EXCHANGE OF INFORMATION:

THE INDIAN EXPERIENCE

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Views expressed are personal
• **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**
• **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
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
AEOI: 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
AEOI : 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