THE MULTILATERAL CONVENTION ON MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS AND THE PATH TO THE OECD-STANDARD ON AUTOMATIC EXCHANGE OF INFORMATION

Dr. Achim Pross
Head of International Cooperation and Tax Administration Division, OECD

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Overview

Multilateral Convention
- Background
- Content

Automatic Exchange Standard
- Past
- Present
- Future
“We endorse the Common Reporting Standard for automatic exchange of tax information on a reciprocal basis and will work with all relevant parties, including our financial institutions, to detail our implementation plan at our September meeting. In parallel, we expect to begin to exchange information automatically on tax matters among G20 members by the end of 2015. We call for the early adoption of the standard by those jurisdictions that are able to do so. We call on all financial centres to match our commitments. We urge all jurisdictions that have not yet complied with the existing standard for exchange of information on request to do so and sign the Multilateral Convention on Mutual Administrative Assistance in Tax Matters without further delay.”
MULTILATERAL CONVENTION ON MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS
BACKGROUND
Multilateral Convention

Background

OECD and the Council of Europe jointly develop the convention.
Open for signature by members of both organisations.

G20 call for a multilateral instrument open to all countries.

2010 Protocol brings the Convention in line with the internationally agreed standard and opens it for signature to all countries.

Amended convention enters into force.

64 signatories, 34 countries have ratified, 7 countries have signed letters of intention to sign.

Liechtenstein signs multilateral convention.

Nov ’13
Feb ’14
Jun ’11
‘10
‘09
‘88
Multilateral Convention Signatories

- 64 signatories: all G20 countries, all BRIICS, almost all OECD countries, major financial centres and a growing number of developing countries.

Albania, Andorra, Argentina, Australia, Austria, Azerbaijan, Belgium, Belize, Brazil, Canada, Chile, China, Colombia, Costa Rica, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Ghana, Greece, Guatemala, Hungary, Iceland, India, Indonesia, Ireland, Italy, Japan, Kazakhstan, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Moldova, Morocco, Netherlands, New Zealand, Nigeria, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Saudi Arabia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, Ukraine, United Kingdom, and United States.

- 13 jurisdictions are also covered by the Convention through territorial extension by:
  - Denmark: the Faroe Islands and Greenland;
  - The Netherlands: Aruba, Curaçao and Sint Maarten; and
  - The United Kingdom: Isle of Man (Crown Dependency) and Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Gibraltar, Montserrat, and Turks & Caicos (Overseas Territories).
Multilateral Convention
Signatories
CONTENT
Multilateral Convention
Content

- Taxes covered
- Forms of assistance and limitations to provide assistance
- Confidentiality
- Relationship with other instruments
- Coordinating Body
- Territorial application / entry into force / date of effect
- Reservations
Multilateral Convention

Content

• Taxes covered
  – All forms of compulsory payments to the general government except for customs duties. It applies to taxes on income, profits, capital gains, and net wealth levied at the central government level. It also covers local taxes, compulsory social security contributions, estate, inheritance or gift taxes, etc.

• Assistance covered
  – Exchange of information (including on request, spontaneous and automatic), simultaneous tax examinations, tax examinations abroad, assistance in recovery and measures of conservancy, and the service of documents. It can also facilitate joint audits.
• Rights and safeguards
  – Generally, rights and safeguards under national law remain applicable and the Convention expressly recognises a number of limitations to the obligation to provide assistance.
• Confidentiality
  – Very high standards of confidentiality and protection of personal data.
• Co-ordinating Body
  – Made up of representatives of each of the Parties, it monitors the implementation of the Convention. States which have signed but not yet ratified the Convention also participate in the meetings of the Co-ordinating Body as observers.
Multilateral Convention
Content

• Flexibility
  – The Convention lists reservations which States may make regarding the taxes covered (e.g. local taxes) and the type of assistance to be provided (e.g. assistance in collection). Reservations can be made at the time of signature or when depositing the instrument of ratification and they can also be made or withdrawn at a later stage. Certain forms of co-operation such as automatic exchange of information and tax examinations abroad require the previous consent of the relevant Parties.
### Multilateral Convention

**Benefits**

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<th><strong>Wide scope</strong></th>
<th>Range of taxes covered, extensive forms of cooperation</th>
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<td><strong>Multilateral instrument</strong></td>
<td>Single legal basis for multi-country cooperation</td>
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<td><strong>Express provisions for</strong></td>
<td>Spontaneous and automatic exchange of information</td>
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<td>Simultaneous tax examination and presence of foreign tax officials</td>
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<td>Use of information received for non-tax purposes under certain conditions</td>
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<td><strong>Saves resources</strong></td>
<td>In terms of negotiations and ratifications</td>
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<td><strong>Coordinating Body</strong></td>
<td>Ensures consistent application of the Convention</td>
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The Convention specifically permits automatic exchange of information under Art 6.

Requires a bilateral or multilateral agreement between the countries.
AUTOMATIC EXCHANGE STANDARD
PAST
G20 Leader’s Declaration, St Petersburg Sep ‘13

Support to **OECD/G20 work** on:
- Presenting standard by February 2014; and
- Finalizing technical modalities by mid-2014.

Expects to **begin AEOI** among G20 members by the end of 2015.

Asked the GFTEI to establish mechanism to monitor and **review implementation** of standard.

Called on the OECD, the GFTEI and others to allow **developing countries** overcome obstacles to participation in the standard, and to assist them in meeting the standard.
Automatic exchange standard
Development of AEOI

- ‘81: Design of the Paper Standard Format
- ‘92: Standard Magnetic Format (SMF) adopted
- ‘03: Approval of EU Savings Directive which builds upon SMF
- ‘05: Standard Transmission Format (STF) adopted
- ‘10: EU Savings Directive updates to STF
- ‘11-14: Creation of TRACE Group
- US enacts FATCA
- Next slide...
Automatic exchange standard
Development of AEOI

CFA focuses more on AEOI

Jan ‘11:
- CFA focuses more on AEOI

Jun ‘12:
- In Los Cabos, G20 welcomes OECD report on AEOI

Jul ‘12:
- Model 1 IGA includes commitment to develop a common model

Nov ‘12:
- G5 pilot (early adopters)

Apr ‘13:
- G20 support AEOI

Jun ‘13:
- OECD report to G8 on common model for AEOI

Sep ‘13:
- G20 endorse AEOI as new global standard

Jan ‘14:
- CFA approves Common Reporting Standard

Ongoing business consultation
Automatic exchange standard
Legal basis

• Exchange of information provision of a double taxation convention based on Article 26 of the OECD or UN Model Convention,

• Article 6 of the Convention on Mutual Administrative Assistance in Tax Matters, or

• For EU member countries, domestic laws implementing EU directives which provide for automatic exchange.
PRESENT
Automatic exchange standard
Basic approach

1. Model 1 IGA reporting
2. Model 1 IGA exchanges
3. Leveraging on Model 1 IGA implementation to develop standardised automatic exchange in a multilateral context
Automatic exchange standard
Basic approach - CRS + CAA = exchange standard

Account Holder → Bank → Country A
Country B → Bank

Reporting of information based on Common Reporting and Due Diligence Standard (CRS) implemented via domestic law

Automatic exchange of information based on MTC Article 26 or MAC, & Model CAA

Reporting of information based on Common Reporting and Due Diligence Standard (CRS) implemented via domestic law
To prevent taxpayers from circumventing the CRS, it is specifically designed with a broad scope across three dimensions:

**Broad scope of information reported:**
- Personal data: name, address, tax residence, TIN
- Financial data: account balance, all investment income (including sales proceeds)

**Broad scope of financial institutions required to report:**
- Banks, custodians, and other financial institutions (brokers, certain collective investment vehicles, and certain insurance companies)

**Broad scope of account holders subject to reporting:**
- Individuals
- Entities (including trusts and foundations)
- Controlling persons (i.e., beneficial owners) of entities
Automatic exchange standard
Due diligence procedure - Individuals

Individuals

Pre-existing accounts
- No de minimis threshold
- Lower Value Accounts: permanent residence address test based on documentary evidence or electronic indicia search
- Higher Value Accounts: enhanced due diligence procedures (paper record indicia search, actual knowledge test by the relationship manager)

New accounts
- Self-certification without de minimis threshold
Automatic exchange standard
Due diligence procedure - Entities

Entities

Pre-existing accounts
- No review for accounts below 250,000 USD
- Reportable person: available information (AML/KYC procedures), in certain cases self-certification
- Passive NFE and controlling persons: available information or self-certification

New accounts
- Same assessments as for pre-existing accounts, but no de minimis threshold & self-certification required to identify reportable persons
## Automatic exchange standard
### Main differences from FATCA

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<th>Individuals</th>
<th>Entities</th>
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<td>• Residence (not citizenship)</td>
<td>• Look-through for professionally managed investment entities in non-participating jurisdictions</td>
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<tr>
<td>• No thresholds</td>
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<tr>
<td>• Residence address test for pre-existing accounts building on EU Savings Directive</td>
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<td>• Simplified indicia search</td>
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### Low risk FIs and products

General exclusion for country specific low-risk reporting financial institutions and accounts
Automatic exchange standard

Next steps

- **Feb ‘14**: Presentation of CRS to G20
- **Mar ‘14**: 1st meeting of GF AEOI Group
- **Jun ‘14**: CFA approval of commentaries and other technical modalities
- **Sep ‘14**: Presentation of commentaries and other technical modalities to G20

Ongoing business consultation

*Liechtenstein participates both in OECD and GF work*
G5 launches pilot and commits to early adoption

12 European countries join the pilot

UK Crown dependencies and overseas territories join the pilot

Pilot extends beyond Europe as Mexico, Norway, and Australia join

G20 countries endorse

10 countries (including Liechtenstein) join on the occasion of the GFTEI

Now 42 countries have joined the pilot and it continues to expand

Automatic exchange standard
Next steps

**OECD**
- Finalise commentary, technical solutions working closely with stakeholders

**Global Forum**
- Establish mechanisms to monitor and review implementation of standard
- Work on developing country’ issues and assist them in meeting the standard

**Participating countries**
- Adopt CRS in domestic law
- Conclude CAA
- Consult and work with financial institutions on implementation
- Put in place IT and administrative process
- Ensure confidentiality of information
Automatic exchange standard

Any questions, please contact me

Achim.PROSS@oecd.org

Thank you!