

## Automatic Exchange of Information Agreements (AEOIs)

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**Abstract:** This paper examines the structure and implementation of the Automatic Exchange of Information Agreement, popularly known as an AEOI. The OECD introduced the AEOI mechanism in 2014 to eliminate the practice of tax evasion. A comprehensive list of countries have already adopted this mechanism with their own implementation schemes. An example of a successfully implemented AEOI is the Switzerland-India AEOI. The paper weighs the benefits and costs of this mechanism. In the case of an AEOI, one of the good outcomes is the strengthening of the global economy.

### 1. Background to an Automatic Exchange of Information Agreement

An Automatic Exchange of Information Agreement (AEOI) provides for the exchange of non-resident financial account information with tax authorities in the account holder's country of residence. The aim of the agreement is to reduce the possibility of tax evasion. Participating jurisdictions that implement an AEOI send and receive pre-agreed information each year, without having to send a specific request repeatedly. An AEOI enables governments to recover tax revenue lost to non-compliant taxpayers, and strengthens international efforts to increase transparency, co-operation and accountability among financial institutions and tax administrations. An AEOI generates a secondary benefit. It increases voluntary disclosures of concealed assets by encouraging taxpayers to repost all relevant information<sup>2</sup>.

### 2. Rationale Behind an AEOI

The entire process required for successful implementation of an AEOI between countries is intricate and demands compliance and confidentiality from countries involved. Nobel Laureate economist, Joseph Stiglitz in a video for the 'World Economic Forum', explains how tax avoidance damages society and what countries can do to stop this practice<sup>3</sup>. According to Stiglitz, most companies across the world avoid their most important social responsibility: payment of taxes.

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<sup>2</sup> Official OECD portal for AEOI:  
<http://www.oecd.org/tax/transparency/automaticexchangeofinformation.htm>

<sup>3</sup> Speech by Nobel laureate Joseph Stiglitz, World Economic Forum-  
<https://m.facebook.com/worldeconomicforum/videos/nobel-laureate-economist-joseph-stiglitz-explains-how-companies-that-avoid-tax-d/482133225814031/>

Many multinational corporations artificially shift profits to countries with low tax rates, to avoid paying higher taxes in the country where the profits are generated. This tax shortfall costs governments around the world an estimated \$240 billion every year. It makes sense to move to a standard global tax rate of a minimum percentage between 25%-30% tax on profits. For Stiglitz, it is especially important for tax havens to correct this questionable status. Developing countries lose more to tax havens than they gain in foreign aid. This fact is precisely the reason the OECD, in 2014, came up with the concept of the AEOI for exchange of financial information between countries<sup>4</sup>.

The Global Forum agreed to monitor and review the implementation of the AEOI Standards<sup>5</sup> and in 2014, as a first step, launched a commitment process whereby all members, aside from developing countries that do not host a financial centre, were asked to commit to:

1. Implement the AEOI Standard.
2. Commence exchanges in 2017 or 2018.
3. Exchange information with all “Interested Appropriate Partners<sup>6</sup>.”

Soon after, the Global Forum also put in place a process whereby a jurisdiction not previously asked to commit to implement the AEOI Standard but seen as relevant for AEOI, is asked to commit to implement the AEOI Standard according to particular timelines and to exchange information with all Interested Appropriate Partners.

The new members, except for developing countries without a financial centre, were also asked to adhere to such commitments. Finally, jurisdictions who were not specifically asked to commit can also make such a commitment based on their discretion. Together all these constitute the “AEOI commitments”.

In order to ensure consistency in implementing the commitments the following sources provide further assistance :

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<sup>4</sup> “Here's how companies can build a better economy”, by Joseph Stiglitz, World Economic Forum, February 2020-<https://www.weforum.org/agenda/2020/02/davos-outcomes-economic-changes-progress>

<sup>5</sup> Official OECD portal for online support for implementation of AEOIs:  
<http://www.oecd.org/tax/automatic-exchange/>

<sup>6</sup> An Interested Appropriate Partner is considered to be a jurisdiction that is interested in receiving information from another jurisdiction and that meets the requirements in relation to confidentiality and data safeguards prescribed by OECD.

1. The AEOI Implementation Handbook<sup>7</sup> provides further explanations and illustrative guidance in relation to the implementation of the AEOI Standard.
2. The Common Reporting Standard (CRS)<sup>8</sup> FAQs<sup>9</sup> which provide answers to frequently asked questions in relation to the implementation of the AEOI Standard.
3. The Common Transmission System (CTS) File Preparation and Encryption User Guide in cases where transmissions are conducted using the CTS.

### 3. Ethics Analysis

#### 3.1 Method Used by Participating Members

By examining the method involved in successful implementation of an AEOI, it helps gain insight to other issues that may be involved, for example, safety issues, privacy matters, transition process, strength of regulatory framework, possibilities of misuse of power and status etc.

The OECD lists three core requirements<sup>10</sup> for implementation of an AEOI framework, as follows:

Core Requirement 1: Jurisdictions should ensure all Reporting Financial Institutions apply due diligence procedures which are in accordance with the CRS<sup>11</sup> to review the Financial Accounts they maintain, and then collect and report the information required by the CRS:

- Jurisdictions should have a domestic legislative framework in place that requires all Reporting Financial Institutions to conduct the due diligence

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<sup>7</sup> Standard for Automatic Exchange of Financial Information in Tax Matters , Implementation handbook, second edition, OECD 2018 : <https://www.oecd.org/tax/exchange-of-tax-information/implementation-handbook-standard-for-automatic-exchange-of-financial-information-in-tax-matters.pdf>

<sup>8</sup> Provides the due diligence and reporting requirements, as well as requirements with respect to the effective implementation of the CRS, that a jurisdiction implementing the AEOI Standard must have in place to ensure that their Reporting Financial Institutions review the Financial Accounts they hold and collect and report the information specified;

<sup>9</sup> OECD, CRS-related Frequently Asked Questions, February 2019: <http://www.oecd.org/tax/automatic-exchange/common-reporting-standard/CRS-related-FAQs.pdf>

<sup>10</sup> Global Forum on Transparency and Exchange of Information for tax purposes, The framework for the full AEOI reviews: Terms of reference, OECD 2018- <https://www.oecd.org/tax/transparency/AEOI-terms-of-reference.pdf>

<sup>11</sup> More information on “Common Reporting Standard” on the official AEOI portal by OECD- <http://www.oecd.org/tax/automatic-exchange/common-reporting-standard/>

and reporting procedures in the CRS, and that provides for the effective implementation of the CRS requirements.

- Jurisdictions should have an administrative framework to ensure the effective implementation of the CRS and ensure that in practice Reporting Financial Institutions correctly implement the due diligence and reporting procedures mentioned in the CRS.

Core Requirement 2: Jurisdictions should exchange information with all Interested Appropriate Partners in accordance with the AEOI Standard, in a timely manner, ensuring the information is organised, prepared, validated and transmitted in accordance with the AEOI Standards:

They should have exchange relationships in effect with all Interested Appropriate Partners as committed to and that provide for the exchange of information in accordance with the Model Competent Authority Agreement<sup>12</sup> (Model CAA).

Core Requirement 3: Jurisdictions should keep the information exchanged confidential and properly safeguarded, and use it in accordance with the exchange agreement under which it was exchanged.

When members strictly adhere to these core requirements the purpose of implementing the AEOI (to detect tax avoidance) can be achieved. The recent AEOI signed between Switzerland and India can be considered as an example of a successful AEOI.

### **3.2 The Switzerland-India AEOI**

Switzerland is the most popular tax haven amongst Indians. The low tax rates and high secrecy maintained by the Swiss Government make it a favourable place for hiding money. In February 2012, Central Bureau of Investigation (CBI) director, A. P. Singh, at the inauguration of the first Interpol global programme on anti-corruption and asset recovery said: "It is estimated that around 500 billion USD of illegal money belonging to Indians is deposited in tax havens abroad. Largest depositors in Swiss Banks are also reported to be Indians"<sup>13</sup>.

According to a White Paper on Black Money in India, published in May 2012, the Swiss National Bank estimates the total amount of deposits made by Indian citizens, in all Swiss banks, at the end of 2010, at CHF 1.95 billion (INR 92.95

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<sup>12</sup> Provides for the model international legal framework for the automatic exchange of information between jurisdictions, including aspects in relation to keeping the information confidential and properly safeguarded.

<sup>13</sup> "Black money: Indians have stashed over 500 billion in banks abroad", TIMES OF INDIA, 13 February, 2012- <https://timesofindia.indiatimes.com/india/Black-money-Indians-have-stashed-over-500bn-in-banks-abroad-says-CBI/articleshow/11871624.cms>

billion, 2.1 billion USD)<sup>14</sup>. The Swiss Ministry of External Affairs has confirmed these figures upon request for information by the Indian Ministry of External Affairs. In light of such incidents, on November 22, 2016, Switzerland and India signed a Joint Declaration on the introduction of an Automatic Exchange of Information (AEOI) concerned with the mutual exchange of tax related information. The joint declaration was signed by Mr. Shushil Chandra, Chairman, Central Board of Direct Taxes, India and Mr. Gilles Roduit, Deputy Chief of Mission, Swiss Embassy in New Delhi. With the signing of this AEOI, India will start receiving, on an automatic basis, information on accounts held by Indian residents in Switzerland from September 2019 for the 2018 calendar year and subsequent years thereafter<sup>15</sup>.

This exchange of information was agreed upon under the Common Reporting Standard (CRS), the global reporting standard for this form of information exchange. The CRS was developed by the Organisation for Economic Cooperation and Development (OECD). It covers areas such as confidentiality rules and data safeguards<sup>16</sup>.

India has already received the first tranche of details about financial accounts of its citizens with Swiss bank accounts. This is an important milestone in the fight against black money stashed abroad. The details about the defaults and quantum of black money remain confidential and shall continue to remain so. The next exchange is set to take place in September 2020<sup>17</sup>.

#### **4. Possible Shortcomings of AEOIs**

##### **I. Cost of Implementation**

The intricate nature of the new global AEOI architecture, with the CRS at the heart of it, may result in burdening tax authorities, which are required to collect a massive load of relevant information from local financial intermediaries, as well as to exchange this information, largely in a reciprocal manner, with their foreign counterparts. In this kind of a situation which involves comprehensive usage of information transmitted from third party intermediaries to the tax authorities, the success largely depends on the quality of systems in place for electronic reporting

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<sup>14</sup> “White paper on black money likely to be tabled in Budget Session”, The Hindu Business Line, 13 March, 2012- <https://www.thehindubusinessline.com/economy/white-paper-on-black-money-likely-to-be-tabled-in-budget-session/article23068535.ece>

<sup>15</sup> “Switzerland and India sign joint declaration on introduction of AEOI”, Embassy of India to Switzerland, 22 November, 2016- <https://www.indembassybern.gov.in/coi.php?id=AEOI>

<sup>16</sup> “Automatic Exchange of Information (AEOI) Programme”, Civils Daily News, 8 October, 2019- <https://www.civildaily.com/news/automatic-exchange-of-information-aeoi-programme/>

<sup>17</sup> “India receives first tranche of Swiss account details of its residents”, India Today, 7 October, 2019- <https://www.indiatoday.in/india/story/india-receives-first-tranche-swiss-account-details-residents-1606955-2019-10-07>

and transmission of data. Doubts have been expressed in the literature about the capacity of tax authorities, especially developing countries' potential to capitalise on the AEOI developments due to institutional and/or technical constraints, posing an added burden on already limited resources<sup>18</sup>.

In the UK, KPMG estimates compliance will cost approximately 125 million USD for global banks to effectively implement the systemic technology solutions and the complex and costly customer outreach required under the CRS<sup>19</sup>. It is yet to be analysed whether AEOIs and the CRS mechanisms are cost-effective. Before adopting new measures, policymakers should conduct a detailed analysis of the expected compliance costs<sup>20</sup>.

## II. Jurisdiction Issues

One major drawback of the CRS system lies in determining the residency of the account holder. Individuals may escape the CRS mechanism by tricking the financial institution where they actually hold an account, into believing that they are a resident in a completely different jurisdiction<sup>21</sup>. In this manner, an individual may keep living and working in their actual country of residence, while their account information may be sent to the “wrong” jurisdiction. This risk is considerably increased if the country where an individual is “falsely” claiming to be resident is not participating in the CRS or if it has chosen voluntary secrecy (to send, but not to receive information from other countries). In either case, the account holder will become a non-reportable person. In other words, it is not that their information will be sent to the “wrong” country, but rather that their information will not even be reported at all<sup>22</sup>.

Some EU countries offer residency and/or citizenship by investment schemes: Cyprus, Ireland, Malta, Bulgaria, Greece, Italy, Netherlands, Portugal, Austria,

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<sup>18</sup> “Effective international information exchange as a key element of modern tax systems: promises and pitfalls of the OECD’s common reporting standard”, Public Sector Economy Journal, Volume 41, Published on 15 June, 2017- [http://www.pse-journal.hr/en/archive/effective-international-information-exchange-as-a-key-element-of-modern-tax-systems-promises-and-pitfalls-of-the-oecd-s-common-reporting-standard\\_1460/](http://www.pse-journal.hr/en/archive/effective-international-information-exchange-as-a-key-element-of-modern-tax-systems-promises-and-pitfalls-of-the-oecd-s-common-reporting-standard_1460/)

<sup>19</sup> “The challenges and complexities of AEOI implementation”, KPMG perspectives, Business Mirror, 1 May, 2016- <https://businessmirror.com.ph/2016/05/01/the-challenges-and-complexities-of-aeoi-implementation/>

<sup>20</sup> “Tax Evasion and Incomplete Tax Transparency”, Noam Noked, Assistant Professor, Faculty of Law, The Chinese University of Hong Kong, Hong Kong, Published on 23 August, 2018- [https://res.mdpi.com/d\\_attachment/laws/laws-07-00031/article\\_deploy/laws-07-00031-v2.pdf](https://res.mdpi.com/d_attachment/laws/laws-07-00031/article_deploy/laws-07-00031-v2.pdf)

<sup>21</sup> Wherever the account holder declared to be resident using the acquired passport or residency, and utility bill if necessary.

<sup>22</sup> “Reporting taxation: Analysing loopholes in the EU’s automatic exchange of information and how to close them”, Andres Knobel, A REPORT COMMISSIONED BY THE GREENS/EFA GROUP IN THE EUROPEAN PARLIAMENT, Published on : 15 October, 2018- <http://extranet.greens-efa-service.eu/public/media/file/1/5729>



Latvia and Spain. Other jurisdictions related to the EU also offer these schemes: Cayman Islands, Jersey, Guernsey, Curacao, Gibraltar and Switzerland<sup>23</sup>.

### III. Limited Use of Information:

The CRS mechanism under the ordinance AEOI framework requires information received to be used for tax purposes only<sup>24</sup>. However, information received such

Source: OECD



as an account balance could also be relevant for authorities tackling corruption and money laundering (e.g. if an individual cannot justify the legal origin of the money deposited abroad, regardless of whether or not such money or income is subject to tax). There is no public list of countries that require or allow other countries to use the information for non-tax purposes like combating money laundering or corruption<sup>25</sup>.

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<sup>23</sup> “Citizenship and Residency by Investment Schemes: Potential to avoid the Common Reporting Standard for Automatic Exchange of Information”, Andres Knobel & Frederik Heitmüller, 12 March, 2018- [http://taxjustice.wpengine.com/wp-content/uploads/2018/03/20180305\\_Citizenship-and-Residency-by-Investment-FINAL.pdf](http://taxjustice.wpengine.com/wp-content/uploads/2018/03/20180305_Citizenship-and-Residency-by-Investment-FINAL.pdf)

<sup>24</sup> Supra note 1

<sup>25</sup> Supra note 23

IV. No Specific Sanctions Issued:

The CRS requires jurisdictions adopting the AEOI mechanism have their own effective enforcement provisions and sanctions to address noncompliance by financial institutions in their region . Penalties will vary from country to country. It is solely up to the country to decide the severity of the sanction required. But this may pose a risk to the successful implementation of the AEOI framework. If a country chooses to impose only monetary sanctions, this may not incentivise compliance because a financial institution or a service provider may assist a client to evade millions in taxes, no matter what the fine may be if it considers the client a worthwhile cost<sup>26</sup>.

V. Cryptocurrency:

Crypto-currencies have become popular and are being widely used in today's economy , however, it is not clear if all entities involved in trading, issuing or exchanging crypto-currencies are covered by the CRS mechanism.<sup>27</sup>

**5. Conclusion**

According to a utilitarian analysis, no consideration is given to the intention behind an action. Only the result the agreement yields counts. Specifically, as long as the implementation of any action results in the benefit of a majority of the people involved, then that action can be justified as ethical. The implementation of an AEOI, despite some problems as examined above, ultimately results in detection of tax evasion and the increase in revenues to governments, outcomes that are especially beneficial to governments in developing countries. The outcomes benefits individual countries, and also helps strengthen the global economy, making it more resilient to crises, which seem likely to happen on a regular basis. The Switzerland/India case demonstrates the positive results of an AEOI. However, more empirical studies need to be carried out to definitively support the positive outcomes of AEOIs.

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<sup>26</sup> "Obligations and Penalties Under the Common Reporting Standard", Tom Lickess, Line of Service Lead, Tax Advisory, Radius, <https://ieglobal.vistra.com/blog/2018/6/obligations-and-penalties-under-common-reporting-standard#>

<sup>27</sup> Supra note 21



## **Appendix**

### **Countries Implementing the AEOI**

This list depicts first exchanges that have taken place since 2017 and the first exchanges that are yet to take place in 2020. However, there are first exchanges listed to take place even after 2020 and also a list of developing countries that have joined the AEOI commitments but are yet to confirm a date for a first exchange.

#### **As of January 2020, the list is as follows:**

##### **Jurisdictions That Undertook First Exchanges in 2017**

Anguilla, Argentina, Belgium, Bermuda, British Virgin Islands, Bulgaria, Cayman Islands, Colombia, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Faroe Islands, Finland, France, Germany, Gibraltar, Greece, Guernsey, Hungary, Iceland, India, Ireland, Isle of Man, Italy, Jersey, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Montserrat, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Seychelles, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Turks and Caicos Islands, United Kingdom.

##### **Jurisdictions That Undertook First Exchanges in 2018**

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, Greenland, Grenada, Hong Kong (China), Indonesia, Israel, Japan, 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.

##### **Jurisdictions That Undertook First Exchanges in 2019**

Ghana, Kuwait.

##### **Jurisdictions Undertaking First Exchanges By 2020**

Kazakhstan, Ecuador, Maldives, Nigeria, Oman, Peru.