

IFA 2020 Cancun Congress: Subject 2

Exchange of Information: Issues, use and Collaboration and attorney client privilege

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Introduction

The aim of this report is to provide an update of the issues arisen as a result of the implementation of the goals and strategies of the Global Forum on Transparency and Exchange of Information (Global Forum), the OECD BEPS Project, and other interrelated initiatives in the field of Exchange of Information (EOI), which will be further enumerated later in this report. The enforcement of the attorney client privilege will be further investigated within the context of these international bilateral and multilateral tax obligations, and domestic tax legislation.

There are several dimensions to exchange of information within the enumerated documents. Within the context of BEPS, particular attention will be devoted to EOI occurring within the context of:

- (i) BEPS Action 5 – exchange of Information of Tax Rulings; and
- (ii) BEPS Action 8-13 – Country by Country Reporting (CBCR)

Outside BEPS, the following frameworks for exchange of information are worthy of mention:

- (i) FATCA
- (ii) Common Reporting Standard (CRS)
- (iii) The Convention on Mutual Administrative Assistance in Tax Matters (CMAATM)
- (iv) EU based initiatives
- (v) Bilateral and Multilateral Tax Information Exchange Agreements (TIEAs)

Within the framework of the international agreements and frameworks cited above, the following processes and cooperative approaches should be covered, if applicable:

- (a) Joint and simultaneous tax audits;
- (b) Reporting of beneficial ownership information/beneficial ownership registries
- (c) Financial reporting obligations assumed under the context of tax crime investigation – such as frameworks aimed to curb Illicit Financial Flows, corruption and the evasion of taxes.

The general reporters are particularly interested in investigating the challenges arising out of this new expanded framework for EOI. The IFA General Report of 2013 covered the main legal framework for exchange of information. Although some overlap will be inevitable, the authors would like to draw from the conclusions reported then, to derive new issues for consideration outside the basic framework. This report should focus on the challenges arising out of the expanded EOI framework, demonstrate positive and negative experiences, and report on the domestic and international case-law, whenever possible.

There is a strong pull for international and regional¹ cooperation under the G20. Therefore, experiences and initiatives involving sharing of technology, data and resources between developed and developing countries under EOI frameworks will be welcomed in this report.

The digitalization of business relations, the expansion of blockchain and the popularization of the use of digital currencies are issues which are likely to cause profound impact in the international tax frameworks for exchange of information mentioned above. Not only do these new technologies escape the traditional controls and regulations (i.e. digital currency platforms and traders are not required to disclose financial information regarding the owners of cryptocurrencies), they might also incite illicit financial flows and other crimes. The interaction between the traditional government regulated trading and financial structures and new digital finance markets should be investigated, particularly in the jurisdictions which are more overt to these types of businesses (i.e. Singapore, Switzerland and others). Jurisdictions who have opposed and even forbidden the operation of these services (i.e. China and others) should also provide remarks on the impact of those measures for that particular jurisdiction.

It is expected that by the 2020 IFA Congress there will have been a great deal of change in the fields of exchange of information, country by country reporting (CBCR), and digital currency. The first country files are expected to be exchanged in June 2018, and the MLI enters into force in July 2018, inciting domestic implementation of international rules and standards, and greater scrutiny over the effectiveness and efficiency of these measures.

Furthermore, in 2018 only 43 jurisdictions, out of 192 jurisdictions around the world, will have adhered to the new AEOI introduced by the OECD in 2016, being most of them developed, EU or OECD Member States. A total of 53 jurisdictions,² most developing countries - many of them small island and jurisdictions normally referred to as tax haven jurisdictions - will only implement AEOI from 2019, providing little time to report on such developments. Reports on the implementation of EOI standards in those jurisdictions will be most welcome, particularly from the Central American islands (Caribbean) and

¹ Regional experiences include South-south cooperation, initiatives geared towards the Global South, cooperation within the Asian and African regions, as well as cooperation within smaller blocks, such as the ASEAN, CIAT, ATAF and others.

² Andorra, Antigua and Barbuda, Aruba, Australia, Austria, Azerbaijan***, The Bahamas, Bahrain, Barbados, Belize, Brazil, Brunei Darussalam, Canada, Chile, China, Cook Islands, Costa Rica, Curacao, Dominica, Ghana***, Greenland, Grenada, Hong Kong (China), Indonesia, Israel, Japan, Kuwait, Lebanon, Macau (China), Malaysia, Marshall Islands, Mauritius, Monaco, Nauru, New Zealand, Niue, Pakistan***, Panama, Qatar, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Saudi Arabia, Singapore, Sint Maarten, Switzerland, Trinidad and Tobago, Turkey, United Arab Emirates, Uruguay, Vanuatu.

the Middle East. Joint reports are encouraged from small island States, covering the regional implementation of legislation.

Furthermore, 43 jurisdictions are scheduled to only undergo their first automatic exchange of information after 2020, and therefore this development will not be captured by this report.

It is hoped, but not expected for the attorney client protection will have evolved to accompany these changes.

Prior Reports on Related Topics

Exchange of Information has been addressed in previous Congresses, most recently in 2013 (Exchange of information and cross-border cooperation between tax authorities). Because exchange of information is an issue that correlates with many other topics, it has, of course, been delved with in a number of IFA General Reports in the context of dispute resolution, transfer pricing, the BEPS Action Plan and other topics of relevance. Of particular interest to the topic at hand is the prior coverage on taxpayers rights in 2015 (The practical protection of taxpayers' fundamental rights) and BEPS issues in 2017 (Assessing BEPS: origins, standards, and responses) where country by country reporting was a topic of discussion.

This client-attorney privilege was briefly covered in the General Report of 2013 (Exchange of information and cross-border cooperation between tax authorities) and of 2015 (The practical protection of taxpayers' fundamental rights).

Structure of the Report

The report will be divided into the following sections: (1) Instruments and processes of international application; (2) incorporation of the instruments and processes into domestic legislation; (3) impacts of digitalization on the established frameworks (interaction with cryptocurrency trading, data protection, technology infrastructure, training and expectation of revenue generation; and (iv) Attorney client privilege.

An extended outline will follow on a later date, once branch reporters are announced.