

COOPERATION WITH AFRICA

Tax Transparency and Exchange of Information (EOI): Priorities for Africa

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Abstract

Illicit financial flows (IFFs) is one of the key contributing factors to lower tax revenues in developing countries. As most IFFs flows from African countries end up in financial institutions outside Africa, intergovernmental cooperation aiming at enhancing transparency and exchange of information (EOI) for tax purposes is a key ingredient of any solution to tackling international tax evasion. However, while the supply side of the EOI equation has improved over the years with over 70 jurisdictions having eliminated strict bank and ownership secrecy for EOI purposes, the African demand side of the equation remains problematic, with few African countries making requests and thus benefiting from the huge unexploited potential in the EOI tools and wide network. This policy brief proposes solutions whereby African countries could influence existing global standards on EOI and develop home-grown tax information sharing and transparency measures.

Challenge

The 2013 Report of the World Bank Group shows that in lower-income countries, tax revenues account for only approximately 10 to 14% of GDP, which is one-third below that collected by middle-income countries and significantly less than 20-30% of GDP raised in high-income countries (World Bank Group (2013)). In Africa, while the ratio varies according to the income level of each country, a significant proportion of countries fall under a lower-income bracket with figures below 15% of GDP which is commonly accepted as a minimum threshold to cover basic state functioning and services (IMF 2005). The ATAF's African Tax outlook (2017) reported that the average ratio of tax revenue to GDP was 18% in selected African countries in 2015. The low capacity of tax administrations to enforce tax laws and tackle illicit financial flows (IFFs) is a core reason for this problem.

One of the key contributing factors to lower tax revenues in developing countries is a high level of illicit financial flows (IFFs). These flows, which include international tax evasion, the laundering of proceeds from corruption, organised crime and bribery, create a significant barrier to effective domestic resource mobilisation (DRM). The amount lost annually by Africa through IFFs is estimated to exceed \$100 billion (ECA 2018). International tax evasion and aggressive tax avoidance constitute a major component of IFFs and is therefore a central target in any attempt to curtail IFFs (AU/ECA 2015).

Most illicit financial flows from African countries end up in financial institutions outside Africa. Therefore, intergovernmental cooperation aiming at enhancing transparency



and exchange of information for tax purposes is a key ingredient of any solution to tackling illicit financial flows. In particular, the implementation of the internationally agreed standards of tax transparency and EOI, the Exchange of information on request (EOIR) and the Automatic exchange of financial account information (AEOI) helps to bridge informational asymmetry between taxpayers and tax authorities. Furthermore, the availability of information to tax authorities has a deterrent effect by making the costs of evasion higher. This enhances the public belief in the fairness of the tax system and strengthens the motives for tax compliance.

However, while the supply side of the EOI equation has improved over the years with over 70 jurisdictions having eliminated strict bank and ownership secrecy for EOI purposes (including the British Virgin Islands, the Cayman Islands, Switzerland, and Panama), the African demand side of the equation remains problematic, with few African countries making requests and thus benefiting from the huge unexploited potential in the EOI tools and wide network. For example:

- India made 10 times as many EOI requests as the whole of Africa.
- The United Kingdom has made 1856 requests in 2016 alone, whereas the whole of the Africa Initiative members (Cameroon, Burkina Faso, Ghana, Kenya, Liberia, Morocco, Nigeria and Uganda) have made 79 requests in the first three years of the Africa Initiative (2015-17). These figures however should be seen in a broader context: many African countries made no request prior to joining the Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum).

As many significant financial centres in the world have signed up to the standards (with the notable exception of the US) they are expected to provide information to countries that also meet the standards and are part of the Global Forum. African countries could be massive net recipients of such information if they also reach these standards.

The use of the exchange of information on request and automatic exchange of tax information could create a wide scope of benefits to the Continent, if correctly used. In particular, it could give Africa access to the following benefits:

- Tax transparency: availability of reliable and up-to-date information within the jurisdiction on ownership (legal and beneficial), accounting records, banking information, and on account holders which may stimulate improvements or introduction of similar reporting for resident taxpayers.
- Effectiveness of tax administration: access of tax authorities to the



essential tax-relevant data by 1) eliminating incompatible restrictions, e.g. bank and other professional secrecy, often also for domestic purposes and 2) addressing potentially ineffective procedures, e.g. no sanctions

- Exchange of information: setting up a wide international framework for EOI, improving responsiveness and quality of requests, and setting up processes on access to and handling of sensitive information
- Digitalisation of tax administration: assessment of confidentiality and data safeguards brings benefits for the tax administration as a whole; handling AEOI data develops systems, skills and expertise and may improve the quality and handling of domestically available tax data
- Taxpayers' discipline: third-party reporting has a proven record of enhancing tax compliance through the threat of prosecution for fraud.

Three types of information are at heart of the EOIR standard: 1) Legal and beneficial ownership information, 2), accounting records and 3) bank information. Without access to this type of information countries cannot effectively enforce their own laws or provide, on request, 'foreseeably relevant information' for the administration or enforcement of the domestic tax laws of another tax authority.

Examples of tax gains generated through the implementation of the EOIR standard include:

- Uganda which has set-up its exchange of information unit in March 2014. Since its inception, the unit has sent over 30 information requests and responded to several requests. Uganda recovered over \$9 million in taxes in 2015/2016.
- Burkina Faso set-up an exchange of information unit in 2015. The first EOI requests were sent in 2017 (7 requests). As of September 2017, the tax administration's estimation is to recover over 2.4 million US dollars in taxes from its first requests sent.
- South Africa collected \$62.24 million through a settlement from one taxpayer in 2013. The exchange of information played a determining role in the collection of tax in this case.

The AEOI requires financial institutions to automatically disclose financial account information of non-residents to their tax authorities, who in turn exchange this information with the tax authorities of the account holders' country of residence



under the globally-agreed ‘common reporting standard’ (CRS). This substantially improves the ability of tax authorities to detect tax evasion, including in cases where there was no initial indication of non-compliance.

The automatic exchange of financial account information, which commenced in September 2017, has already proved to be effective in generating tax revenues:

- India, prior to its first automatic exchange of financial account information in 2017, launched an Income Declaration Scheme in 2016 which persuaded 65,000 taxpayers to disclose assets of \$11 billion not previously declared. The voluntary disclosure programme started on 1 June 2016 and ended on 30 September 2016. A total of \$6 billion in tax was recovered.
- Indonesia has recently recovered more than \$10 billion in tax under an amnesty scheme developed prior to its introduction of the CRS. Almost one million taxpayers disclosed \$366 billion of previously undisclosed assets.
- Brazil reported that the total value of previously undeclared taxable foreign income disclosed during the fiscal year through a legislative or administrative disclosure mechanism or practice has reached nearly R\$ 170 billion in 2016. The total tax, interest and penalties collected as a result come to almost R\$ 47 billion (approximately €12 billion).
- France launched a voluntary disclosure programme in 2013, prior to implementing the AEOI Standard. As at September 2017, more than 50,000 taxpayers voluntarily disclosed €32 billion in hidden assets and €7.8 billion in tax were recovered.

This begs the question: why are African countries not fully participating in these exchange of information global initiatives?

A. Some of the challenges African revenue administrations are facing with regard to EOIR include:

- Treaty networks and exchange of information networks are limited for many African jurisdictions which result in low numbers of EOIR
- Personnel trained in EOIR in revenue administrations are reallocated to different business divisions – resulting in a loss of skills to other departments
- Marketing EOIR as not only as a tool for increased compliance but also as a money generation tool for revenue administrations remains difficult given



the challenge to isolate the effects of EOIR on additional revenues from other contributing factors

- Some jurisdictions require several months to reply to requests from developing countries
- Convincing revenue administrations that EOIR is not only limited to transfer pricing divisions but it is a support function for the entire revenue administration; and
- Lack of willingness from policy makers to introduce EOIR in a jurisdiction as the scarce resources are mainly focused on BEPS and Transfer Pricing while EOI is largely ignored. In some revenue administrations, staff in the EOI unit has been reallocated to different units. In other jurisdictions, there is no will to implement an EOI unit.

B. The challenges for Africa to benefit from automatic exchange of tax information can be summarized as follows:

- Failure by African political leaders to prioritize the investment need to make the automatic exchange of tax information a reality
- Data security requirements are onerous and can be costly depending on a revenue administration's existing information technology architecture. Assessment of confidentiality and data safeguards are extensive and the revenue administrations must demonstrate physical security in all parts of the organisation i.e. biometrics or access control for all staff in the revenue administration. In addition, they must implement security software, encryption tools, and policies and procedures that are conform to ISO standards.
- Financial institutions are required to automatically disclose financial account information of non-residents to tax administrations, which in turn exchange this information with the tax administrations of the account holders' country of residence as this takes place on a reciprocal basis. This is a cumbersome process in the context of limited tax administrative capacity in Africa.
- Technical expertise to assist revenue administrations to implement the AEOI lifecycle is scarce;
- Cooperation between stakeholders - including the financial industry - is required and requires skilled personnel from the revenue administration to facilitate such working relationships;



- Information received under AEOI must be effectively and efficiently used otherwise resources of other jurisdictions are wasted when AEOI information remains unused. Therefore, a revenue administration must also invest in its risk identification systems and auditing skills to ensure information is effectively used.
- Alongside these costs and capacity limitations, the benefits to African countries of implementing the AEOI standard developed by the Global Forum may be unclear. While there have been successes, African countries cannot be certain of the size of accounts that would be reported on under the Global Forum's AEOI standard in participating countries. Moreover, a number of concerns have been raised about loopholes in the standard that would enable individuals to avoid their accounts being captured in information reported under the AEOI standard (TJN 2015). Finally, information obtained through AEOI can only be used for tax administration purposes, and not shared with other law enforcement agencies, reducing the value of such information.

Many of these problems may stem from the fact that the AEOI standard implemented by the Global Forum were not developed in consultation with African countries. As a result, the standards may not reflect the concerns, priorities and capacities of African countries. Though a number of African countries have signed up to this standard, they did not have the opportunity to influence its design; rather, they were confronted with a *fait accompli*, with the option to take or leave a standard that had already been developed. As a result, it may not be surprising that African countries make limited use of such a standard. In order to increase the use of these processes, non-African countries may need to consider allowing flexibilities for African countries regarding the standards, given their capacities, and/or to modify the standards or their implementation or to complement them with additional measures in order to take into account Africa's needs.

Proposal

We ask African and G20 leaders to take urgent and decisive action to facilitate greater effective use of exchange of information on request and automatic exchange of tax information by African countries.

A. African countries should be given the opportunity to influence global standards on exchange of tax information, and should seize this opportunity



Countries and territories involved in the exchange of tax information should be open to discuss changes to the system that take into account the capacities and concerns of African and other developing countries

The mandate of the Global Forum is to facilitate the implementation of the existing standards on EOIR and AEOI, but further discussions in consultation with African countries about the issues of tax information sharing must take place. As a result, both African and G20 countries should ensure that:

- Issues of how to design a system for tax information sharing that serves the needs of African and other developing countries are discussed in a fully inclusive way, that considers adapting measures that are fit for purpose beyond merely focusing on the implementation of existing International standards defined largely apart from African countries. This could be achieved through ATAF with the political backing of the African Union (AU) and the United Nations Economic Commission for Africa (UNECA) where awareness will be raised on the policy, legal and administrative interventions and cooperation required to effect tax transparency and exchange of information on the continent.
- Business models are discussed and adopted by African countries through ATAF, the AU and UNECA with the aim of reducing the cost of implementing exchange of information on request and automatic exchange of tax information in Africa. In practice, the burden of implementation of tax transparency and exchange of information on the continent need not to be high, lengthy and cumbersome.
 - o Complementary to this, international efforts on the exchange of tax information should seek to address concerns related to the ability to avoid inclusion in AEOI (e.g. loopholes in CRS).
 - o To the extent practicable, countries involved in the automatic exchange of tax information should consider providing information on a non-reciprocal basis, at least initially, to countries with limited capacities to collect and compile the information from their financial institutions.
- Efforts to increase transparency around the potential benefits of the automatic exchange of information, by making use of the data collection that has already started under AEOI, can better allow countries to assess the costs and benefits of joining (increased compliance, increased number of audits conducted, improvement in case selection systems, modernised tax administrations, etc.)

The AU should create a space at the highest level where tax matters are debated and decisions made for implementation at country level

The pressing need to eradicate poverty and stimulate economic growth makes tax-related modernisation a first-order priority for Africa. The need for tackling IFFs in Africa is further magnified by its large amount of natural resources, which opens many possibilities for abuse. In addition, Africa and other “developing countries should be able to reap the benefits of a more transparent international tax system, and to enhance their revenue capacity, as mobilizing domestic resources is critical to financing development” (G20 2013 St. Petersburg Summit).

Following up on the Heads of State and Government of the AU declaration of their commitment to end the IFFs from Africa and implement the findings and recommendations of the High-Level Panel¹, the AU should to establish a continental tax body where African tax-related standards in policy, legislation and administration can be established, activities reported to and adopted by Heads of States, and recommendations made for implementation by governments.

The AU should strengthen the political willingness to do more and adopt a firm commitment to prioritise improving tax transparency and information sharing in African countries and engaging beyond the continent to achieve tax information sharing agreements with other countries that are better suited to Africa’s capacities and interests

Africa’s interests are more likely to be reflected in global approaches to the sharing of a tax information if the continent can speak with one voice. As such:

- The African Union should host discussions to coordinate a common African position on tax transparency and information sharing. African bodies, such as the Regional Economic Communities, the United Nation Economic Commission for Africa, the African Development Bank and regional tax organisations, such as ATAF and CREDAF, can make inputs to this process.
- At the same time as pursuing an approach to tax information sharing at the global level that respects its interests, Africa can also benefit from already putting in place measures to benefit from tax information sharing, both at the global and intra-African levels. In this regard, the AU can host discussions among African countries on implementing the legal measures, IT infrastructure and human capacities to make the most of opportunities for

¹ The Assembly Special Declaration on Illicit Financial Flows, adopted by the Heads of State and Government of the African Union at the 24th Ordinary Session of the AU Assembly in Addis Ababa, Ethiopia, 30-31 January 2015.



tax information sharing. This could include:

- o Signing and ratify the multilateral Mutual Administrative Assistance Convention (MAC)
 - o Signing and ratify the ATAF's Agreement on Mutual Assistance in Tax Matters (AMATM) which allows for the exchange of information, sharing of expertise, joint audits and investigations/industry wide exchange, and mutual administrative assistance among African countries
 - o Joining the Global Forum and making a commitment to effectively implement the EOIR standard, including the beneficial ownership requirements, by undergoing a peer review and benefitting from technical assistance, while lobbying for changes to the standard to the extent that these are called for in the common African position on tax information sharing
 - o Commencing with EOIR at the soonest since this will create relationships and demonstrate the ability to exchange information
 - o Introducing AEOI in parallel to the EOIR process by making use of a phased approach to ensure no more time is lost to revenue administrations in their search for improved voluntary compliance and improved revenue collection.
- The AU can also seek to support a comprehensive agreement on intra-African tax information sharing, respecting the priorities of African countries, building on ATAF's Agreement on Mutual Assistance in Tax Matters (AMATM) and the experience of the pilot project of automatic exchange of tax information between African countries that is being supported by ATAF.

B. Provide support to African efforts to implement tax information sharing and transparency measures

G20 leaders should support African efforts to share tax information and improve tax transparency

The above suggestions for Africa to articulate a common position on tax information sharing, and to pursue its own approach at the intra-African level, will require resources. G20 countries may assist by providing financial and technical support to these processes. As part of this and/or in addition, individual skills within revenue administrations must be developed through an array of different programmes starting



with training seminars and activities designed to sensitise tax administrations and officials about the importance of tax transparency and encourage the use of EOI to tackle cross-border tax evasion. Furthermore, to stem the tide of illicit flows from Africa it is imperative to develop skills in investigators able to interrogate and analyse data once received.

In addition, EOI manuals, toolkits, templates, databases that make the EOIR and AEOI standards more accessible must be developed.



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