TAX INFORMATION PRODUCTION, SHARING, USE AND PUBLICATION

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FACTI PANEL BACKGROUND PAPER 2
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FINANCIAL ACCOUNTABILITY TRANSPARENCY & INTEGRITY

CONTENTS

List of acronyms

AAAA	Addis Ababa Action Agenda
AEOI	Automatic Exchange of Information
BEPS	Base Erosion and Profit Shifting
CAA	Competent Authority Agreement
CbC reporting	Country-by-Country Reporting
CbC MCAA	Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports
CIT	Corporate income tax
CRS	Common Reporting Standard
CRS MCAA	Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information
CRS MDR	Model Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures
DTTs	Double taxation treaties
EIOR	Exchange of Information on Request
EU	European Union
FATCA	Foreign Account Tax Compliance Act
FACTI Panel	High Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda
G20	Group of 20
ICIJ	International Consortium of Investigative Journalist
ICRICT	Independent Commission for the Reform of International Corporate Taxation
IMF	International Monetary Fund
IRS	Internal Revenue Service
Multilateral Convention	Multilateral Convention on Mutual Administrative Assistance in tax Matters
MNE	Multinational Enterprise
OECD	Organization for Economic Co-operation and Development
OJ	Official Journal of European Union
TIEAs	Tax Information Exchange Agreements
UN	United Nations

1. BACKGROUND

1.1. Introduction

The Sustainable Development Goals recognize the key role of taxation by calling on Member States to "(s)trengthen domestic resource mobilization, including through international support to developing countries, to improve domestic capacity for tax and other revenue collection" (17.1). In order to realize this target, the 2015 Addis Ababa Action Agenda (AAAA)[1] committed signatories to "redouble efforts to substantially reduce illicit financial flows by 2030, with a view to eventually eliminating them, including by combating tax evasion and corruption through strengthened national regulation and increased international cooperation". Without collective efforts of source and residency countries for disclosure and transparency, the international tax system will remain exposed to tax evasion and avoidance practices.

While this paper underscores the importance of recent key steps towards transnational tax information cooperation in the exchange of tax information, the established legal framework is far from being universal, since it overlooks the need of developing countries. While the AAAA emphasizes the need to build capacity in developing countries, this paper highlights the need to revise the existing legal frameworks in order to respond to the exigencies of developing countries in particular. In this regard, the paper calls for public availability of certain tax information as a key policy tool.

Tax information performs several crucial functions: it enables tax authorities to carry out legitimate taxing rights in their jurisdictions and enables all stakeholders to be held to account for their actions. National tax authorities and governments can be held accountable for their taxation policies; jurisdictions, for procuring tax abuses through profit shifting or hidden assets and income streams; and major taxpayers, including companies, for their compliance. There is a wide range of tax information available. However, the paper focuses on the main three types of tax information, i.e., banking information, financial reporting information, and accounting records information that play a vital role in administering income and wealth taxes.[2]

The gender equality aspects of taxation also increase the importance of tax information cooperation. The mean unconditional gender wealth gap is large,[3] and is more pronounced in developing countries.[4] One recent study focusing on Colombia suggests that evading tax by offshoring wealth is an overwhelmingly male pursuit.[5] Since there is a clear gender imbalance in the distribution of wealth, effective cooperation and sharing of tax information would favorably contribute to equality by empowering tax administrators to collect tax revenues from offshore capital income and wealth owners, the great majority of whom are men. Furthermore, the growth of value-added taxation due to fiscal consolidation measures results in the tax burden falling disproportionately on women.[6] However, when administrations increase tax revenue

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[1] United Nations (UN), Addis Ababa Action Agenda of the Third International Conference on Financing for Development (New York: United Nations, 2015).

[2] Beneficial ownership is essential information in administrating income and wealth taxes. However, this type of information is not touched upon here, since there is another background paper dedicated specifically to this topic.

[3] According to studies based on individual-level wealth data, this is as large as 45 % in Germany, 15 % in France, 18 % in Italy, and 45 % in Estonia, Jaanika Meriküll, Merike Kukk and Tairi Rõõm, "What Explains the Gender Gap in Wealth?: Evidence from Administrative Data" (2020), https://www.nber.org/papers/w26920.pdf.

[4] For example, men's mean level of wealth is more than two times that of women in Ghana and four times more in India, Cherly Doss et al. "The Gender Asset and Wealth Gaps: Evidence from Ecuador, Ghana, and Karnataka, India" (2011) at 12, http://emerge.ucsd.edu/wp-content/uploads/2018/08/dossetal_2011.pdf

[5] Juliana Londono-Velez & Javier Avila-Mahecha, "Can Wealth Taxation Work in Developing Countries? Quasi-Experimental Evidence from Colombia" (2018) at 27, https://eml.berkeley.edu/~saez/course/londono-wealth2018.pdf.

[6] Åsa Gunnarsson, Margit Schratzenstaller & Ulrike Spangenberg, Gender Equality and Taxation in the European Union: Study for the FEMM Committee (Brussels: European Union, 2017) at 43-44.

from income and wealth as a result of greater accountability and improved transparency through financial account information reporting or country-by-country (CbC) reporting, this can provide a justification for policy makers to prompt a shift in the opposite direction toward progressive taxation regimes considered pro-poor and gender responsive.

This paper considers a number of proposals for improving existing legal frameworks of taxation. These proposals centre on the development of a more coherent, nuanced and equitable approach to taxation which reduces the related obligations of developing countries. Furthermore, the High-Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda (FACTI panel) is urged to consider a new international, framework to serve the cooperative exchange of tax information. While the recent adoption of automatized tax transparency measures constitutes a step change in the ability of larger economies and higher-income countries to access offshore banking information and financial reporting information, developing countries have so far not been able to enjoy the benefits of this recent development. Thus, meaningful and inclusive progress in transnational tax cooperation requires a binding convention in order to compel the production of tax information, to track compliance and punish noncompliance.

1.2. Production of tax information

To facilitate enforcement of their tax laws, countries rely on information provided via different sources that consist of self-reporting, third-party reporting, whistleblower reporting, voluntary disclosure or tax amnesty programs. In the first of these, taxpayers are expected to self-report information pertaining to banking, financial reporting and accounting records directly to the authorities. Third-party reporting is conducted by banks when sharing their customers' information with the authorities.

Table 1: Current sources of tax information

Banking information	Self-reporting: from individual/companies to tax authorities Third-party reporting: from banks to tax authorities
Financial reporting information	Self-reporting: from multinational enterprise (MNE)/local subsidiary or branch of MNEs to tax authorities
Accounting records information	Self-reporting: from companies to tax authorities

However, recent tax scandals have underlined the importance of whistle-blower reporting in the production of tax information. For example, in 2008, Hervé Falciani's 'Swiss Leaks' data revealed bank accounts held by more than 100,000 wealthy individuals and legal entities from over 200 countries including France, Germany, Italy, Spain, the United Kingdom, Canada, Greece and the United States.[7] Many tax administrations have used such leaked data to pursue tax evaders.[8] Whistle-blowers play a vital part in exposing the scale and complexity of the issue of tax evasion. In another example, Deltour and Halet's 'Lux Leaks' data exposed secret tax ruling practices between MNE taxpayers and the Luxembourg authorities which facilitated corporate

[7] The International Consortium of Investigative Journalist (ICIJ), "Bout the Swill Leaks Data" (2007), https://projects.icij.org/swiss-leaks/about; Shu-Yi Oei & Diane M. Ring. "Leak-Driven Law" (2018) 65:3 UCLA Law Review, 532-618 at 591-594.
[8] Oei & Ring, ibid.

tax avoidance though complex financial structures designed to obtain tax reductions.[9] In each of these cases, the whistle-blowers were charged with criminal offences, and the lack of whistleblower protection clearly impedes the production of valuable information from this source.

On the other hand, financial payments or other types of incentives can be provided by authorities in order to encourage whistle-blowers. For example, the United States awards whistle-blowers up to 30 % of the additional tax, penalty and other amounts the Internal Revenue Service (IRS) collects.[10] According to the IRS, whistle-blowers earned awards in the amount of $931.7 million based on the recovered amount of $5.7 billion since 2007.[11] Recently, the EU has introduced Directive 2019/1937 of 23 October 2009 that provides for the protection of whistle-blowers in the tax field.[12] Moreover, the Organization for Economic Cooperation and Development (OECD) has been calling its member states for two decades to commit effective whistleblower protection and the use of incentives to encourage reporting in both public and private sectors to prevent corruption, fraud or wrongdoing.[13] In the light of these policies, the FACTI Panel should recommend countries provide whistleblower protection and incentives as a complementary tool to increase their effectiveness in identifying tax evasion and avoidance schemes that could otherwise go undetected; such policies would also deter prospective tax evaders.

Despite its commitment to whistleblower reporting, the OECD does not place similar emphasis on mechanisms for increasing the amount of tax information brought to tax authorities, instead highlighting voluntary disclosure programs. In 2010, the OECD published guidance that identifies principles and design features for a successful voluntary disclosure program in the field of taxation.[14] In the 2015 revised version of the guidance, the key features of voluntary tax disclosure programs in 47 countries were examined with the aim of disseminating good practice.[15] Around this time, US authorities used the Swiss Leaks data as a pretext for obtaining tax information via voluntary disclosure allowing taxpayers to declare previously undeclared offshore holdings without the fear of prosecution.[16] Many countries have followed suit and introduced voluntary disclosure programs to take advantage of the momentum gained by the increased occurrence of whistleblower reporting and the growth in cross-border tax information resulting from increased transnational tax cooperation.[17] Evidence shows that voluntary disclosure is much more cost-effective than assessing taxes based on whistleblower-information, making it a valuable policy choice for governments.[18] However, a cautious approach to voluntary disclosure is recommended to the FACTI Panel, since the theoretical and

[9] Ibid. at 555-558; ICIJ, Investigation Luxembourg Leaks: Global Companies' Secrets Exposed, https://www.icij.org/investigations/luxembourg-leaks/

[10] IRS, "Whistleblower - Informant Award" (6 Feb. 2020), https://www.irs.gov/compliance/whistleblower-informant-award#:~:text=Whistleblower%20Office%20Home&text=If%20the%20IRS%20uses%20information,and%20other%20amounts%20it%20collects.

[11] IRS, "Whitsleblower Program: Fiscal Year 2019 Annual Report to Congress (2020), https://www.irs.gov/pub/irs-pdf/p5241.pdf

[12] Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law OJ L 305/17 (26 Nov. 2019).

[13] OECD, "Committing to Effective Whistleblower Protection" (2016), https://www.oecd.org/corruption/Committing-to-Effective-Whistleblower-Protection-Highlights.pdf

[14] OECD, "Offshore Voluntary Disclosure: Comparative Analysis, Guidance and Policy Advice" (2010), https://www.oecd.org/tax/administration/45967994.pdf

[15] These countries are Argentina, Australia, Austria, Belgium, Canada, Costa Rica, Chile, China, Croatia, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Iceland, India, Indonesia, Ireland, Italy, Japan, Jersey, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Russian Federation, Singapore, the Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States, see, OECD, Update on Voluntary Disclosure Programmes: A pathway to tax compliance (Paris: OECD Publishing, 2015) at 29, footnote 19.

[16] Oei & Ring, supra note 7, at 602.

[17] For the revenue raising effect of such availability, see Part One: Sec. 4.

[18] Dominika Langenmayr, Voluntary disclosure of evaded taxes — Increasing revenue, or increasing incentives to evade? (2017) 151 Journal of Public Finance 110-125 at 117.

empirical evidence also shows that these programs increase the incidence of tax evasion[19] and become effective when couple with tough noncompliance sanctions and the presence of a credible threat of detection via automatic exchange or whistle-blower reporting.[20]

Recent international tax scandals such as the above examples underscore the fact that globalization and technological developments have spurred an increase in cross-border business and investment activities, pointing to the need for tax administrations to reach tax information beyond national borders.

1.3. Sharing tax information

In this regard, sharing tax information plays the crucial role of empowering administrations to collect revenues from cross-border transactions and activities, thereby narrowing the tax gap created by international evasion and avoidance. To engage in tax information exchange, states use three methods: *exchange of information on request* (EOIR), which takes place when a tax authority makes a specific request for information to another tax authority in a foreign country; *automatic exchange of information* (AEOI), carried out between the tax authorities of two or more countries on an ongoing basis in accordance with predetermined categories; and *spontaneous exchange of information* that occurs when a tax authority considers tax information in its jurisdiction to be of interest to another tax authority in a foreign country and sends it without prior solicitation.

While the EOIR has been the centerpiece of current transnational tax cooperation efforts, it has one important limitation that reduces its effectiveness against international tax evasion and avoidance. The EOIR requires a tax administration to specify and detail its information request around a clearly defined suspicion, but tax administrations do not generally have such information in the first place. Thus, the expansion of the AEOI between tax authorities through the new financial account information reporting, CbC reporting and tax rulings frameworks has marked a key development in transnational tax cooperation in the recent era. These have not only enhanced the means of the production of tax information, but also added a multilateral dimension to combatting cross-border tax evasion and avoidance.

Table 2: Methods of tax information exchange

Tax information	**Exchange of information on request**	**Automatic exchange of information**	**Spontaneous exchange of information**
Banking information	All information	Financial account information	All information
Financial reporting information	All information	CbC information Cross-border tax rulings	All information
Accounting records	All information	-	All information

[19] Ibid. 110.
[20] Londono-Velez & Avila-Mahecha, at 5; Niels Johannesen, Patrick Langetieg, Daniel Reck, Max Risch & Joel Slemrod, "Taxing Hidden Wealth: The Consequences of U.S. Enforcement Initiatives on Evasive Foreign Accounts" (2019) at 4, https://www.irs.gov/pub/irs-soi/19rptaxinghiddenwealth.pdf.

As a matter of fact, the exchange of information has been an integral part of administrative cooperation in matters of taxation as far back as the work of the League of Nations in the post-World War I era. Conspicuously, the 1927 League's Draft Model of a Bilateral Convention on Administrative Assistance in Matters of Taxation was a significant early indicator of greater commitment to tax cooperation. The Draft stipulated not only the exchange of information on request, but also the automatic exchange of information in the six categories of immovable property; mortgages; industrial, agricultural, and commercial undertakings; earned income and directors fees; transferable securities; and estates.[21] The 1943 Mexico and 1946 London draft models also mandated extensive automatic exchange of information again in a separate convention with regard to administrative assistance.[22] However, the OECD and UN abandoned the separate convention approach when producing their treaty models. The 1963 OECD and 1989 UN model double tax treaties (DTTs) embedded the exchange of information articles in their texts, instead of creating one treaty for eliminating double taxation and another to assist administrative cooperation to prevent international tax evasion and avoidance. Thus, they reduced tax information cooperation to a supporting role that diluted and limited its impact in two ways.[23] First, the tax information cooperation was confined to the existence of a DTT. This created an important obstacle to many developing countries, which tend to lack an extensive treaty network. Second, the models did not expressly call for the automatic exchange of information between countries. It was many years before these two impediments would be addressed by the international tax regime.

In the 1980s, the US authorities began implementing a policy of entering into standalone bilateral Tax Information Exchange Agreements (TIEAs) with tax haven jurisdictions.[24] Around the same time, the OECD and the Council of Europe jointly updated the League of Nations' model multilateral convention on administrative assistant for their member states.[25] However, it was the 1998 OECD Harmful Tax Competition Project that prompted the recent wave of multilateral cooperation on tax information[26]. The report targeted international tax evasion and avoidance and defined the characteristics of tax havens as applying zero or low tax rates, little substantial economic activity, lax regulation, and a lack of transparency. In this context, the report encouraged more widespread and efficient use of exchange of information agreements.[27] The project was ambitious since it contemplated the imposition of coordinated defensive measures against uncooperative tax havens. For this purpose, the OECD started to work on creating a list of tax havens in 1999 and then released its blacklist of thirty-five jurisdictions on June 2000.

The Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) was established as part of this process. It consisted of OECD members and international financial centers (IFCs),[28]commonly known as tax havens,[29] and represented the interests of all these parties during the coercive process of blacklisting.[30] In spite of this inclusivity, the OECD's harmful tax competition project encountered two major obstacles. First, it was subjected to

[21] Steve Dean, "The Incomplete Global Market for Tax Information" (2008) 49 Boston College Law Review 605-672 at 641.
[22] Ibid., at 647.
[23] Ibid., at 645.
[24] Ibid., at 650.
[25] Multilateral Convention on Mutual Administrative Assistance in Tax Matters (1988) (hereinafter Multilateral Convention). For the original text, see, https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007a84c
[26] See, OECD, Harmful Tax Competition: An Emerging Global Issue (Paris: OECD Publishing, 1998).
[27] Ibid., at 46.
[28] OECD, "Transparency and Exchange of Information for Tax Purposes: Multilateral Co-operation Changing the World- 10th Anniversary Report" (2019) at 7, http://www.oecd.org/tax/transparency/global-forum-10-years-report.pdf
[29] Arthur J. Cockfield, "How Countries Should Share Tax Information" in Philip Alston & Nikki Reisch eds. Tax, Inequality and Human Rights (Oxford University Press: New York, 2019) at 307.
[30] Miranda Stewart, "Transnational Tax Information Exchange Networks: Steps towards a Globalized, Legitimate Tax Administration" (2012) 4:2 World Tax Journal, 152-179 at 161.

criticism from both the blacklisted jurisdictions, and some member states. These objections came from countries which are important IFCs, such as Switzerland and Luxembourg, and countries with former colonial ties to blacklisted IFCs, such as Australia, Canada and New Zealand.[31] The second obstacle was the newly-elected Bush government's decision to withdraw US support for the project in May 2001. This was an important turning point, as the preceding US government had been a key driver of the OECD's blacklisting approach.[32] Following, the OECD refocused the project aim from the fight against international tax evasion and avoidance to securing commitments to exchange of information with small tax havens.[33] As a result, the 2002 Model TIEA proposed only provided for EOIR, [34] but failed to secure consent even for this, and abandoned the goal of establishing a uniform standard until a later date.[35]

The financial crisis of 2008-2009 was the catalyst for a push towards enhanced levels of cooperation on the exchange of tax information. At the London Summit on 2 April 2009, the leaders of the Group of 20 (G20)[36] declared that "(t)he era of banking secrecy is over" [37] and underscored the importance of inclusive international tax cooperation by calling for action "to make it easier for developing countries to secure the benefits of the new cooperative tax environment, including a multilateral approach for the exchange of information".[38] By 2010, the Global Forum had been transformed into a multilateral framework for OECD members and non-member states alike. This aimed to initiate and implement tax regimes of greater transparency and exchange information for tax purposes.[39] In the same year, the above- mentioned 1988 OECD/Council of Europe Multilateral Convention was opened up to non-OECD/EU Member States.[40] The revised version of the Convention has, to some extent, removed the obstacles to developing countries which lack a widespread network of double tax treaties. It also contained an express provision for the automatic exchange of information. Similarly, in 2015, the OECD introduced a Protocol to the model TIEA which extended the scope of the existing TIEAs to the automatic and/or spontaneous exchange of information.[41] However, neither of these instruments mandate the automatic exchange of specific income categories. Thus, cosignatories need a separate mutual agreement to define the type of information to be exchanged on an automatic basis.

In the post financial-crisis period, the automatic exchange of financial account information and of CbC reporting reforms have become "game-changer(s)".[42] To begin with, the United States passed the Foreign Account Tax Compliance Act (FATCA) in 2010, which enabled it to

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[31] Jason C. Sharman, Havens in a Storm: The Global Struggle for Tax Regulation (Ithaca: Cornell University Press, 2006) at 16.
[32] Ibid. at 17.
[33] Ibid.
[34] OECD, "Model Agreement on Exchange of Information in Tax Matters" (2002), http://www.oecd.org/ctp/exchange-of-tax-information/2082215.pdf
[35] Sharman, supra note 30, at 18.
[36] The G20 is an international network of 19 countries and the European Union. Those individual member countries are Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, Republic of Korea, Russia, Saudi Arabia, South Africa, the United Kingdom, the United States, and Turkey, G20, "G20 Participants", https://g20.org/en/about/Pages/Participants.aspx.
[37] See, G20 Leaders' Declaration, London, 2 April 2009, para. 15, http://www.g20.utoronto.ca/2009/2009communique0402.pdf
[38] See, G20 Leaders' Declaration, Global Plan Annex: Declaration on Strengthening the Financial System, London, 2 April 2009, http://www.g20.utoronto.ca/2009/2009ifi.html
[39] OECD, "About the Global Forum" (2018), https://www.oecd.org/tax/transparency/about-the-global-forum/. As of February 2020, the Global Forums consists of 161 members, see, https://www.oecd.org/tax/transparency/about-the-global-forum/members/
[40] As of 7 July 2020, the Multilateral Convention has been entered into force in 125 jurisdictions, and 12 jurisdictions including the United States signed but have not yet ratified the revised version https://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf.
[41] For the full text of Protocol, see, https://www.oecd.org/ctp/exchange-of-tax-information/Model-Protocol-TIEA.pdf.
[42] OECD Secretary-General Angel Gurría, "International community continues making progress against offshore tax evasion" (30 June 2020), http://www.oecd.org/tax/transparency/documents/international-community-continues-making-progress-against-offshore-tax-evasion.htm?utm_source=Adestra&utm_medium=email&utm_content=Press%20release&utm_campaign=Tax%20News%20Alert%2002-07-2020&utm_term=ctp.

implement its own system of automatic exchange of financial account information with other jurisdictions. Subsequently, the Saint Petersburg Summit of 6 September 2013 saw the G20 express both their commitment to the automatic exchange of information as the new global standard, and their full support for the efforts of the OECD in its development.[43] In 2014, the OECD approved a detailed commentary of the Common Reporting Standard (CRS) and its full text under the title of "Standard for Automatic Exchange of Financial Account Information in Tax Matters", thereby emulating the USA's systematic approach to this area.[44] The text contains a model competent authority agreement (CAA) which determines the details of the financial account information to be exchanged, as well as the manner and time this would occur. It also includes model CRS legislation to help countries translate the CRS requirement into domestic law. In line with the multilateral approach to the exchange of information, the model CAA has a multilateral version (Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information or CRS MCAA),[45] as well as a bilateral version.[46]

At the Saint Petersburg Summit, the G20 countries also approved 15 Actions resulting from the OECD/G20 Base Erosion and Profit Shifting (BEPS) project to inhibit the aggressive tax planning of multinational enterprises. For instance, Action 13, entitled "Re-examining Transfer Pricing Documentation" has spurred the development of transfer pricing documentation as a transparency tool.[47] In their interim and final reports of 2014[48] and 2015[49] the OECD and G20 developed a framework for obligatory CbC reporting. This entitles tax authorities to information about MNEs operating in their jurisdictions, including revenue, profit before income tax, and income tax paid. Similar to the CRS, the Final Report contains a model competent CAA, both in bilateral[50] and multilateral (Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports or CbC MCAA) versions.[51] These detail the CbC information and procedure alongside model CbC legislation in order to facilitate the translation of CbC reporting obligation into domestic law.

In conclusion, all states can now cooperate in the exchange of tax information if they can successfully manage the legal complexities entailed by the related international frameworks. The discussion has identified a number of such frameworks. DTTs have historically been the most common legal foundation for cross-border tax information exchange through articles pertaining to the exchange of information. However, countries also deploy TIEAs based on the 2002 OECD model (limited to EOIR) and revised in 2015 (including the AEOI and/or spontaneous exchange of information) in order to access cross-border information from tax havens. A further option is the Multilateral Convention developed jointly by the OECD and the Council of Europe in 1988 and then amended as a result of the OECD and G20 efforts by Protocol in 2010 to attain a global legal foundation for sharing information. Finally, in addition to these legal frameworks, the exchange of information can be automatized through a CAA, bilateral or

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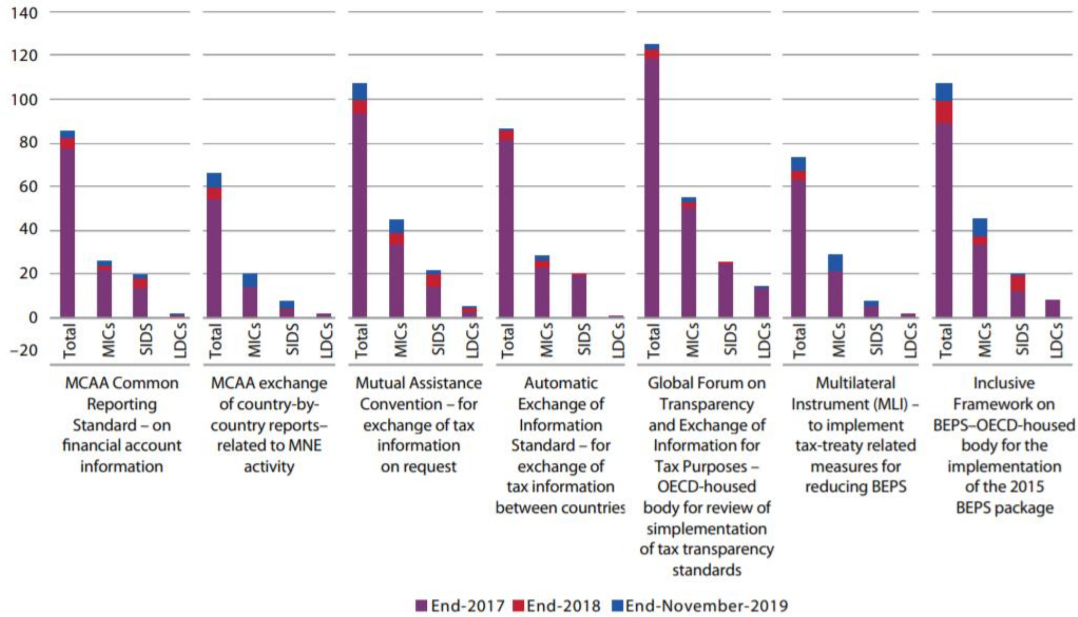
[43] See G20 Leaders' Declaration, St. Petersburg, 6 September 2013, para. 50-52, http://www.g20.utoronto.ca/2013/2013-0906-declaration.html. Also see Tax Annex to the Saint Petersburg G20 Leader's Declaration, St. Petersburg, 5 September 2013, para. 3, http://www.g20.utoronto.ca/2013/2013-0905-tax.html (last visited 27.11.2017).
[44] OECD, Standard for Automatic Exchange of Financial Account Information in Tax Matters (Paris: OECD Publishing, 2014). For the revised edition, see, OECD, Standard for Automatic Exchange of Financial Account Information in Tax Matters, Second Edition, (Paris: OECD Publishing, 2017).
[45] Ibid. at 215-222.
[46] Ibid. at 21-27.
[47] OECD, Action Plan on Base Erosion and Profit Shifting (Paris: OECD Publishing, 2013) at 23.
[48] OECD, Guidance on Transfer Pricing Documentation and Country-by-Country Reporting, OECD/G20 Base Erosion and Profit Shifting Project (Paris: OECD Publishing, 2014).
[49] OECD, Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project (Paris: OECD Publishing, 2015).
[50] Ibid. at 59-69.
[51] Ibid. at 45-51.

multilateral, to determine the details of the information to be exchanged, as well as the manner and time this would occur.

As the High Level Panel on Illicit Financial Flows from Africa stated, it is important for Africa, and for developing countries in general, to be a part of the legal frameworks related to sharing tax information.[52] However, the existing legal frameworks have several gaps, vulnerabilities and impediments that increase the difficulty of detecting tax evasion (see Sections 2, 3 & 4 below). Since government revenues are the main means of financing sustainable development, addressing these issues is particularly important for low-income countries with average tax revenues below the 15 % of GDP threshold required to ensure the effective functioning of governments.[53] However, as shown in Figure 1,[54] low income countries have almost no presence in the transnational tax cooperation networks. No least developed country receives data either via the automatic exchange of financial account information or CbC reporting.[55] In 2019, only four African countries (The Seychelles, South Africa, Mauritius and Ghana) activated AEOI relationships regarding financial accounts.[56]

Figure 1: Participation in international tax cooperation instruments, 2017-2019



Source: OECD.
Note: Middle-income countries (MICs). Small island developing States (SIDS). Least developed countries (LDCs). Multilateral Competent Authority Agreement (MCAA).

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[52] 'Mbeki Panel', AU/ECA Conference of Ministers of Finance, Planning and Economic Development, Illicit Financial Flows, Report of High-Level Panel on Illicit Financial Flows from Africa (2015) at 46.
[53] This threshold is the total of a minimum tax-to-GDP ratio of 12.88 % that is estimated as the adequate amount for spending on development programs and additional 2 % of GDP from the average nontax state revenues, IMF, "Sub-Sharan Africa: Domestic Revenue Mobilization and Private Investment" (2017) at 32 footnote 4, https://www.imf.org/en/Publications/REO/SSA/Issues/2018/04/30/sreo0518.
[54] United Nations, Inter-Agency Task Force on Financing for Development, Financing for Sustainable Development Report 2020 (New York: United Nations, 2020) at 44.
[55] Ibid.
[56] OECD, "Tax Transparency in Africa 2020: Africa Initiative Progress Report 2019" (2020), at 39, https://www.oecd.org/tax/transparency/documents/Tax-Transparency-in-Africa-2020.pdf.

1.4. Determining what is at stake

The Offshore Leaks, Swiss Leaks and Panama Papers scandals revealed the extensive use of offshore jurisdictions by wealthy individuals and MNEs. A prominent set of studies estimates that offshore household financial wealth amounted to $7.9 trillion in 2016, corresponding to 8% of global financial household wealth,[57] whereas another study estimated offshore financial assets as reaching between $21 trillion and $32 trillion.[58] Further, several studies suggest that offshore wealth is almost never reported to the tax authorities by wealthy account-holders.[59] It is also clear that offshore tax evasion particularly hits the revenues of developing countries, as Table 3 indicates.

Table 3: Estimate of offshore wealth and corresponding revenue loss (2016)

	Offshore wealth ($ bn)	Share of financial wealth held offshore	Tax revenue loss ($ bn)
Europe	2,300	11 %	55
United States	1,300	4 %	30
Asia	1,200	4 %	25
Latin America	900	27 %	19
Africa	800	44 %	17
Canada	300	9 %	5
Russia	500	54 %	4
Gulf countries	600	58 %	0
Total	**7,900**	**8.0 %**	**155**

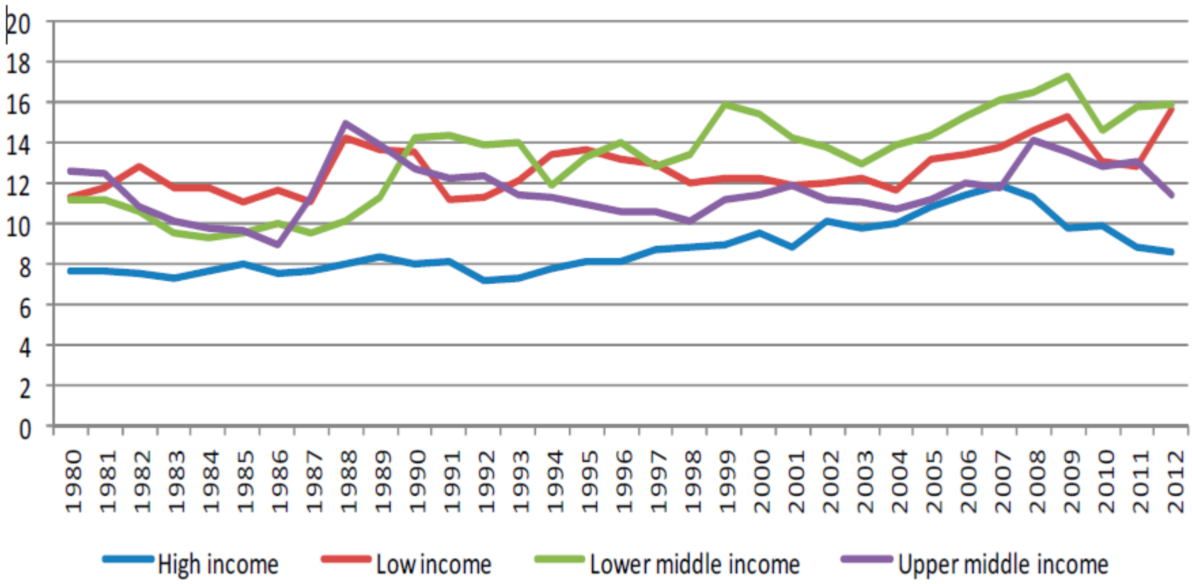
Source: Gabriel Zucman, supra note 56, http://gabriel-zucman.eu/richesse-cachee/.

[57] Gabriel Zucman, Online Appendix to "La richesse cachée des nations (Paris: Le Seuil, Second edition updated and extended, 2017), http://gabriel-zucman.eu/richesse-cachee/.

[58] James S. Henry, "The price of offshore revisited: new estimates for missing global private wealth, income, inequality, and lost taxes" (2012), https://www.taxjustice.net/cms/upload/pdf/Price_of_Offshore_Revisited_120722.pdf

[59] Annette Alstadsæter, Niels Johannesen and Gabriel Zucman, "Tax Evasion and Inequality" (2019), 109:6 American Economic Review 2073-2103, at 2078.

Figure 2: Revenue from the corporate income tax in percent of total revenue



Source: IMF, supra note 61, at 7.

On the other hand, there are many studies confirming the use of tax havens by profit shifting MNEs.[60] For example, one 2014 International Monetary Fund (IMF) study estimates annual corporate income tax (CIT) revenue loss as 5 % of total CIT revenue in the OECD and almost 13 % in the non-OECD countries for the year 2012.[61] Another group of studies suggests a USD CIT revenue loss of $400 billion for OECD countries and $200 billion for lower-income countries, corresponding to 1 % of the GDP in the former and 1.3 % in the latter.[62] Lastly, tax revenue losses related to profit shifting are estimated to be 10 % of global CIT revenue in a recent study.[63] Given that CIT revenue as a percentage of total tax revenue is higher in low and upper-middle-income countries than high-income countries, as can be seen in Figure 2,[64] profit shifting impacts these countries more severely.

Thus, transparency policies helping to prevent international tax evasion and avoidance may benefit developing countries even more than their developed counterparts. In fact, overall patterns of response to the increase in the sharing of transnational tax information suggest an increase in tax compliance. According to the OECD, the governments gained additional tax revenue of 102 billion Euros over the 2009-2019 period as a result of voluntary compliance and offshore tax investigations whose effectiveness was increased by cross-border exchange of information.[65] For instance, voluntary disclosure programs launched prior to the automatic exchange of financial account information allowed India to recover $6 billion, Indonesia $10 billion, Brazil 12 billion Euro,[66] Nigeria $82 million, and South Africa $296 million.[67] South

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[60] For an extensive literature review in this regard, see, Alex Cobham & Petr Janský, A Critical Guide to the Data Methodologies, and Findings: Estimating Illicit Financial Flows (Oxford: Oxford University Press 2020) at 81-128.
[61] IMF, "Spillovers in international corporate taxation" (2014) at 20, http://www.imf.org/external/np/pp/eng/2014/050914.pdf
[62] Ernesto Crivelli, Ruud De Mooij & Michael Keen, "Base Erosion, Profit Shifting and Developing Countries" (2015) at 21, https://www.imf.org/external/pubs/ft/wp/2015/wp15118.pdf; Alex Cobham & Petr Janský, "Global distribution of revenue loss from corporate tax avoidance: reestimation and country results" (2018) 30:2 Journal of International Development 206–232.
[63] Thomas Tørsløv, Ludvig Wier & Gabriel Zucman, "The Missing Profits of Nations" (2020) at 31, 50, http://gabriel-zucman.eu/files/TWZ2020.pdf
[64] IMF 2014, at 7. According to a recent report, the CIT revenue comprises on average 18.6 % of total tax revenue in Africa and 15.5 % in Latin America but 9.3 % in the OECD countries, see, OECD, "Corporate Tax Statistics" (2020) at 3, http://www.oecd.org/tax/tax-policy/corporate-tax-statistics-second-edition.pdf
[65] OECD, supra note 28, at 3.
[66] Nara Monkam, Gamal Ibrahim, William Davis & Christian von Haldenwang, "Tax Transparency and Exchange of Information: Priorities for Africa" (2018) at 5-6, https://www.g20-insights.org/wp-content/uploads/2018/07/TF5-5.2-Taxation_FINAL-1.pdf
[67] OECD, supra note 56, at 9.

Africa has yielded around $213 million more revenue as a result of its new permanent voluntary disclosure program following the activation of its first AEOI agreements in 2017.[68] Moreover, from 2014 to 2019, 8 African countries claimed $189 million of additional taxes by using the EOIR mechanism[69].

Other than its monetary benefits, recent research indicates the deterrent effect of the AEOI framework. One IMF report from 2019 states that "recent automatic exchange of information frameworks reduced foreign-owned deposits in offshore jurisdictions by an average of 25 %."[70] Several studies have also revealed the relocation of bank deposits from the AEOI signatories to non-signatories,[71] underlining the importance of applying the AEOI cooperative framework to all jurisdictions. The impact of introducing public CbC reporting for banks in the rise of banking sector tax payments is also clear.[72] Recent public disclosure of tax information is motive enough for countries to move ahead to the next level of multilateral cooperation on tax transparency. Overall, improved transnational tax cooperation efforts on transparency and exchange information are highly likely to help national governments generate more revenue to finance sustainable development.

2. Challenges to financial account information transparency

The automatic exchange of information on financial accounts provides for the exchange of non-resident (offshore) account information concerning various categories of income including dividends and interest, and wealth. The first collective step in the direction of automatic exchange of bank information came from the EU. In 2005, the first effective step towards automatic exchange of banking information was taken with the EU Savings Tax Directive. The directive required EU financial institutions to report a single category of income i.e. interest paid to EU residents in other Member States.[73] The United States took the next important step with FATCA, which obliged foreign financial institutions to report the financial accounts information of US persons directly to the United States tax authority. This unilateral approach was complemented with an intergovernmental approach in practice.[74] More importantly, it spurred other countries to act, later becoming the base for the OECD's development of multilateral AEOI on financial accounts. In 2014, the OECD's CRS contributed to the legal framework for automatic exchange of financial account information.[75] While the CRS's multilateral framework promises to be highly beneficial for developing countries, its effectiveness is undermined by a number of loopholes.

[68] Ibid. at 25.
[69] Ibid. at 8.
[70] Sebastian Beer, Maria Coelho & Sebastien Leduc, "Hidden Treasure: The Impact of Automatic Exchange of Information on Cross-Border Tax Evasion" (2019), IMF Working Paper, WP/19/286.
[71] See, for example, Niels Johannesen & Gabriel Zucman, "The end of bank secrecy? An evaluation of the G20 tax haven crackdown" (2014) 6/1 American Economic Journal: Economic Policy 5-91; Lukas Menkhoff. & Jakob Miethe, "Tax evasion in new disguise? Examining tax haven's international bank deposits" (2019) 176 Journal of Public Economics 53-78.
[72] M. Overesch & H. Wolff, "Does Country-by-Country Reporting Alleviate Corporate Tax Avoidance? Evidence from the European Banking Sector" (2018), http://dx.doi.org/10.2139/ssrn.3075784.
[73] Council Directive 2003/48/EC on Taxation of Savings Income in the Form of Interest Payments OJ L 157 (2003). Gradually, the EU has enlarged AEOI cooperation in respect of automatic exchange of non-financial income categories (income for employment, director's fees, pensions, life insurance products, immovable property) in 2011, of financial account information in 2014, of cross-border tax rulings and advance pricing arrangements in 2015, of country-by-country reporting in 2016 and of reportable cross-border arrangements in 2018, https://www.eca.europa.eu/lists/ecadocuments/ap19_14/ap_tax_information.pdf.
[74] Itai Grinberg, "The Battle Over Taxing Offshore Accounts" (2012) 60 UCLA Law Review 305-283, at 334.
[75] See, supra note 44.

2.1 Restrictions on the use of information

International agreements for CRS include provisions limiting the use of the information exchanged. According to the Multilateral Convention, Art 4 (1):

> "The Parties shall exchange any information, in particular as provided in this section, that is *foreseeably relevant for the administration or enforcement of their domestic laws concerning the taxes* covered by this Convention."

More particularly the Multilateral Convention, Art 22 (2) states:

> "Such information *shall in any case be disclosed only to persons or authorities (including courts and administrative or supervisory bodies) concerned with the assessment, collection or recovery of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, taxes of that Party, or the oversight of the above. Only the persons or authorities mentioned above may use the information and then only for such purposes.* They may, notwithstanding the provisions of paragraph 1, disclose it in public court proceedings or in judicial decisions relating to such taxes."

Also, Section 5 (1) of the CRS MCAA reiterates the limitation on usage, as follows:

> "All information exchanged is subject to the confidentiality rules and other safeguards provided for in the Convention, *including the provisions limiting the use of the information exchanged*..."

These provisions mean that, in principle, tax authorities are unable to use this information to tackle money laundering and corruption, which is clearly a major impediment to the effectiveness of the system. The Financial Transparency Coalition, an alliance of pro-transparency civil organizations, states that "bank account information sent to tax authorities may also be shared with law enforcement agencies and other relevant government authorities" in order to "to improve the fight against corruption and money laundering, at no extra costs for countries."[76] Yet the existence of a parallel restriction for using received CbC reporting information in the OECD BEPS Action 13 must be highlighted (see Part Three, 1). Both restrictions appear to deliberately disempower the exchange of information.

2.1.1 The cost of closing the loophole

Nevertheless, the receiving jurisdiction may use banking information for other law enforcement purposes if it fulfills two additional requirements in the Multilateral Convention, Art 22(4):

> "information received by a Party may be used for other purposes when such information may be used for such other purposes under the laws of the supplying Party and the competent authority of that Party authorises such use."

The requirement to allow this information to be used in the receiving country for other purposes refers to domestic legislation. If the receiving country has the political will it can easily fulfill this requirement by aligning its domestic legislation accordingly. However, the fulfillment of the second requirement depends on the other party. Until the sending country allows the use of banking information to be used for this purpose in the recipient country, the latter is restricted in the use of the information it may legitimately make.

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[76] Financial Transparency Coalition, "Letter to the OECD Center for Tax Policy and Administration" (2016) https://financialtransparency.org/wp-content/uploads/2016/05/Letter-to-OECD.pdf

2.2 Lack of complete coverage

The AEOI regarding financial accounts can only bring real transparency if all jurisdictions participate in the AEOI network. As of December 24, 2019, there were 108 signatories of the CRS MCAA.[77] Even if this level of coverage appears adequate, there are several non-signatory developing countries such as Algeria, Angola, Bangladesh, Bolivia, Botswana, Brunei, Cameroon, Dominican Republic, Egypt, El Salvador, Gambia, Guatemala, Jordan, Kenya, Macedonia, Maldives, Montenegro, Morocco, Paraguay, Peru, Philippines, Puerto Rico, Rwanda, Sri Lanka, Tanzania, Thailand, Trinidad & Tobago, Thailand, Tunisia, Ukraine, US Virgin Islands, Venezuela, and Vietnam. The US is not a signatory.

2.2.1 Cherry picking of partner countries

Moreover, signatories are not able to exchange information with every signatory. The CRS MCAA activates AEOI relationships among jurisdictions that choose each other (Section 7):

> "1. A Competent Authority must provide, at the time of signature of this Agreement or as soon as possible after its Jurisdiction has the necessary laws in place to implement the Common Reporting Standard, a notification to the Co-ordinating Body Secretariat:
>
> ... and
>
> f) a list of the Jurisdictions of the Competent Authorities with respect to which it intends to have this Agreement in effect, following national legislative procedures (if any)."

If cosignatories don't notify each other or their choices don't match, the agreement can't come into effect between these jurisdictions even if they have the necessary laws in place to implement the CRS and safeguards for the protection of personal data (Section 7.2.1). In such cases, a bilateral CAA is required, which creates extra costs in time and resources for treaty negotiations, impeding the participation of developing countries in particular.[78]

In principle, the CRS MCAA involves full reciprocity. However, low-income developing countries may simply not have the capacity to collect and send information. In such a situation, the unidirectional provision of information by developed to developing countries may be considered. In fact, the CRS MCAA already offers non-reciprocal arrangements to jurisdictions without income taxes, a misguided approach which may increase the risk of negative spillover to other countries. Currently, there are 28 countries opting into this arrangement of voluntary secrecy: Anguilla, Aruba, Bahamas, Bahrain, Belize, Bermuda, British Virgin Islands, Bulgaria, Cayman Islands, Costa Rica, Curacao, Cyprus, Dominica, Grenada, Kuwait, Lebanon, Macao, Marshall Islands, Montserrat, Nauru, Qatar, Romania, Samoa, St. Kitts and Nevis, St. Vincent and the Grenadines, Turks and Caicos Islands, United Arab Emirates and Vanuatu. These jurisdictions can send information without receiving it (CRS MCAA Section 2.1.2). This means that the CRS MCAA mechanism already recognizes unidirectional information sharing from one country to another. It therefore ought to be possible to produce a unidirectional mechanism enabling developing countries to first only receive information before being obliged to send it.

However, the US has already created an extra burden on the negotiation of bilateral CAAs for FATCA. The United States has signed the FATCA Intergovernmental Agreements with a total of

[77] OECD, "Signatories of the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information and Intended First Information Exchange Date" (24 December 2019), http://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/crs-mcaa-signatories.pdf
[78] Andres Knobel and Markus Meinzer, "Delivering a level playing field for offshore bank accounts: What the new OECD/Global Forum peer reviews on automatic information exchange must not miss" (2017) at 19, http://www.taxjustice.net/wp-content/uploads/2013/04/TJN_AIE_ToR_Mar-1-2017.pdf

113 jurisdictions; only 95 of these have entered into force to date.[79] Moreover, there are three types of model agreements: Model 1A, Model 1B and Model2. While Model 1B and Model 2 involve only unidirectional information sharing from the foreign country to the United States, Only Model 1A includes even partial reciprocity, indicating that this aspect of FATCA rarely operates to the benefit of foreign countries.[80]

2.2.2 Loopholes relating to scope

For full transparency, the AEOI system requires complete coverage of reporting financial institutions, reportable persons and reportable accounts. The CRS has several loopholes in these respects that may allow tax evaders to continue their non-transparent activities.[81] For example, financial institutions must identify reportable persons for the purpose of sending financial account information to their country of residence. However, there has been an increase in of schemes offering residency and/or citizenship in return for investment, which could be used to avoid CRS reporting.[82] Since there is no test for certifying genuine residency included in the CRS, financial institutions may be led to report information linked to a country in which the reportable person has claimed residency but few genuine financial interests.[83]

2.3 Insufficiency of compliance rules

In an attempt to address such loopholes, the OECD published the "Model Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures" (CRS MDR) on 9 March 2018.[84] The mandatory disclosure rules require intermediaries and/or taxpayers to report on CRS avoidance schemes that try to hide the beneficial owner. They aim to combat tax evasion by identifying regulatory loopholes in the CRS legal framework and deterring taxpayers and intermediaries from evasive activities in the future. However, the CRS MDR has several shortcomings as well.[85]

2.3.1 No obligation to transpose the Mandatory Disclosure Rules for CRS into domestic laws

First of all, there is no obligation for a jurisdiction to transpose the model rules into domestic law. In this regard, the EU Directive must be highlighted as good practice.[86] The EU has introduced the CRS MDR into legislation. To do so required the Member States to transpose the rules that oblige intermediaries to report schemes that could be used to circumvent the CRS.

[79] US Department of the Threasury, "Foreign Tax Compliance Act" (2020), https://home.treasury.gov/about/offices/tax-policy/foreign-account-tax-compliance-act
[80] Andres Knobel, "Reporting Taxation: Analysing Loopholes in the EU's Automatic Exchange of Information and How to Close Them" (2018) at 10, http://extranet.greens-efa-service.eu/public/media/file/1/5729.
[81] For a detailed analysis of the CRS on this point, Knobel & Meinzer, supra note 78, at 23-37.
[82] OECD, "Residence/Citizenship by investment schemes" (2020), http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/residence-citizenship-by-investment/
[83] Knobel and Meinzer, supre note 78, at 27-28.
[84] OECD, "Model Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures" (2018), https://www.oecd.org/tax/exchange-of-tax-information/model-mandatory-disclosure-rules-for-crs-avoidance-arrangements-and-opaque-offshore-structures.pdf
[85] See, Andres Knobel, "OECD rules vs CRS avoidance strategies: not bad, but short of teeth and too dependent on good faith" (27 March 2018), https://www.taxjustice.net/2018/03/27/oecd-rules-vs-crs-avoidance-strategies-not-bad-but-short-of-teeth-and-too-dependent-on-good-faith/.
[86] Council Directive 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements OJ L 139 (5 Jun. 2018).

2.3.2 No mandatory provisions for non-compliance or non-monetary penalties in the Model

The model does not introduce any mandatory provision for the sanction of intermediaries and taxpayers that fail to comply with the mandatory disclosure reporting obligations. Besides, there are no non-monetary penalties among the introduced sanctions.

2.3.3 No access to disclosed avoidance schemes

The MDR CRS doesn't require tax authorities to publish details of avoidance schemes. This is crucial to achieving a level playing field for all jurisdictions. In this regard, an example of good practice, albeit limited in its implementation, is that of Portugal, where Decree Law No. 29/2008 Article 15 states that the Portuguese fiscal authority shall publicly disclose the reported schemes which the Portuguese authorities find abusive.[87]

It would be quite possible to establish a central depository within a global UN body that facilitates automatic disclosure within the jurisdictions. There are two precedents for the use of a central directory for the exchange of information in tax matters. The EU has a central depository for tax avoidance schemes, and the OECD also has an aggressive tax planning depository that includes 400 types of schemes, though this is only available to a close-knit group of countries.

2.4 Alternative approaches

2.4.1 Public statistics for CRS aggregates

An alternative approach, backed by the Tax Justice Network to ensure compliance and effectiveness of the AEOI regarding financial accounts is to have comprehensive, comparable, detailed and robust public statistics on the aggregates of the collected data.[88] This is important for two main reasons. First, public statistics have the ability to compel government and taxpayer compliance with the CRS since they enable researchers, civil society and journalists to track the efficiency of the measures that are taken. Second, developing countries purposively excluded from the CRS system can benefit from such data, as the OECD confirms: "To date, many countries have spontaneously shared aggregate data with their treaty partners on various types of income, such as the existence and amount of foreign owned accounts in their jurisdiction. G20 and other developed countries may consider spontaneously sharing aggregate data with a specific developing country. The purpose of this would be to build awareness of AEOI, to demonstrate possible revenue benefits and increase the prioritisation of AEOI, and to obtain political commitment to AEOI."[89] Though the OECD conceives aggregate data sharing as voluntary, the FACTI Panel could propose mandatory public statistics for CRS aggregates. It is also important to publish CRS aggregates that allow data to be analyzed on the basis of gender.

There has been no example of a country publishing aggregates of the data collected under CRS.[90] Unfortunately, a recent parliamentary document from Germany indicates possible opposition to this alternative approach.[91] Upon submission of a written question, the German government lists all the countries from which it received CRS data, including the account balance, and the income. There are however seven countries who prevented the German government from

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[87] Tax Justice Network, Corporate Tax Haven Index 2019 Methodology (2019) at 125, footnote 399, https://www.corporatetaxhavenindex.org/en/.
[88] Knobel and Meinzer, supra note 78, at 37 ff.
[89] https://www.oecd.org/tax/exchange-of-tax-information/global-forum-AEOI-roadmap-for-developing-countries.pdf
[90] Tax Justice Network, Financial Secrecy Index 2020 Methodology (2020) at 192, https://fsi.taxjustice.net/PDF/FSI-Methodology.pdf.
[91] See, Markus Meinzer, "Written Response by German Ministry of Finance to parliamentary question on Statistics on CRS data received by Germany in 2016-2018" (15 June 2020).

publishing its data by classifying it as secret. The following country governments prevented the release of aggregate statistical data on its information exchange even to the members of the German parliament: Canada, Isle of Man and South Korea. The following countries prevented the release of the data but enabled the members of the German parliament to view the data by treating it as a secret to be viewed only by a small circle of persons, and under strict surveillance and constraints: Azerbaijan, Bermuda, Cayman Islands and the United Kingdom.

2.4.2 Global asset registry

The Independent Commission for the Reform of International Corporate Taxation (ICRICT) has supported to create a global asset registry that is an extension of beneficial ownership registers, more than a strict alternative.[92] The ICRICT underlines the weakness of the current international exchange of information framework, highlighting the following issues: first, the AEOI as applied to financial account information is based upon third party reporting of the very financial institutions that enable tax evasion and avoidance schemes; second, many tax authorities have only limited access to the CbC report information; and third, many countries have not as yet implemented national commitments to establishing beneficial ownership registers.[93] As an extension of current transparency measures, a global asset registry can provide the missing wealth data and ensure the existing measures are joined up.[94] However, this approach needs to be developed to answer technical questions from its scope to the manner and time this would occur. Thus, the FACTI Panel could propose pilot implementations in the context of system development and test a global asset registry in a realistic setting, with a view to confirming this as an aim of the development of national beneficial ownership registers.[95]

2.5 Specific recommendations

Considering the loopholes identified, the FACTI Panel could propose the following specific recommendations to cope with the challenges of financial account information transparency:

- Require all jurisdictions to publish public statistics on the aggregated AEOI data (short term),
- Promote nonreciprocity of information exchange for developing countries (short term)
- Ensure all domestic jurisdictions enact laws that allow tax authorities to share information with other law enforcement units (short term), or
- Remove barriers in the international legal framework for CRS exchanges that limit the use of banking information to tackle money laundering and corruption (short term),
- Level the playing field for all jurisdictions in terms of access to the MDR CRS data by requiring public disclosure of abusive avoidance schemes, or at least guarantee all jurisdictions to have access to a database on the MDR CRS schemes (short term),
- Ensure all domestic jurisdictions implement the MDR CRS rules (short term),
- Ensure the inclusion of nonmonetary penalties for noncompliance with the MDR CRS rules (short term),
- Require the development of a global asset registry (long term).

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[92] ICRICT, "A Roadmap for a Global Asset Registry" (2018), https://static1.squarespace.com/static/5a0c602bf43b5594845abb81/t/5c988368eef1a1538c2ae7eb/1553498989927/GAR.pdf.
[93] Ibid. at 5.
[94] Ibid.
[95] See, ibid. at 6, 11-12.

3. Challenges to CbC information transparency

The automatic exchange of CbC report information provides for the global allocation of MNE income, taxes and other indicators of the location of economic activity including employees, stated capital, retained earnings and tangible assets.[96] It is a powerful transparency tool that can help governments "to ensure that MNEs are paying tax 'where their economic activities occur and value is created.'"[97] In 2016, the OECD established the Inclusive Framework on BEPS to facilitate implementation of the BEPS project including transfer pricing documentation and CbC reporting as elaborated in the Action 13 Final Report.[98] Subsequently, the OECD and G20 followed by the members of the Inclusive Framework agreed minimum standards for tax cooperation against base erosion and profit-shifting that must be implemented and subjected to peer review and monitoring in all participating jurisdictions.[99] CbC reporting comprises one of these standards. However, the current OECD design international framework for CbC information exchange has several loopholes that greatly undermine its potential benefit.

3.1 Restrictions on the use of CbC data

Action 13 doesn't permit data to be used for purposes other than risk assessment. To facilitate this restriction, the CbC MCAA limits its use in Section 5 (2) as follows:

> "1. All information exchanged is subject to the confidentiality rules and other safeguards provided for in the Convention, *including the provisions limiting the use of the information exchanged*.
>
> 2. In addition to the restrictions in paragraph 1, the use of the information will be further limited to the permissible uses described in this paragraph. In particular, information received by means of the CbC Report will be used for assessing high-level transfer pricing, base erosion and profit shifting related risks, and, where appropriate, for economic and statistical analysis. *The information will not be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis. It is acknowledged that information in the CbC Report on its own does not constitute conclusive evidence that transfer prices are or are not appropriate and, consequently, transfer pricing adjustments will not be based on the CbC Report. Inappropriate adjustments in contravention of this paragraph*

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[96] The emerging economies of Argentina, Brazil, People's Republic of China, Colombia, India, Mexico, South Africa, and Turkey requested to add additional transactional data regarding related party interest payments, royalty payments and service fees to the CbC report that would be very useful for them to identify flows of payments through a group that might indicate certain types of BEPS risk. However, this request was overturned due to strike a balance in favor of business (OECD, supra note 49, at 10). The OECD is conducting in 2020 a review of its CbC reporting standard, and the public consultation has seen global investors, along with independent experts and civil society groups, call for the OECD standard to converge to that published by the Global Reporting Initiative (GRI), the leading global setter of sustainability standards. The GRI standard was created through a process with multiple rounds of public and private consultation by experts from major reporting companies, investors, and one of the big 4 accounting firms, along with academic, civil society and labor representatives. Following its launch in December 2019, the GRI standard was immediately proposed as one of the key sustainability standards that should be adopted and integrated into companies' financial reporting, in a report co-authored by representatives from all of the big four accounting firms for the World Economic Forum's International Business Council, see, World Economic Forum, "Toward Common Metrics and Consistent Reporting of Sustainable Value Creation" (22 Jan. 2020), http://www3.weforum.org/docs/WEF_IBC_ESG_Metrics_Discussion_Paper.pdf.

[97] BEPS Monitoring Group, Submission to the Inclusive Framework on BEPS on the Public Consultation Document: Review of Country-by-Country Reporting (BEPS Action 13) (7 Mar. 2020) at 3, https://www.bepsmonitoringgroup.org/news/2020/3/7/country-by-country-reporting

[98] As of December 2018, the Inclusive Framework has 137 members, see, https://www.oecd.org/ctp/beps/inclusive-framework-on-beps-composition.pdf.

[99] OECD, "Inclusive Framework on BEPS: Progress Report" (2017) at 4, https://www.oecd.org/tax/beps/inclusive-framework-on-BEPS-progress-report-july-2016-june-2017.pdf.

> *made by local tax administrations will be conceded in any competent authority proceedings.* Notwithstanding the above, there is no prohibition on using the CbC Report data as a basis for making further enquiries into the MNE Group's transfer pricing arrangements or into other tax matters in the course of a tax audit and, as a result, appropriate adjustments to the taxable income of a Constituent Entity may be made."

The imposition of such a constraint on countries limits their potential to contribute to discussions on the application of formulaic methods that can be facilitated by the information in CbC reports.[100] This is especially problematic for developing countries that lack the technical capacity to apply a full functional analysis and seek certainty, simplicity and ease of administration that a formula might ensure.[101]

3.2 Lack of complete coverage

Countries can access the CbC information through the automatic exchange of information mechanism. If a jurisdiction is unable to activate automatic exchange of information with the jurisdiction in which the MNE's ultimate parent entity resides, it will not be able to receive CbC information from the foreign tax authority. Importantly, under current regulations and similar to the AEOI on financial accounts, countries are free to cherry-pick among possible partners for CbC reporting. According to the CbC MCAA, Section 8:

> "1. A Competent Authority must provide, at the time of signature of this Agreement or as soon as possible thereafter, a notification to the Co-ordinating Body Secretariat:
>
> …
>
> e. that includes (i) a list of the Jurisdictions of the Competent Authorities with respect to which it intends to have this Agreement in effect, following national legislative procedures for entry into force (if any) or (ii) a declaration by the Competent Authority that it intends to have this Agreement in effect with all other Competent Authorities that provide a notification under paragraph 1e) of Section 8."

Currently, there are 137 members of the Inclusive Framework but only 85 signatories of the CbC MCAA.[102] For example, the United States is the world's largest economy, host of many MNEs and a leading member of the Inclusive Framework. However, it is not a signatory of the CbC MCAA, instead signing bilateral CAAs with its partner jurisdictions. As of December 31, 2019, the United States has only 45 active CbC relationships with EU or OECD members, and a few small offshore centers.[103] South America (beyond Brazil and Colombia), Asia (beyond India and Indonesia), and Africa (beyond South Africa and Mauritius) are almost entirely excluded from the US tax information exchange network.

3.3 Impediment to domestic production of CbC information

By way of domestic legislation, a jurisdiction can ensure its own access to the CbC reports of any relevant foreign multinational enterprises with domestic operations via a local filing requirement. That is to say that a jurisdiction can mandate the retrieval of tax information held outside the country on activities performed solely outside the country. However, Action 13 also

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[100] BEPS Monitoring Group, supra note 97, at 3.
[101] Ibid.
[102] OECD, "Signatories of the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (CBC MCAA) and Signing Dates" (7 May. 2020), https://www.oecd.org/ctp/exchange-of-tax-information/CbC-MCAA-Signatories.pdf
[103] IRS, "Country-by-Country Reporting Jurisdiction Status Table" (11 Jun. 2020), https://www.irs.gov/businesses/country-by-country-reporting-jurisdiction-status-table

restricts the domestic production of CbC information. Article 2 of the model legislation states that:

> "2. A Constituent Entity which is not the Ultimate Parent Entity of an MNE Group shall file a country-by-country report conforming to the requirements of Article 4 with the [Country Tax Administration] with respect to the Reporting Fiscal Year of an MNE Group of which it is a Constituent Entity, on or before the date specified in Article 5, if the following criteria are satisfied:
>
> (i) the entity is resident for tax purposes in [Country]; and
>
> (ii) one of the following conditions applies:
>
> a) the Ultimate Parent Entity of the MNE Group is not obligated to file a country-by-country report in its jurisdiction of tax residence; or,
>
> b) the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which [Country] is a party but does not have a Qualifying Competent Authority Agreement in effect to which [Country] is a party by the time specified in Article 5 for filing the country-by-country report for the Reporting Fiscal Year; or,
>
> c) there has been a Systemic Failure of the jurisdiction of tax residence of the Ultimate Parent Entity that has been notified by the [Country Tax Administration] to the Constituent Entity resident for tax purposes in [Country]."

This provision requires pre-existing international agreements i.e. a DTT, TIEA or the Multilateral Convention, as a legal basis. Otherwise, the jurisdiction is not permitted to trigger the local filing requirement.[104] Even if the model legislation is not legally binding, the OECD compels compliance with these provisions via the peer review process which may carry more force than even hard law mechanisms. As a matter of fact, by December 2017, 19 countries had introduced a local filing requirement without first having an international agreement in place, contravening the OECD model legislation.[105] Because of the OECD CbC peer reviews conducted in 2018 and 2019, 10 member countries of the Inclusive Framework have already changed their legislation to comply with recommendations in line with the OECD model.[106] There are still 9 countries yet to enact legislative changes. 8 out of 9 are Inclusive Framework members (Gibraltar, Uruguay, Germany, France, India, Spain, Russia, and Vietnam),[107] and one is a non-member country (Taiwan).

3.4 High revenue threshold

Action 13 includes only the MNEs with annual consolidated group revenues of at least 750 million Euros, a very high threshold. While this means the reporting obligations for MNE groups

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[104] Andres Knobel and Alex Cobham "Country-by-Country Reporting: How Restricted Access Exacerbates Global Inequalities in Taxing Rights" (2016) at 6, https://ssrn.com/abstract=294397

[105] Tax Justice Network, supra note 90, at 124

[106] Ibid. at 125.

[107] For example, compared to the OECD legislation model, the Gibraltar Income Tax Act 2010 (Amendment) Regulations 2017 10O doesn't contain the provision I added to the text in italics that requires the existence of a legal basis for AEOI: "(1) Subject to section 10P(3), a constituent entity resident for tax purposes in Gibraltar that is not an ultimate parent entity must provide the Commissioner with a country by country report for each fiscal year where- (a) the ultimate parent entity of the MNE group is not required to provide a country by country report in its jurisdiction of tax residence; (b) the jurisdiction in which the ultimate parent entity is resident for tax purposes (has a current International Agreement to which [Country] is a party but) does not have a qualifying competent authority agreement with Gibraltar on the date on which the constituent entity must provide the report under section 10T; or (c) there has been a systemic failure by the jurisdiction of tax residence of the ultimate parent entity and the Commissioner has notified the constituent entity resident in Gibraltar that such a failure has occurred" (https://www.gibraltarlaws.gov.gi/uploads/legislations/income-tax/2017=101.pdf#viewer.action=download).

cover over 90 % of total global corporate revenues, it entails the exclusion of approximately 85 to 90 % of MNE groups from the CbC reporting obligation.[108] Those excluded MNEs can be significant contributors to many developing countries' economies and may account for a larger share of the risk of tax avoidance. Thus, a lower threshold of 40 million Euros based on the EU definition of large undertakings has been advocated by many.[109]

3.5 Alternative approach: public CbC reporting

The best approach for all jurisdictions to benefit from CbC reporting is to require this information to be made publicly available.[110] As a matter of fact, the importance of the financial transparency of MNEs was recognized as back as the late 1960s.[111] However, the efforts of the G77 and the UN Commission for Transnational Corporations to force publication of financial reports for all MNE subsidiaries were blocked by leading business lobby groups and the OECD.[112] The next wave of the public reporting discussion began in the early 2000s with the engagement of civil organizations on global tax justice issues. These entered the political agendas of national governments after the financial crisis of 2008-2009, especially with the OECD/G20 BEPS project.[113]

In its background paper, the FACTI Panel refers to the tension between the right to privacy and the public right to information as regards financial transparency.[114] However, the OECD's newly released data on CbC aggregated statistics clearly indicates that the location of tax accrued and the location of economic activities took place do not geographically align.[115] Thus, the balance must be more obviously weighted towards the public right to information concerning CbC reporting. This will both hold government accountable for their tax policy preferences towards the MNEs and the MNEs accountable for their aggressive tax avoidance strategies to the public.

Moreover, the Action 13 CbC reporting template does not consist of any sensitive commercial or trade secret information.[116] This kind of information such as "overall strategy for development, ownership, and exploitation of intangibles, including location of principal R&D facilities and location of R&D management, as well as important drivers of business profit and important business restructuring transactions, acquisitions, and divestitures occurring during the fiscal year" needs to be reported by the MNEs in the Master File or the Local File.[117] These are other Action 13 transfer pricing documents, but the MNEs directly report them to tax authorities on a confidential basis and this information is not disclosed to the public.

There are several good practices in this regard. While limited to some specific sectors, the EU has already required banks (Capital Requirement Directive IV), [118] and together with countries

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[108] OECD, supra note 49, at 21.
[109] Financial Transparency Coalition, "European Commission Proposal on Public 'CbCR': Questions and Answers" (2016), https://financialtransparency.org/wp-content/uploads/2016/07/QA-final_branded.pdf.
[110] See, BEPS Monitoring Group, supra note 97, at 4; Tax Justice Network, supra note 90, at 91; ICRICT, "ICRICT response to the OECD Consultation on the Review of Country-by-Country Reporting (BEPS Action 13)" (9 Mar. 2020), https://www.icrict.com/press-release/2020/3/9/icrict-response-to-the-oecd-consultation-on-the-review-of-country-by-country-reporting-beps-action-13.
[111] Alex Cobham, Petr Janský & Markus Meizer, "A Half-Century of Resistance to Corporate Disclosure" (2018), 25:3 Transnational Corporations 1-26 at 1.
[112] Ibid. at 5.
[113] Ibid. at 8-9.
[114] FACTI Panel, "Background Paper: Overview of Existing International Institutional and Legal Frameworks Related to Financial Accountability, Transparency and Integrity" (6 Apr. 2020) at 19.
[115] OECD, supra note 64, at 41.
[116] Reuven S. Avi-Yonah & Gianluca Mazzoni, "Taxation and Human Rights" in Philip Alston & Nikki Reisch eds. Tax, Inequality and Human Rights (Oxford University Press: New York, 2019) at 265.
[117] Ibid.
[118] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC Text with EEA relevance, OJ L 176/338 (27 Jun. 2013).

including Ukraine and Canada,[119] extractive industries, to publish their CbC reports.[120] The available data for financial institutions made publicly available as a result of the public CbC reporting requirement under the EU's Capital Requirement Directive IV allowed researchers to show the extensive use of tax havens by the 20 biggest European banks[121] and a likely shift of bank profits to tax havens.[122] The EU has even proposed amending the Directive on CbC reporting to tax administrations (i.e. non-public information) to allow public CbC reporting for MNEs. [123]

3.6 Specific recommendations

Considering the loopholes identified, the FACTI Panel could propose the following specific recommendations to cope with the challenges of CbC information transparency:

- Require all MNEs to publish their CbC reports on their webpages (short term),
- Remove impediments to the domestic production of CbC information (short term),
- Remove the restriction to the use of CbC information beyond the purpose of risk assessment (short term).
- Lower the threshold for CbC reporting (short term).

4. Challenges to the transparency of information on accounting records

4.1 Unmet transparency prerequisite

The basic prerequisite of transparency in accounting records is to oblige all companies with limited liabilities to file their annual accounts with a government authority or administration.[124] There are a lot of jurisdictions that do not even comply with this prerequisite by exempting certain types of companies. For example, in Barbados, international entities may sidestep the record keeping requirements by not having a regular system of oversight in place and not applying sanctions for the violation of record-keeping obligations)[125]. Similarly, some jurisdictions do not always require accounting data to be available to the public authority: in Croatia, for instance, the ex officio deletion of companies from the Commercial Register has sometimes led to relevant documentation being unavailable to the Tax Administration[126]. Finally, some jurisdictions simply fail to implement the requirement in practice. For example, in Spain, a low percentage of companies and partnerships comply with the obligation to file annual

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[119] Tax Justice Network, supra note 90, p. 92-97.
[120] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC Text with EEA relevance, OJ L 182/19 (29 Jun. 2013).
[121] Oxfam, "Opening the Vaults: The Use of Tax Havens by Europe's Biggest Banks" (2017), https://oxfamilibrary.openrepository.com/bitstream/handle/10546/620234/bp-opening-vaults-banks-tax-havens-270317-en.pdf;jsessionid=0C359A22BEDF90AEB8435231DC6975B1?sequence=29.
[122] Petr Janský, "European banks and tax havens: evidence from country-by-country reporting" (2020) Applied Economics 1-17.
[123] European Parliament, Brief EU Legislation in Progress (Apr. 2019), available at http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/595867/EPRS_BRI(2017)595867_EN.pdf (accessed 2 Sep. 2019).
[124] OECD, "Joint Ad Hoc Group on Accounts (JAGHA) Paper: Enabling Effective Exchange of Information: Availability and Reliability Standard" (6 Jul. 2005), https://www.oecd.org/ctp/harmful/42179473.pdf.
[125] OECD, Global Forum on Transparency and Exchange of Information for Tax Purposes: Barbados 2020 (Second Round): Peer Review Report on the Exchange of Information on Request (OECD Publishing: Paris, 2020) at 42, para. 107.
[126] OECD, Global Forum on Transparency and Exchange of Information for Tax Purposes: Croatia 2019 (Second Round): Peer Review Report on the Exchange of Information on Request (OECD Publishing: Paris, 2019) at 54-55, para. 143.

accounts with the Commercial Registry, yet the number of sanctions imposed for such non-compliance by the Accountancy and Account Audit Institute is similarly low.[127]

4.1.1 Keeping accounting records outside of the jurisdiction

A further issue arises when countries permit companies to keep their accounts outside the jurisdiction, thereby opening a loophole in the system by making enforcement of this legal obligation much more difficult or even impossible for the government.[128] For example, the Cayman Islands allows accounting records to be held outside its territory; the Global Forum confirms a case when the government, despite several separate attempts, was unable to respond to an EOIR for accounting information held by an exempted company based outside the jurisdiction .[129]

4.2 Alternative approach: public company accounts

The best means of ensuring transparency regarding accounting records information has already been implemented by several European jurisdictions including Luxembourg, Norway, Belgium, Bulgaria, Slovakia, Slovenia, and the United Kingdom.[130] It consists of making annual accounts available online and in an open data format in every jurisdiction where a company operates for free or a minimal cost. This will also eliminate the need for tax administrations to exchange information and, in turn, reduce the cost of compliance with the requirement to exchange information.

4.3 Specific recommendations

Considering the loopholes identified, the FACTI Panel could propose the following specific recommendations to cope with the challenges to the transparency of accounting records:

- States must oblige all types of companies to keep accounting records, including underlying documents (short term)
- States must require these data to be submitted to a public authority (short term)
- States must make all data accessible online at no or a minimal cost and in an open data format (short term).

5. General recommendations for the FACTI Panel

The analysis in this paper reveals that the existing global tax governance structure is not sufficiently effective to address the gaps and vulnerabilities in, and impediments to, tax information exchange. The OECD Global Forum that has led transnational tax collaboration efforts on transparency and exchange information since 1960s, has failed to perform a transparent agenda-setting and participation procedure.[131] The current picture of tax information cooperation networks reveals powerful states as net beneficiaries of this fundamental failure. Besides, the Global Forum has failed to bring the requirement to publish

[127] OECD, Global Forum on Transparency and Exchange of Information for Tax Purposes: Spain 2019 (Second Round): Peer Review Report on the Exchange of Information on Request (OECD Publishing: Paris, 2019) at 51, para. 155-156.
[128] Tax Justice Network, supra note 90, at 88.
[129] OECD, Global Forum on Transparency and Exchange of Information for Tax Purposes: Cayman Islands 2017 (Second Round): Peer Review Report on the Exchange of Information on Request (OECD Publishing: Paris, 2017) at 66, para. 193.
[130] Tax Justice Network, "Financial Secrecy Index 2020: Explore countries & data: Excel extracts by Info ID: ID 201" (2020) https://fsi.taxjustice.net/en/explore/excel-file-by-info-id
[131] Allison Christians & Laurens van Apeldoorn, "The OECD Inclusive Framework" (2018) 72:4 Bulletin for International Taxation 229-230.

comprehensive and comparable annual statistics onto the political agenda, another failure given this is the most essential way to hold countries accountable for their compliance with exchange of information obligations in the era of transparency.

As long as MNEs and wealthy individuals are able to set themselves apart from the public disclosure of certain tax information, revenue loss continues to hit societies and exacerbate inequalities. In addition, the world now is facing the unprecedented global health and economic crisis of COVID-19, which has led to an additional tax gap in government revenues. Now, governments have to seek not only new sources of revenue but also the effective enforcement of existing tax laws. Thus, transnational tax information cooperation must be more at the center of international tax policy than ever before.[132]

To address the failures of the existing institutional and legal framework for tax cooperation, the first step is to start monitoring the magnitude of international tax evasion and avoidance by obtaining consistent annual data from all countries. In this regard, the existing international institutional framework should be improved through the creation of a global body with responsibility for collating and analyzing tax data (including gender-disaggregated data) under the UN umbrella ("UN Centre for Monitoring Taxing Rights").[133] Data should cover, *inter alia*, automatically exchanged financial account information and CbC information. Moreover, countries should enjoy the full benefit of automatically exchanged financial accounts and public CbC reporting. To achieve this, all jurisdictions must commit to fully inclusive and multilateral information exchange, to publish aggregate data and detailed data, and to make detailed data available for analysis. To underwrite these processes, an international tax convention is required.[134] Thus, the FACTI panel should call for a genuinely multilateral approach and AEOI that has been sought since the League of Nations set the stage in 1927.

The paper therefore highlights the need for a more inclusive international tax convention, led by the United Nations, to integrate the following proposals to address the weaknesses in the existing global tax governance structure:

- Improve the existing international institutional framework through the creation of a Centre for Monitoring Taxing Rights,
- Ensure international commitment to fully inclusive and multilateral information exchange, on a widely defined information base,
- Ensure national commitments to publish aggregate and detailed data, and to make detailed data available for analysis,
- Support the harmonization and coordination of national registers of beneficial ownership into a global asset register.

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[132] Civil society organizations have already started to generate discussion around this topic, see, The Financial Transparency Coalition, The ICRICT, Oxfam and Public Services International, "Health versus Wealth?: Tax and Transparency in the Age of COVID-19" (12 May 2020), https://financialtransparency.org/health-versus-wealth-tax-transparency-age-covid-19/
[133] Alex Cobham, The Uncounted (Cambridge: Polity, 2020) at 169.
[134] Ibid. at 171.

Table 4: General recommendations for the FACTI Panel

Type of tax information	Short term (reforms that can be put in place immediately)	Medium term (reforms will require more time to formulate the right response)	Long term (reforms which may be needed, but require a long-term time horizon to agree/implement)
Financial account information	• Require all jurisdictions to publish public statistics on the aggregates of the AEOI data, • Ensure non-reciprocity for developing countries, • Ensure all domestic jurisdictions enact laws that allow tax authorities to share information with other law enforcement units, or • Remove barriers in the international legal framework for CRS exchanges that limit the use of banking information to tackle money laundering and corruption, and • Ensure all domestic jurisdictions implement the MDR CRS rules • Ensure a level playing field for all jurisdictions in terms of access to the MDR CRS data by requiring public disclosure of schemes found abusive by tax authorities; minimally, guarantee all jurisdictions access to a database on the MDR CRS schemes. • Ensure the inclusion of non-monetary penalties for non-compliance to the MDR CRS rules • Provide monetary rewards combined with increased protection to informants (whistle-blowers)	• Develop a UN tax convention	
CbC reporting data	• Require MNEs to publish their CbCR reports on their webpages, or • Remove impediments to local filing of CbC information, • Remove restrictions on the use of CbC information beyond the purpose of risk assessment • Lower the threshold for CbC reporting	• Develop a UN tax convention	
Accounting records	• Obligate all types of companies to keep accounting records • Require these data to be submitted to a government authority • Make all accounting records accessible online at no or a minimal cost in an open data format	• Develop a UN tax convention	