping Futility of the Global Forum's Peer Reviews*

³⁷ Johannesen, Niels and Zucman, Gabriel. 2014. *The End of Bank Secrecy? An Evaluation of the G20 Tax Haven Crackdown*

- There is a lack of beneficial ownership³⁸ information.³⁹
- Many provisions such as confidentiality, costs, domestic laws, relevance, notification requirements, provide for a chance of refusal of the request for information on spurious grounds.

To assess the effectiveness and consistencies of the Peer Review process, this paper took a case study approach, where we looked at the peer review report of select jurisdictions and evaluated them against other available evidence. Three jurisdictions were selected as follows:

1. United States of America: USA was selected due to the country's economic and geopolitical significance and the fact that it has not committed to the CRS for AEOI.
2. Switzerland: Switzerland is infamous for its banking secrecy laws, and in the Phase I peer review, its framework was rated as 'not in place'.
3. Panama: Panama was considered due to of recent leak of confidential documents, known as 'Panama Papers', which show widespread use of shell companies created by a Panamanian law firm.

The **United States of America** was one of the few countries which went through both phases of Peer Review simultaneously. The review was done based on regulations in effect in February 2011. The results of Peer Review phase I and II were published in 2013, which made following observations:⁴⁰

- Information exchange partners have indicated a general satisfaction with USA's EOI programme.
- The power of the American Internal Revenue Service (IRS) to obtain information for tax purposes is wide ranging and is coupled with strong compulsory powers.

It also provided a recommendation to *“ensure that information concerning the owners and accounting records of all Limited Liability Companies is available”*. Overall, USA was assigned a 'Largely Compliant' rating.

However, there are a few loopholes in this report. Citing the Peer Review report of the United States, Eduardo Morgan Jr., a legal expert in international corporation law, finds some inconsistencies with other reports as well as with the standard, as follows:⁴¹

- The IRS and Congressmen of the USA have noted that the USA does not in fact comply with the Global Forum principles, which contradicts the Peer Review report.
- The report ignores foreign investors who are not subject to US taxes and are hence outside the purview of the IRS, though these are entities which are important for EOI arrangements.
- Foreign investors are shielded from the EOI framework through Qualified Intermediary Agreements, signed between the IRS and foreign financial intermediaries.
- There are many known instances of non-compliance by way of violation of 'Know Your Client' rules.

The Peer Review process therefore either neglected these provisions, or deviated from the recommended standard, and gave USA a 'Largely Compliant' rating.

³⁸ Beneficial owner refers to the natural person(s) who ultimately owns or controls and benefits from the legal entities, such as corporations, limited liability companies, trusts, etc. Companies without such information are more prone to be used for illegal activities as it makes it easier for the actors involved in these illegal activities evade the legal repercussions.

³⁹ In the new TOR for EOIR peer review phase III starting 2016 for those jurisdictions that have completed phase I and II, BO information requirement has been added.

⁴⁰ Global Forum. 2013. *Peer Reviews: United States, Combined: Phase 1 + Phase 2, incorporating Phase 2 ratings*

⁴¹ Eduardo Morgan Jr. 2014. *OECD's Double Standard in the Global Forum - The rating of the United States*



Switzerland's Phase I review was conducted in 2011, which found many elements 'not in place' and hence the Phase II was made conditional on the adoption of recommendations. Switzerland had to go through a supplementary review, which was published in 2015. This report noted:⁴²

- The determination of ownership and identity information requirement remains 'not in place'.
- It was recommended that Switzerland ensure access to bank information with respect to EOI requests made pursuant to all of its EOI agreements (regardless of their form). It was also recommended that Switzerland ensure that its Competent Authority has the power to obtain all relevant information pursuant to requests under all exchange of information agreements.
- The EOI agreements that were negotiated prior to March 13, 2009 did not allow for exchange of information in line with the standard. Switzerland still has 35 agreements that were negotiated prior to March 2009 that have not been updated.

Along with the concerns raised in the report, Switzerland has consistently refused to share information with countries such as India even though both countries have signed EOI agreements.⁴³ The Peer Review report however recommended Switzerland for Phase II, leading some commentators to question this decision.⁴⁴ The Global Forum was of the opinion that Switzerland had made changes in accordance with the recommendations in the earlier report.

Panama has gone through three rounds of review for Phase I; including two rounds of supplementary review. The second supplementary review had raised many concerns, most notably:⁴⁵

- Resident agents are not required to hold information on all shareholders and beneficiaries.
- Accounting requirements are not in place in Panama.
- The law does not specify the type of records and minimum retention period related to accounting documents pertaining to trusts and foundations.
- A number of peers have expressed frustration with Panama's hesitance to commence or advance the negotiation of EOI arrangements. At least one peer has indicated that Panama has not been receptive to several requests to sign any kind of EOI agreement, which could be interpreted as a refusal to do so.
- Panama is yet to act on some of the recommendations made in the 2010 Phase I report and a number of elements which are crucial to achieving effective exchange of information are still not in place.

Notwithstanding the concerns raised, the report then recommended Panama for Phase II Peer Review citing some of the changes undertaken by it based on earlier recommendations.

In both the cases of Switzerland and Panama, the final recommendations for Phase II eligibility are based on the improvement made rather than existing framework and practices. Since jurisdictions are differently placed, the scale of improvement needed differs across countries; in such cases basing the report on improvement alone goes against the philosophy of implementing a minimum common standard.

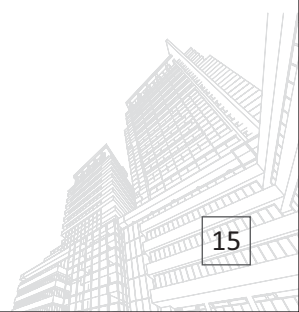
An analysis of the overall Peer Review report reveals some interesting observations too.

⁴² Global Forum. 2015. *Supplementary Peer Review Report - Phase 1. Switzerland*

⁴³ The Hindu. March 28, 2014. *Switzerland has failed to share information, says Chidambaram*

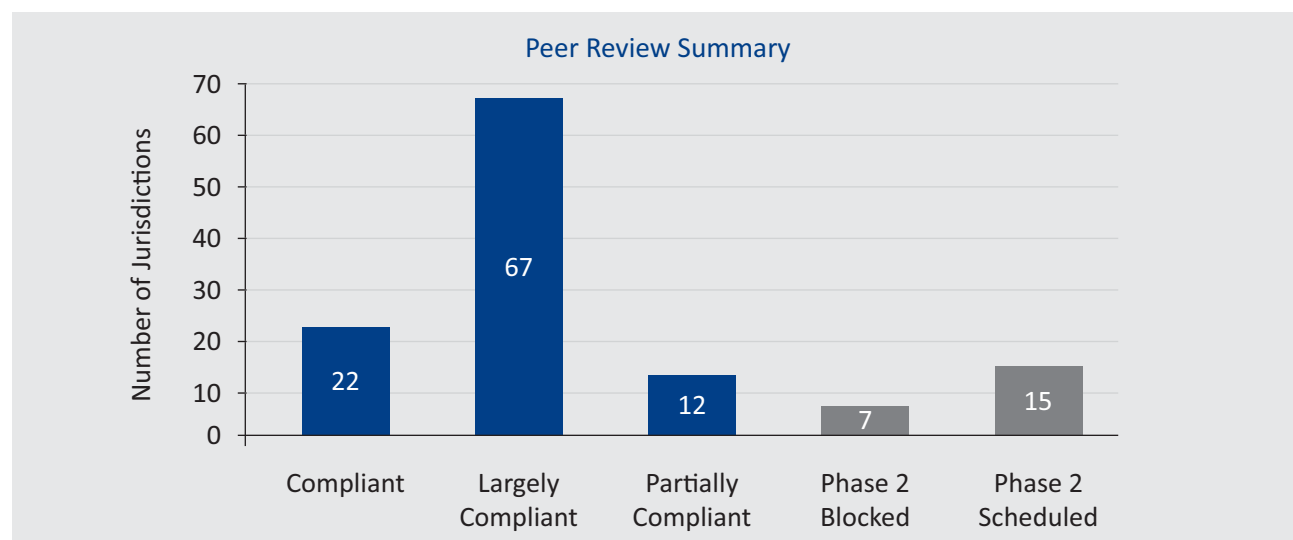
⁴⁴ Swissinfo. March 16, 2015. *OECD upgrades Swiss tax compliance status*

⁴⁵ Global Forum. 2015. *Supplementary Peer Review Report, Phase 1, Panama*



The following chart provides a summary of the Peer Review results:

CHART-3



(Source: EOI Portal⁴⁶)

(Note: Blue Bars show the jurisdiction for which both the phases have been completed; Grey Bars are for jurisdictions which have completed only phase I)

Of 101 jurisdictions that have completed both the phases of peer review, many of them had to go through the supplementary after either Phase I or Phase II because the existing framework and practice were found to be not meeting the standard. For these jurisdictions, 30 such supplementary reviews were done. Out of 15 jurisdictions which are scheduled for the Phase II, 5 were made eligible after the supplementary review while Guatemala is still blocked even after going through supplementary review.

The Peer Review process was initiated by the Global Forum against the backdrop of the Harmful Tax Practices project by OECD, which highlighted the role of bank secrecy jurisdictions and tax havens in perpetuating illicit financial flows. The Peer Review process was started with the goal to identify such jurisdictions, through an evaluation of the respective legal frameworks and practices against an agreed standard of transparency. The Peer Review rating is to denote their current transparency level and whenever it does not meet the standard, recommendations are given for improvement.

To assess the effectiveness of the Peer Review process, this paper analyses the Peer Review ratings which have been accorded to different jurisdictions by comparing the 'ratings of Tax havens countries' against the 'ratings of non-tax havens countries'. Though the existence of tax havens is accepted, there is no agreements on objective criteria which characterises jurisdictions as tax havens. OECD has created its list of tax havens on the basis of four characteristics:⁴⁷

1. Low or no taxes
2. Lack of effective exchange of information
3. Lack of transparency
4. No requirement of substantial value-creation activity

This list was criticised for excluding some OECD members such as Switzerland and Ireland. Even the threshold value for a particular indicator could lead to the inclusion or exclusion of a particular jurisdiction. Keeping in mind the deficiency of existing lists of tax havens, for this study we chose a list of tax havens from the paper 'Tax

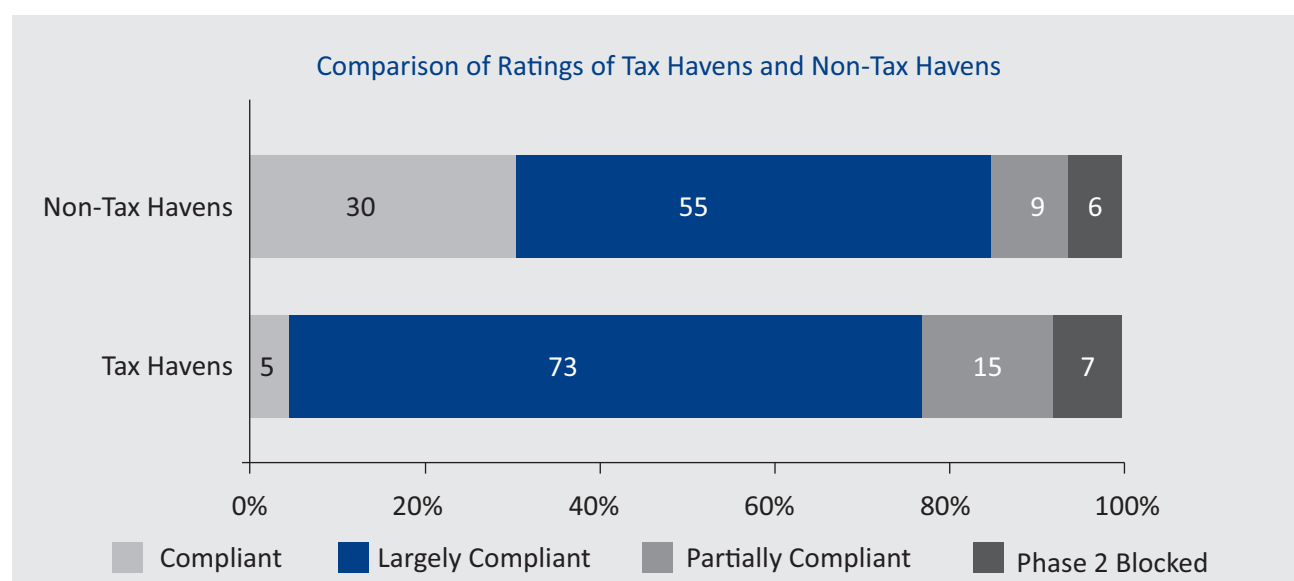
⁴⁶ <http://eoi-tax.org/library/reviews> (Accessed on 22/09/2016)

⁴⁷ OECD, 1988, *Harmful Tax Competition: An Emerging Global Issue*

Havens: International Tax Avoidance and Evasion' by Jane G. Gravelle,⁴⁸ which is based on the survey method; instead of creating its own criteria, this list selects jurisdictions which appear on various tax haven lists drawn up by other organisations and researchers. However, some well-known tax havens do not feature on Gravelle's list, most notably United States of America⁴⁹ and the United Kingdom⁵⁰. This particular list however has been used for this paper as it is currently the most comprehensive, despite its weakness.

Based on this list, all 101 jurisdictions which have been assigned a rating and seven jurisdictions which were blocked from Phase II, were divided into two categories – tax havens and non-tax havens, and then a comparison was made according to their ratings. We found that there are only minor differences in the ratings given to jurisdictions considered tax havens and jurisdictions that are not. Chart 4 provides the summary of Peer Review ratings of 41 tax havens and 67 non-tax havens.

CHART-4



(Source: Produced on the basis of Peer review summary report⁵¹)

We find that comparatively fewer tax havens received the 'Compliant' rating which seems to suggest the effectiveness of Peer Review. However, this notion is broken as comparatively more tax havens are provided 'Largely Compliant' and 'Partially Compliant' rating. Almost 6% of tax havens and 7% of non-tax havens were blocked from Phase II. It is worth noting that 93% of tax havens are found by the Peer Review process to have a domestic framework that (by varying degrees) meets the recommended standard of transparency and cooperation with other jurisdictions, which is only slightly lower than 94% for non-tax haven jurisdictions. The most notable aspect of the Peer Review ratings is that out of 101 jurisdictions that have completed Phase II, including 38 tax havens, not a single jurisdiction has been found to be 'Non-Compliant'.

The fact that many tax havens received various degrees of compliant ratings by implementing only a few changes questions the effectiveness and impartiality of the Peer Review process and provides tax havens with false legitimacy. A rating by the Global Forum is the approval of the regulatory framework and the practices followed by jurisdictions, which could be used by jurisdictions to deny their role as a tax haven. Robert Kudrle notes:

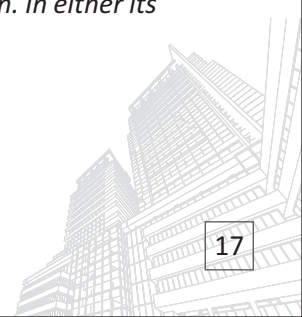
"....there is no evidence yet of success in meeting the substantive goal of actually reducing evasion. In either its

⁴⁸ Jane G. Gravelle. 2015. *Tax Havens: International Tax Avoidance and Evasion*

⁴⁹ Bloomberg. January 26, 2016. *The World's Favorite New Tax Haven Is the United States*

⁵⁰ BBC. April 28, 2014. *UK 'a tax haven for multinationals'*

⁵¹ <http://eoi-tax.org/library/reviews> (Accessed on 22/09/2016)



bilateral or multilateral form, information gathering and sharing are plagued by incentive compatibility problems.”⁵²

In our interview, two more concerns with the Peer Review process were highlighted, as follows:

1. The recommendations provided are universal in nature and don't take into consideration the particularities of each jurisdiction, which is much needed.
2. While a new TOR has been created for Peer Review of EOIR, it will be applicable only for those jurisdictions which will go for Phase III review. This should have been applicable for all the new reviews.

The Peer Review process is an important tool to assess the levels of transparency within a jurisdiction; hence it is necessary that such loopholes and weaknesses are corrected. The Global Forum is slated to start an improved Peer Review process for EOIR (called Phase III) starting in 2016, and it remains to be seen if Phase III of the Peer Review process plugs the loopholes present in the current framework.

b) The CRS AEOI and Developing Countries

The acceptance of AEOI as the standard for exchange of information marks a significant improvement towards financial transparency. While EOIR acted more as a confirmation tool in case of suspected illicit financial flows, AEOI is expected to help in detecting questionable financial flows and bank accounts in the first place. There are substantial expected benefits from AEOI, such as:

- Detection of previously unknown financial flows and bank accounts
- Strong deterrence for potential tax evaders
- Improvement over EOIR, as EOIR required substantial efforts and proof by government machinery to initiate an investigation
- Less incentive for corruption and criminal activities which involve IFFs
- Increased revenue for governments

Notwithstanding the expected benefits, many concerns relating to the AEOI standard still remain, including the design of the standard, and implementation issues especially by developing countries.

1) Design of the Standard for AEOI

Though the Automatic Exchange of Information standard has been endorsed and its implementation is being monitored by the Global Forum, it was originally developed by the OECD. Andres Knobel and Markus Meinzer in their assessment, list out as many as 35 loopholes in the Common Reporting Standard used for AEOI, few of which are:⁵³

1. Confidentiality requirements: It is upto the sending jurisdiction to determine if the confidentiality provisions in the receiving jurisdiction are in place or not. This provides secrecy jurisdictions with a potential excuse to refuse information.
2. Collection of information prior to AEOI: The model CAA requires that before AEOI starts, the confidentiality requirements are to be fulfilled by receiving jurisdiction, though given that most treaties do not allow for retrospective collection and exchange of information, it will further lead to the exclusion of information from the ambit of AEOI.
3. Fake resident certificates: These certificates refer to a foreigner providing a proxy address instead of their real address in their country of residence, so their information will be sent to the wrong jurisdiction. This is

⁵² Robert T. Kudrle. 2012. *Governing Economic Globalization-The Pioneering Experience of the OECD*

⁵³ Knobel and Meinzer. 2014. *An Evaluation of OECD's Common Reporting Standard (CRS) and its alternatives*

possible because some jurisdictions provide certificate of residence in exchange for money or a nominal investment. The AEOI standard does not address this issue.

4. Exclusion of certain financial instruments and non-financial assets from reportable accounts list, such as trusts managed by an individual trustee, trusts managing real estate, registries and entities owning hard assets like real estate, paintings, art objects, pension accounts, life insurance contracts, corporations listed in a stock exchange etc.
5. If a new account is opened for an individual or entity, who already owns an account in that financial institute then it will be considered 'a pre-existing' account and will be excluded from reporting requirements.
6. A jurisdiction can choose whether to report accounts below \$250,000 or not. If decided not to, it will create the loophole for abuse where many accounts with a balance below the threshold of \$250,000 can be operated instead of one account.
7. The account balance to be reported is determined on a particular date. The account holder may reduce the balance for that particular date, thus escaping the reporting requirements.
8. Principle of specialty: The model CAA allows EOI only for tax purposes. The information received cannot therefore be used by other departments of the receiving jurisdiction's government.

Although MCMAA is claimed to be a multilateral convention, it requires bilateral agreements though CAA. This creates a major obstacle as countries need to sign individual agreements with other countries, draining them of significant time and resources, which may be of particular concern to developing countries. Different agreements may also require different procedures and treatment with respect to implementation. Although this standard is supposed to be global in nature, the condition for bilateral agreements needed to operationalise exchange of information has the potential to be influenced by geopolitical power relations between countries. Vokhid Urinov in his study found many instances of discrepancies where the request for EOI agreements were not granted based on various spurious grounds or was made conditional on some other demand.⁵⁴ He highlights one major instance, involving USA and Mexico. Mexico's request to USA to share information, which Mexico claimed would help to contain criminal activities like money laundering, drug trafficking and organised crime, has been ignored by the US since 2009 – until very recently, due to USA's fear of possible capital flight from the US banking sector. The US had demanded and received similar information from Switzerland in the wake of the UBS scandal in 2008.⁵⁵

The CAA is also prone to abuse using CRS. For instance, under the confidentiality requirements, the CRS states that it is upto participating jurisdictions to decide if the confidentiality standard in the partner jurisdiction is adequate. Given the fact that banking secrecy jurisdictions and tax havens have much stricter confidentiality norms, this provision provides a potential loophole for secrecy jurisdictions and tax havens to exclude a particular jurisdiction from CAA.

Another major provision which can potentially be a hurdle, especially for developing countries, is the requirement for reciprocity. The standard requires full reciprocity for AEOI to take place. However, given the fact that many developing countries lack the necessary infrastructure and resources to collect and provide information, they stand to be excluded from AEOI. This runs contrary to the recommendation that the Global Forum has made in its report to bring more developing countries within the ambit of AEOI, and for developing countries to benefit from it. In the report '*Automatic Exchange of Information – A Roadmap for Developing Countries Participation*'⁵⁶ it had suggested two ways in which G20 and developed countries can help developing countries:

⁵⁴ VokhidUronov. 2015. *Developing Country Perspectives on Automatic Exchange of Tax Information*

⁵⁵ Ibid

⁵⁶ Global Forum. 2014. *Automatic Exchange of Information - A Roadmap for Developing Country Participation*

“...spontaneously sharing the aggregate data with specific developing country” and “...participate in pilot project, (which includes)...sending limited information to and receiving limited information from a developing country participant.”

These two initiatives by G20 and developed countries are crucial for developing countries in order to build necessary expertise and capacity required for full implementation of AEOI. The potential benefit accrued due to this information sharing is expected to bring more developing countries into the AEOI framework; however, the AEOI standard endorsed by the Global Forum makes no such provision.

The number of jurisdictions who have committed to the adopt CRS CAA has been increasing since the Global Forum has endorsed it; however, one notable absentee from the list is USA. The USA has not committed to CRS CAA and had said instead it will continue with Foreign Account Tax Compliance Act (FATCA)⁵⁷ for EOI. USA is a particularly important country as it contributes about 25% of nominal global GDP⁵⁸ and serves as the centre for 20% of financial transactions globally.⁵⁹ Along with its economic dominance, it also possesses significant geopolitical influence. Its abstinence from CRS CAA therefore considerably weakens the momentum vital for a global transparency initiative.

2) Implementation Hurdles

Once a jurisdiction has created the necessary framework, there are hurdles in the implementation of AEOI. An efficient exchange of information requires:

- Skilled human resources
- Institutional capacity
- Physical infrastructure
- Technical infrastructure

Many developing countries lack these requirements at present as putting such infrastructure in place requires significant resources. Additionally, institutional capacity can be developed only over a period of time and with consistent engagement. A 2014 study by the Global Forum noted:

“Many developing countries are not currently in a position to benefit from AEOI.”⁶⁰

The report finds the following factors to be significant roadblocks for developing countries to implement and participate in AEOI:

- High cost of information technology infrastructure
- Difficulty in making legislative changes
- Low awareness of the exchange of information process
- Urgency of other domestic reforms
- Resources for confidentiality and data protection measures

Apart from above concerns, government officials interviewed for this paper listed out following hurdles which many developing countries face:

- Electronic platform to be used for information transmission
- Capacity to fulfill timelines of implementation
- The non-participation of USA

⁵⁷ FATCA is a United States federal law, signed between the USA and other countries. Under this agreement, financial institutions of other countries need to report financial records of US entities to the US authorities on an annual basis. It may have partial reciprocity provisions from USA.

⁵⁸ IMF. 2016. *World Economic Outlook Database*, April 2016

⁵⁹ Tax Justice Network. 2015. *Financial Secrecy Index*

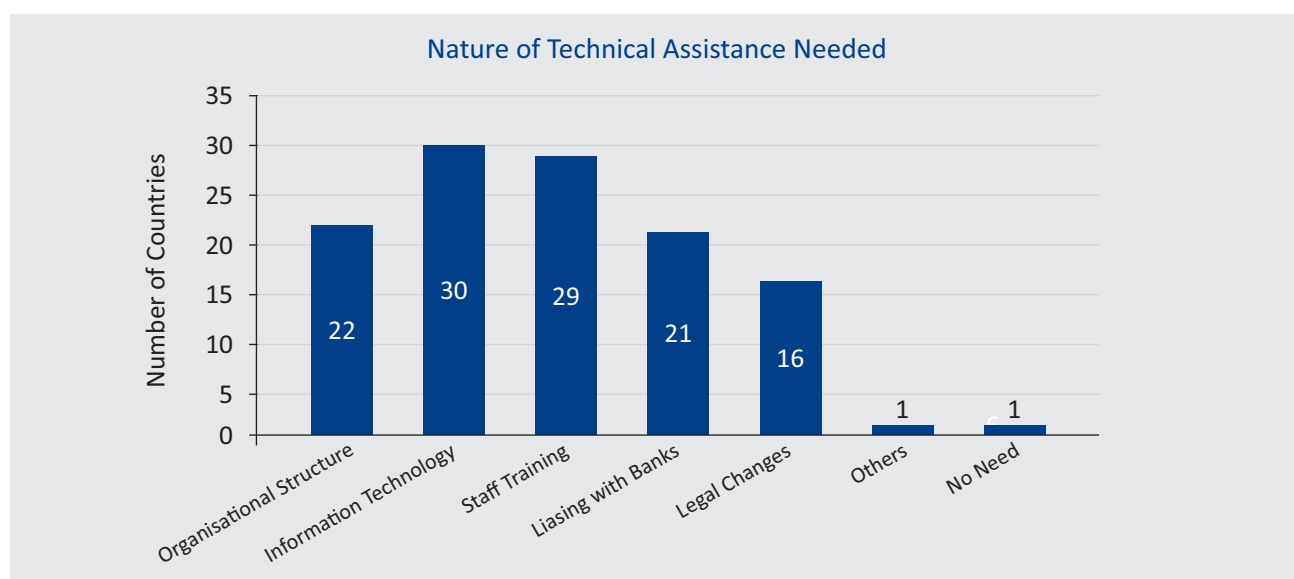
⁶⁰ Global Forum. 2014. *Automatic Exchange of Information - A Roadmap for Developing Country Participation*

The Global Forum acknowledged this issue and provided a roadmap which includes:⁶¹

- Keeping in mind the fact that each jurisdiction is unique and needs to have an approach to AEOI which is best suited to the jurisdiction's context
- A progressive implementation approach which will allow sufficient time to jurisdictions to create and implement the necessary framework
- Alignment with domestic priorities and concerns
- Pilot projects and technical assistance by the Global Forum

The nature of technical assistance required by countries varies greatly. The following chart represents the various aspects of technical assistance required by developing countries:

CHART-5



(Source: Reproduced from Global Forum. 2014. AEOI – A Roadmap for Developing Countries participation)

The Global Forum has conducted various technical assistance sessions, and continues its work in this sphere. However, these resources tend not to be country specific, which is precisely what was highlighted in the Global Forum roadmap. Countries differ from one another in terms of their economic development, resources, legal framework, institutions, capacity, political culture as well as national priorities. Thus, a universal training programme for all jurisdictions has severe limitations. Keeping in mind the needs of individual countries, tailored and context-specific assistance programmes would need to be facilitated.

Among the tax officials we interviewed, it was pointed out that even among developing countries, there are some which face far more severe resource constraints. Given the high costs of physical and technological infrastructure needed to implement the AEOI standard, only technical assistance is not sufficient. These countries also need aid to create necessary infrastructure either through financial support or through technology transfer. This can be achieved in the form of aid provided by the multilateral organisations like World Bank, United Nations or the Global Forum itself. G20 and other developed countries, which have sufficient expertise, resources and experience on this issue should take the lead to partner with poorer developing countries. Moreover, since such cooperation is likely to be bilateral, it provides for greater flexibility and opportunity to address country-specific issues, unlike the solutions by the Global Forum which are inherently global in nature.

⁶¹ Ibid



V. Reforms Required in the Global Forum

In the previous sections, we analysed the initiatives undertaken by the Global Forum as well as its institutional design. Since it was restructured in 2009, the Global Forum has expanded the scope of its work and its membership. Notwithstanding the gains made by the Global Forum, there still remain many aspects where significant improvement is needed. For the Global Forum to be a truly democratic, inclusive and legitimate body that is accepted by all countries – developed and developing – it needs considerable reform.

1. Peer Review of EOIR

- **Making the Peer Review process consistent:** There are many discrepancies in the Peer Review process. All countries need to be treated on an equal footing as envisioned in the mission statement of the Global Forum. Many countries and jurisdictions were allowed to qualify for phase II, based on the improvements made by the jurisdiction, rather than complying with the recommended standard. While the improvements made by jurisdictions need to be acknowledged and encouraged, it is necessary that such assessment is based on the existing framework and practices, rather than changes made by the jurisdiction concerned. Accepting such changes as a sufficient indicator runs the risk that ultimately jurisdictions will stop improving the transparency practices before the minimum agreed standard has been reached. Hence, it is imperative that the Peer Review adopts a consistent approach in all cases.
- **Addressing differentiated needs of developing countries:** The recommendations of the Peer Review process should take into account the specific features, such as existing institutions, resource constraints, and technological requirements of each jurisdiction, rather than providing universal recommendations.
- **Inclusion of outside observers in Peer Review Group:** The Peer Review group consists of appointees by the member countries. Since there is a strong incentive for the jurisdictions to pass the Peer Review, it creates the possibility of collusion among member countries to give each other a favourable assessment. This flaw can be eliminated by including independent experts as is the practice in many other global institutions such as the United Nations.

2. Automatic Exchange of Information

- **Provisions for non-reciprocity for developing countries:** It was noted by a Global Forum report that many developing countries, especially countries new to these initiatives, would find it difficult to adhere to full reciprocity, which may lead to their exclusion from the process.⁶² Thus, it is required that developing countries are provided temporary exemption from reciprocity, their partial engagement will help them with establishing infrastructure and building capacity which would enable developing countries to implement AEOI.
- **Changes in confidentiality provisions:** The CRS allows the sending jurisdiction to determine if the confidentiality provisions of receiving jurisdictions are adequate. This seems to be an encroachment on national sovereignty, as the information shared essentially belongs to the receiving jurisdiction. It should therefore not be the prerogative of the sending jurisdiction to ratify the confidentiality provisions of the receiving jurisdiction as adequate. Temporary ownership of information on part of the sending information should not be allowed to interfere with the receiving jurisdiction's right over such information, which essentially belongs to the latter's citizens. Bank secrecy jurisdictions, known for their strict confidentiality

⁶² Ibid

rules, will find it easier to refuse sharing information due to this provision.

- Removing the requirement of bilateral agreements under MCAA: The requirement for bilateral agreements goes against the ideals of a multilateral framework, which the Global Forum aims to implement. The provision of bilateral agreements puts developing countries at a disadvantage due to geopolitical power relations, and negotiating and implementing several bilateral agreements is a drain on developing countries' resources. The existence of a single multilateral framework needs to be the goal of the Global Forum.
- Bringing the USA under the ambit of MCAA: The USA is a hugely influential country and is one of the biggest destinations of IFFs. Its reluctance to join the MCAA has potential for serious setback to transparency initiatives taken by the Global Forum. The participation of the USA is crucial for the success of these initiatives.

3. Assistance to Developing Countries

- Need for country specific assistance: Technical assistance provided by the Global Forum has proven useful, with room for improvement. Training programmes aimed at the specific requirements of a jurisdiction or small groups of similar jurisdiction will prove helpful.
- Establishing regional centres for facilitation: The Global Forum should consider setting up regional centres for the facilitation of technical assistance.⁶³ A regional centre based in jurisdictions that have sufficient expertise and experience in the area of information exchange will help in providing the personalised assistance required for better implementation and usage of EOI.
- Need for technology transfer: The technology required for the implementation of CRS is expensive and many developing countries do not have the required resources. In such cases, the recommendations of the Global Forum report can be followed – each developing country which requires technology can be partnered with an experienced jurisdiction, which in turn may help with technology transfer and capacity building of staff. It should be ensured that jurisdictions are not excluded from the process despite their willingness to join, due to resource constraints.
- Outreach and assistance to non-member jurisdictions: Global Forum assistance is currently aimed at member jurisdictions. Given the apprehensions on part of developing countries to join the Global Forum, it will prove useful if the same assistance is provided to non-member countries. The Global Forum will not need extra cost to incur as such assistance is needed once the jurisdiction joins the Global Forum in any case. However, assistance provided to non-member jurisdictions may help in bringing more jurisdictions under the membership.

4. Public Participation in Standard Setting and Accessibility of Information

Like other multi-governmental organisations, such as United Nations, information on the functioning of the Global Forum should be made publicly accessible. Draft proposals, before being adopted, should be made publicly available for review and comments from academics, civil society, independent researchers and other stakeholders. Along with making the entire process more inclusive, this will also help in addressing potential loopholes in the standard developed. At present, many documents such as Peer Review reports, which are in public domain are either not available for download or are priced publications. Such documents should be made publicly accessible. The institution which is working towards improving transparency will do well to start making the decision-making process more transparent and accessible.

⁶³ Sadiq & Sawyer. 2015. Developing countries and the automatic exchange of information standard – A “one-size-fits-all” solution?

VI. Conclusion

Exchange of information has emerged as a key tool against illicit financial flows and the Global Forum is currently the largest institute working to create a multilateral framework to facilitate EOI among countries. The Global Forum was started by the OECD and now its scope and membership has extended beyond OECD. Based on its origin, institutional design, initiatives and functioning, concerns have been raised by some commentators. In this context, this paper tried to assess the institutional design of and the initiatives taken by the Global Forum especially in regards to developing countries. Based on our assessment, it was found that there are two visible positive changes. Firstly, more jurisdictions are working towards creating EOI arrangements with other jurisdictions which is evident from the increase in membership of the Global Forum as well as the number of bilateral agreements between the jurisdictions. Second, Automatic Exchange of Information has been adopted as the global standard for EOI slated to start from 2017 among select countries.

Notwithstanding these improvements, it was found that the Global Forum is lacking in many aspects for the initiatives it has undertaken. Major shortcomings are hurdles for developing countries to join the Global Forum, influence of OECD and its possible negative implications for developing countries, ineffectiveness and inconsistencies in the Peer Review process, loopholes in the design of AEOI CRS and hurdles with regard to implementation. While some of these issues, such as related to institutional capacities of developing countries, can be solved only over a period of time with the assistance from the Global Forum and other organisations such as UN, World Bank; there are some concerns which can be addressed solely at the end of the Global Forum, such as requirements of Peer Review to join the Global Forum, reciprocity and confidentiality requirements for AEOI, loopholes in the CRS, and making the process more transparent and accessible. These reforms highlighted are crucial as it will help the Global Forum to be a more inclusive institute which can look after the interest of all members in equal and just manner.

VII. Annexures

Annexure A

List of the Initial Global Forum Members

1. Andorra	31. Greece	61. New Zealand
2. Anguilla	32. Grenada	62. Niue
3. Antigua and Barbuda	33. Guatemala	63. Norway
4. Argentina	34. Guernsey	64. Panama
5. Aruba	35. Hong Kong, China	65. Philippines
6. Australia	36. Hungary	66. Poland
7. Austria	37. Iceland	67. Portugal
8. Bahrain	38. India	68. Russian Federation
9. Barbados	39. Indonesia	69. Samoa
10. Belgium	40. Ireland	70. San Marino
11. Belize	41. Isle of Man	71. Saudi Arabia
12. Bermuda	42. Israel	72. Seychelles
13. Brazil	43. Italy	73. Singapore
14. British Virgin Islands	44. Japan	74. Slovak Republic
15. Brunei Darussalam	45. Jersey	75. Slovenia
16. Canada	46. Korea, Republic of	76. South Africa
17. Cayman Islands	47. Liberia	77. Spain
18. Chile	48. Liechtenstein	78. St. Kitts and Nevis
19. China	49. Luxembourg	79. St. Lucia
20. Cook Islands	50. Macau, China	80. St. Vincent and the Grenadines
21. Costa Rica	51. Malaysia	81. Sweden
22. Cyprus	52. Malta	82. Switzerland
23. Czech Republic	53. Marshall Islands	83. The Bahamas
24. Denmark	54. Mauritius	84. Turkey
25. Dominica	55. Mexico	85. Turks and Caicos Islands
26. Estonia	56. Monaco	86. U. S. Virgin Islands
27. Finland	57. Montserrat	87. United Arab Emirates
28. France	58. Nauru	88. United Kingdom
29. Germany	59. Netherlands	89. United States
30. Gibraltar	60. Netherlands Antilles	90. Uruguay
		91. Vanuatu

**Based on OECD. 2009. Decision of the Council Establishing the Global Forum on Transparency and Exchange of Information for Tax Purposes

Annexure B

Jurisdictions to start automatic exchange of information from 2017 (As of August 2016)

1 Anguilla	15 Estonia	29 Italy	43 Portugal
2 Argentina	16 Faroe Islands	30 Jersey	44 Romania
3 Barbados	17 Finland	31 Korea	45 San Marino
4 Belgium	18 France	32 Latvia	46 Seychelles
5 Bermuda	19 Germany	33 Liechtenstein	47 Slovak Republic
6 British Virgin Islands	20 Gibraltar	34 Lithuania	48 Slovenia
7 Bulgaria	21 Greece	35 Luxembourg	49 South Africa
8 Cayman Islands	22 Greenland	36 Malta	50 Spain
9 Colombia	23 Guernsey	37 Mexico	51 Sweden
10 Croatia	24 Hungary	38 Montserrat	52 Trinidad and Tobago
11 Curacao	25 Iceland	39 Netherlands	53 Turks and Caicos Islands
12 Cyprus	26 India	40 Niue	54 United Kingdom
13 Czech Republic	27 Ireland	41 Norway	
14 Denmark	28 Isle of Man	42 Poland	

Jurisdictions to start automatic exchange of information from 2018

1 Albania	13 Chile	25 Lebanon	37 Samoa
2 Andorra	14 China	26 Marshall Islands	38 Saint Lucia
3 Antigua and Barbuda	15 Cook Islands	27 Macao (China)	39 Saint Vincent & Grenadines
4 Aruba	16 Costa Rica	28 Malaysia	40 Saudi Arabia
5 Australia	17 Dominica	29 Mauritius	41 Singapore
6 Austria	18 Ghana	30 Monaco	42 St Maarten
7 The Bahamas	19 Grenada	31 Nauru	43 Switzerland
8 Bahrain	20 Hong Kong	32 New Zealand	44 Turkey
9 Belize	21 Indonesia	33 Panama	45 United Arab Emirates
10 Brazil	22 Israel	34 Qatar	46 Uruguay
11 Brunei Darussalam	23 Japan	35 Russia	47 Vanuatu
12 Canada	24 Kuwait	36 Saint Kitts & Nevis	

***Based on Global Forum - AEOI: STATUS OF COMMITMENTS

Annexure C

The Global Forum website, as of May 2016, read:

“Exchange relationships under the CRS MCAA

From early 2016, this section will allow you to verify if an effective exchange relationship is in place between two jurisdictions under the MCAA that allows for the automatic exchange of CRS information and when this exchange relationship became effective.

Based on the timelines to which jurisdictions have committed to implementing the CRS (i.e. 2017 or 2018), it is expected that the first exchange relationships under the MCAA will become effective in late 2016/early 2017.”

Annexure D

Methodology

A questionnaire was sent to government officials and tax authorities of select countries in Asia, Africa and Latin America. Countries were selected based on their income level as per World Bank data, their engagement with the Global forum, their position on issues of financial transparency issues and their geopolitical significance. Given the sensitivities of providing opinion on a G20/OECD initiative, the identity of the respondents is treated as confidential and anonymous. We received seven responses from across the world.

Questionnaire:

1. What are the hurdles, if any, for Developing Countries to join the OECD Global Forum?
2. Could you please provide any suggestions to address the hurdles listed above?
3. Do you have any concern(s) related to the Peer Review process? If yes, could you please indicate what they are, and how they can be addressed?
4. Do you have any concern(s) related to the Common Reporting Standard for Automatic Exchange of Information? If yes, could you please indicate what they are, and how they can be addressed?
5. What kind of difficulties, if any, do developing countries face in implementing the Common Reporting Standard recommended by the Global Forum?
6. Has your country received any technical assistance from the Global Forum? If yes, what kind of assistance has been received and what other assistance is needed?
7. Given that the Global Forum was created and is hosted by the OECD, does it adequately address the concerns of developing countries in terms of standard and agenda setting? If not, what are some possible alternatives?
8. What change(s), if any, should be made in the Global Forum in terms of organizational structure, representation, decision making and priorities?

All the questions were optional.

Annexure E

List of Tax Havens		
1. Andorra	18. Guernsey	35. Nauru
2. Anguilla	19. Hong Kong	36. Netherlands Antilles
3. Antigua and Barbuda	20. Ireland	37. Niue
4. Aruba	21. Isle of Man	38. Panama
5. Bahamas	22. Jersey	39. Samoa
6. Bahrain	23. Jordan	40. San Marino
7. Barbados	24. Lebanon	41. Seychelles
8. Belize	25. Liberia	42. Singapore
9. Bermuda	26. Liechtenstein	43. St. Kitts and Nevis
10. British Virgin Islands	27. Luxembourg	44. St. Lucia
11. Cayman Islands	28. Macau	45. St. Vincent and Grenadines
12. Cook Islands	29. Maldives	46. Switzerland
13. Costa Rica	30. Malta	47. Tonga
14. Cyprus	31. Marshall Islands	48. Turks and Caicos
15. Dominica	32. Mauritius	49. U.S. Virgin Islands
16. Gibraltar	33. Monaco	50. Vanuatu
17. Grenada	34. Montserrat	

Sources: Organization for Economic Development and Cooperation (OECD), *Towards Global Tax Competition*, 2000; Dhammika Dharmapala and James R. Hines, "Which Countries Become Tax Havens?" *Journal of Public Economics*, Vol. 93, October 2009, pp. 1058-1068; Tax Justice Network, "Identifying Tax Havens and Offshore Finance Centers: http://www.taxjustice.net/cms/upload/pdf/Identifying_Tax_Havens_Jul_07.pdf. The OECD's gray list is posted at <http://www.oecd.org/dataoecd/38/14/42497950.pdf>. The countries in Table 1 are the same as the countries, with the exception of Tonga, in a 2008 Government Accountability Office (GAO) Report, *International Taxation: Large U.S. Corporations and Federal Contractors with Subsidiaries in Jurisdictions Listed as Tax Havens or Financial Privacy Jurisdictions*, GAO-09-157, December 2008.

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