Papers on Selected Topics in Protecting the Tax Base of Developing Countries

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Transparency and Disclosure

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should help countries evaluate their own circumstances and determine which options make the

reviews a number of key dimensions of the domestic law critical to transparency. One set of factors looks to the *availability* of information on the following topics: (1) ownership and

base erosion and profit shifting through related party transactions, transfer pricing and cross border arbitrage.

However, the BEPS setting is not the only context in which global tax actors continue to examine how tax administration can be strengthened through transparency and disclosure. In some cases, individual countries have taken action that has triggered a more global response. For example, the United States' implementation of the FATCA (Foreign Account Tax Compliance Act) regime which requires foreign financial entities to disclose information regarding U.S. taxpayers to the U.S. tax authorities or face penalties, has led to the signing of IGAs (intergovernmental agreements) (see 4.5). Additionally, other countries increasingly seek to secure similar commitments for taxpayer information from foreign financial entities. In still other cases, international bodies are promoting enhanced access to information through automatic information exchange (see 4.2), and/or through the expansion of the Multilateral Agreement on Mutual Assistance in Tax Matters (see 5.3).

Thus, while the need to acquire information is as old as the international tax system, the current climate for tax administration differs from the past. The scale of information needed, its complexity, and its importance have all grown dramatically. Although traditional information-based tools for facilitating tax compliance remain relevant and valuable, close examination of the ways in which transparency and disclosure can be enhanced is a critical topic for countries to tackle now. To that end, section 3 of this paper reviews and analyzes the BEPS Project's work

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Developing countries may confront a number of challenges as their tax administrators seek the information necessary for effective enforcement of the tax laws. The challenges include: (1) domestic law impediments (inadequate required reporting by multinationals regarding assets, accounts, and transactions); (2) constrained domestic enforcement (due to limited audit staff, inexperienced staff, attrition of trained staff, insufficient technological capacity to receive,

the master file information is intended to provide a high level risk overview and should be used consistent with that function (and, for example, not replace actual audits and more detailed taxpayer specific analysis and inquiry).

3.3.3.2 CbC Template. The CbC template is expected to require taxpayer reporting on the following seven items: (1) revenue, (2) earnings before taxes, (3) cash tax, (4) current year tax accruals, (5) stated capital and accumulated earnings, (6) number of employees, and (7) tangible assets.[18] This information would be provided on a country-by-country basis (as opposed to entity-by-entity).

The template would be accompanied by a list of all group entities and permanent establishments, by country, along with business activity codes identifying their major activities. Taxpayers will have the flexibility to use either statutory account data or financial statement reporting packages to complete the template, if data usage is applied consistently across the group and across years. Information contained in the country-by-country template would

the annual financial statements; summary schedules of the financial data of the comparables and the source of that data.

Controlled transactions: The third category is information regarding controlled transactions involving the local entity. A more specific list of information is enumerated, which goes to the core of how the taxpayer applied the transfer pricing rules:

*description of the transactions (e.g., services, purchase of goods, loans, etc.) and the context in which that transaction took place (e.g., business activity, financial activity, cost contribution arrangement)

*aggregate charges for each category of transactions

*identity of the related parties involved and the nature of their relationships

*functional analysis of the taxpayer and the related entities regarding each category of controlled transactions (functions performed, assets used, assets contributed, intangibles involved, risks born, and changes compared to prior years).

*identification and description of controlled party transactions that might impact the transaction in question

*specification of the most appropriate transfer pricing method by category, the reasoning for the selection, which entity is the tested party (where relevant) and why, and assumptions made in using the method

*if use of multi-year analysis, an explanation of why

*information regarding comparables, how selected, search strategy, application of method, and relevant financial indicators used in the analysis

*any adjustments to comparables, to the tested party

*conclusions regarding the arm's length status of related party transactions based on application of the selected method.

3.3. 4 Implementation Issues under BEPS Action Item 13

Documentation and burden: Taxpayers are expected to price at arm's length based on contemporaneous information, prior to engaging in the transaction, with confirmation completed before filing the tax return. But the Discussion

In countries for which final statutory financial statements and related country-by-country reporting data are not available until after the tax return is due, the best practice would allow for completion of the country-by-country template by one year after the last day of the MNE parent's fiscal year.

Materiality. Conscious of the need to balance the competing interests of countries (seeking access to transfer pricing information) and taxpayers (seeking a "reasonable" documentation burden), the Discussion Draft recommends documentation requirements with materiality thresholds based on the "size and nature of the local economy, the importance of the MNE group in that economy, and the size and nature of local operating entities, in addition to the overall size and nature of the MNE group."[20] For example, many jurisdictions offer simplified transfer pricing documentation rules for small and medium sized enterprises. Nonetheless, such smaller business would be expected to provide data and documentation regarding material cross-border related party transactions when requested and also to complete the country-by-country template.

Document Retention: Again, balancing taxpayer burdens and a country's need to access information, the Draft recommends tax administrators take into account the difficulty in locating documents from prior years, and should make such requests only when there is a "good reason" relating to a transaction under review. To assist in the balance of burden and need, taxpayers should be permitted to store the documentation in a manner they find appropriate (electronic, paper, etc.) so long as it can be produced in a :

impose these penalties would not forestall a jurisdiction from making the underlying transfer pricing adjustment in order to bring taxpayers into compliance with the arm's length principle. Two strategic observations regarding documentation-related penalties may guide countries thinking about designing a penalty regime:

(1) Differences among countries penalty regime may influence whether a taxpayer "favours" one jurisdiction over another in pricing. For example, if one jurisdiction imposes stronger penalties (compliance and/or underlying substantive pricing penalties) than another, the taxpayer may be more inclined to shift resources (and transfer pricing profits) to the jurisdiction with the stronger penalty regime so as to avoid the imposition of large penalties

(2) A documentation regime that includes benefits for compliant taxpayers may increase a taxpayer's actual compliance with the documentation rules, which is a good outcome for the country. For example, if taxpayers who meet documentation requirements receive some measure of penalty protection (substantive penalties) or a shift in burden on some or all issues, there is an added taxpayer incentive for up-front conformity with the documentation requirements.

Confidentiality. As the prospect of increased disclosure of information becomes more likely, taxpayers have expressed greater concern regarding confidentiality. The Draft urges tax administrations to protect taxpayers from: public disclosure of trade secrets, scientific profits, and other confidential information. The need for protection should lead countries to carefully consider their requests for such information and to provide assurances to the taxpayer regarding confidentiality. To the extent public court proceedings or judicial decisions will entail some measure of disclosure, confidentiality should be reserved to the extent possible and disclosure should be as limited as possible.

Implementation:

(1) *Changes to domestic law*: Tax law, including transfer pricing rules, is a function of domestic law. Thus, in order to achieve the benefits of increased uniformity under

to the Discussion Draft Annex (detailing the information in both the master file and the country-by-country reporting template).

(2) *Reporting oversight*: As part of the effort to ensure consistency, the Draft recommends that the master file and the country-by-country template be completed under the supervision of the MNE parent.

Despite this general critique, taxpayers seem to have considerably in their response to the release of the recommendations under Action Item 13. MNEs have pursued one or more of the following steps: (a) reported that their operations are significantly out-of-

Assist Beyond Transfer Pricing: Should countries use some of this high

multinationals in the economy and the related BEPS issues has led to calls for *public* disclosure of some, or all,

the various accepted recommendations that emerge from the multi-stage BEPS process. These realities are not unique to Action Item 13. But the effort to resolve the delivery mechanism question (for the master file and template) will be one important piece of the BEPS

3.3.6.2 Implementation-Specific Perspective. Although the driving purpose behind Action Item 13 would be compatible with and help facilitate most developing countries' tax audit and enforcement goals, the details regarding the actual implementation of Action Item 13 are critical to their real world impact. Both the final content of the master file, CbC template, and the local file, and the manner in which this information is provided to countries ultimately determine whether the potential value of Action Item 13 is realized.

3.3.6.2.1 Content. Several of the design questions that have arisen in the context of crafting the master file, template and local file may be particularly relevant for developing countries.

Reporting entities. First, given that developing countries may find they have many permanent establishments operating in their jurisdiction, it will be important to clarify how that kind of presence in a jurisdiction will be handled for reporting purposes. Presumably, to the extent that the CbC reporting is country-based, the data from the permanent establishments should be picked up. But clarification on this point may be valuable. For example, the enumerated listing of entities operating in the jurisdiction should include not only local subsidiaries of the foreign multinational, but also the foreign corporations with a permanent establishment in the jurisdiction.

Accounting. Second, as initially noted above in 3.3.3.1.1, and 3.3.5.3, countries in general, but developing countries especially, might prefer the top-down allocation of group income to the extent they are concerned that use of the local statutory accounts to construct a bottom-up reporting may disguise underlying BEPS problems. If the local statutory accounts reflect inappropriate pricing and profit shifting, that reality might be built into the template responses and effectively obscure the base erosion and profit 0.002 Tc ( )]TJ406(t( )-10()3(iTTot)-12(e)4l2(

Language. Fourth, the current proposals anticipate that the master file (and the template) would be prepared in English but that the local file would be prepared in the local language of the jurisdiction. Certainly, it is likely to be more efficient for the developing country that the master file be in English as compared to the language of the MNE's parent jurisdiction (assuming that language is not English). However, the personnel constraints that developing country tax administrations face include the limited pool of English-speaking tax professionals with sufficient international tax training to effectively review the files, make risk assessments, and then pursue taxpayer audits where appropriate. If more information is made available in the language of the developing country, the number of tax professionals in government available to work on audits, reviews, and examinations may increase.

Burden. Fifth, the dominant taxpayer critique of the Action Item 13 reporting (master file, template, and local file) has been that of the burden it imposes on taxpayers. See 3.3.5.1. Although the question of burden is important, and requested information should be useful and reasonable in context, the balance of benefit and burden may look different from a developing country perspective. Taxpayers have urged that they not be asked to provide difficult to gather data that a country will be unable to use. This objection is not leveled solely at developing countries, but it is one that is heightened where a country has limited access and is ultimately constrained in its ability to meaningfully process information. However, despite this claim, which might suggest that the benefits to developing countries would be less than the burden to the taxpayer, a broader look at the benefit and burden question might produce a different conclusion. Developing countries are often understood to be highly dependent on income taxes, specifically corporate income taxes, for their revenue base. There are a number of factors contributing to this fiscal picture and although it may shift in the long term, at present there is a serious cost to the fiscal welfare and stability of these countries when they are unable to collect corporate income tax otherwise due. Additionally, developing countries have fewer internal resources to engage in extensive monitoring and reviewing of multinational taxpayers and their tax planning. Thus, the benefit to these jurisdictions in having MNEs provide relatively uniform, comprehensive information of both a qualitative and quantitative nature that assists in risk assessment and in audit is distinctly valuable. That said, the BEPS project is a group effort by countries to respond to base erosion and profit shifting. However, in making a group-wide assessment of the burden imposed on taxpayers by Action Item 13 as compared to the benefit for tax administration, it will be important to bear in mind that the benefit should not be measured solely from a developed country perspective.[22]

[22] Various international groups have urged that the BEPS Project appropriately incorporate the views and needs of developing countries. See, e.g., C20 Position Paper Background: Governance (7 August 2014) (recommending "an inclusive and transparent process that ensures developing countries benefit from these tax reforms."), G20 Leaders' Declaration (5-6 September 2013) at 13 ("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.").

3.3.6.2.2

multinationals. Thus, although all countries would (under this approach) be required to seek information via treaty, the burden would be most significant for developing countries which are resource constrained, are dependent on corporate income taxes, and have few domestic multinationals.

3.3.6.2.3Domestic The proposed steps under Ac

context of Action Item 12. Perhaps of greater importance for developing countries now are the recommendations under Action Item 13 pertaining to documentation of transfer pricing and the multinational group. This Action Item has been the subject of extensive debate and comment and its three part reporting package (Master file, CbC template, and Local file) could play a significant role in developing country tax enforcement. Additionally, Action Item 11 might play a role in the future to the extent that its anticipated collection of broad level data regarding the success of strategies targeting base erosion and profit shifting provides guidance on future reform.

4. Other New Developments in Transparency and Disclosure.

4.1 Overview.

The BEPS project is the most expansive effort to address base erosion and profit shifting, including through transparency and disclosure. But it is not the only venue for such action. Other work on transparency, disclosure, and exchange of information is taking place at the national, regional, and global level – including at the OECD. A review of these efforts helps provide a more complete picture of the tools being developed to enhance countries' ability to enforce their tax laws in a global economy.

4.2 Automatic Exchange of Information.

4.2.1 Overview. Before the BEPS project began, countries were struggling with the question of how to improve access to taxpayer information and thus improve tax enforcement. Although global taxpayers are not new and exchange of information provisions have existed in bilateral tax treaties for decades, the explosion of cross border commercial activity and investment by businesses and individuals has increased tax authorities' need for information located outside their jurisdiction. Existing exchange of information provisions in bilateral tax treaties were insufficient, in part because they generally call for exchange of information upon request. But that process can be slow, burdensome, and difficult for requesting countries (see 5.2). Many in the international tax community advocated for automatic exchange of information – a process and commitment between or among jurisdictions to regularly send a country specified types of tax-related information regarding that country's taxpayers. Others though resisted on various grounds including domestic traditions of bank secrecy, administrative burden, recipient's inability to meaningfully process large quantities of information, and privacy concerns. Perhaps less often acknowledged is the tax competition reason to resist automatic exchange of information. Countries which impose low taxes on outsiders investing in or through their jurisdiction would see little upside to helping the home country impose tax and thereby negate the "value" of "investing" in that low tax jurisdiction.

Commentary offers alternative Art. 26 language that would include automatic exchange of information as part of the states' commitment.[28] The OECD Commentary for Art. 26 similarly considers automatic exchange of information as one of mechanisms available for countries to adopt.[29] The OECD Model Tax Information Exchange Agreement, which formally uses the on request mode of exchanging information, envisions in its Commentary that countries could use the document for automatic exchange of information subject to agreement by the two states.[30] The Multilateral Convention on Mutual Administrative Assistance in Tax Matters provides for automatic exchange of information between members pursuant to terms mutually agreed to by those states. (See 5.4).

The European Union's Administrative Cooperation Directive requires mandatory automatic exchange of information effective 1 January 2015. The Directive mandates automatic exchange of information in specified categories: employment income, directors' fees, life insurance products, pension, ownership and income from immovable property. The EU Savings Directive generally requires member countries to 0 Td [.potnfermst mncome fpbi-2(d u)-2(o b -1.328ope)4(

partners, as appropriate."[32] The G20 gave the OECD a mandate to prepare standards and guidance on automatic exchange of information. In February 2014, the OECD released the first part of this project, the "Standard for Automatic Exchange of Financial Account Information: The Common Reporting Standard,"[33] which the G20 approved: "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."[34]

As a follow-up to its February 2014 document, the OECD released its more comprehensive "Standard for Automatic Exchange of Financial Account Information in Tax Matters" in July 2014.[35] This July OECD report includes: (1) the text of a Model Competent Authority Agreement ("CCA") for automatic exchange of certain tax information, (2) the Common Reporting Standard ("CRS"), and (3) Commentary intended to facilitate uniform implementation of the agreement and standard. Exchange of information under this system requires that each country take two basic steps.

First, countries must implement any domestic law changes necessary to require (1) financial entities to gather and report the designated information, and (2) ensure appropriate protection of taxpayer data. Second, countries (through their competent authorities) must agree to exchange on an automatic basis and must set the terms of that exchange (e.g., the Model Competent Authority Agreement). The report urges that this agreement be executed under the legal framework of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (see 5.4) because the convention allows for more than one country to enter into such competent authority agreement, potentially reducing the amount of negotiating a country must do. Alternatively, the competent authority agreement could be executed under two countries' bilateral tax treaty.

Much of the discussion and debate surrounding implementation of automatic exchange of information concerns the same questions that arose in considering the work under BEPS Action Item 13 – the information to be provided, the level of burden imposed, the usefulness of the information, and the protection of taxpayer data. One notable difference is that automatic

[32] Communiqué Meeting of Finance Ministers and Central Bank Governors, Washington, 18-19 April 2013,

4.3.4 Developing Country Analysis

4.3.4.1 Overview. A range of developing countries have expressed interest in automatic exchange of information. Income tax evasion poses a serious fiscal challenge for many developing countries which rely substantially on the income tax base. Current methods for obtaining information located outside the jurisdiction can be costly or unavailable. Treaties generally permit exchange of information only on request (a process that can be burdensome in time, money and expertise). Moreover, many developing countries have a more limited treaty network (even including TIEAs), and may not have treaties with key tax haven jurisdictions (used by their residents in evading the developing country income tax). Thus, some developing countries are among those who have committed to early adoption of the Common Reporting Standard. (4.3.1)

4.3.4.2 Advantages of the CRS and CAA. The overall automatic exchange of information project advances the potential for meaningful income tax enforcement. Widespread dissemination of relevant taxpayer information to the appropriate taxing authorities enhances real enforcement and more broadly signals to taxpayers the risks of tax evasion. As noted above (4.3.4.1) current information exchange mechanisms can be too burdensome to serve as a regular component of tax enforcement. Automatic, bulk provision of the enumerated information in the CRS would significantly reduce the costs of acquiring that information compared to existing mechanisms. Additionally, the automatic nature of the delivery reduces the opportunity for pressure, leverage, and corruption in tax administration.

The scope of taxpayers whose accounts are covered by the CRS further increases the value of the information exchange. The decision to include entities and not just individuals, and to reach trusts and other often opaque holding structures, expands the coverage of this automatic exchange of information system beyond that of some other programs.

4.3.4.3 Limitations of the CRS and CAA. The advantages described above of the CRS and CAA essentially reflect the reduced costs and difficulties of acquiring information *as compared* to obtaining it via an existing bilateral treaty. But the ability to participate in the CRS and CAA is currently contingent on (1) meeting the standards necessary to commit to providing, not just receiving information (required reciprocity), and (2) getting key jurisdiction to sign a CAA (participation).

4.3.4.3.1 Reciprocity. The CAA is premised on reciprocity between or among signatories. Although countries may sign a CAA in advance of being ready to participate, the agreement only takes effect when they are in fact prepared to reciprocally share information.[41] The only option

[41] See, e.g., Model Competent Authority Agreement, Section 7, available at http://www.oecd.org/ctp/exchange-tax-information/standard-for-automatic-exchange-of-financial-information-in-tax-matters.htm.

for non-reciprocal participation in the CRS and CAA is provided for countries which do "not need to be reciprocal" (e.g., because one of the jurisdictions does not have an income tax).[42] This has been characterized by some commentators as intended to facilitate automatic exchange of information *from*

Multilateral Convention on Mutual Administrative Assistance in Tax Matters.[43] This multilateral version would offer two key advantages to developing countries – only a single agreement to negotiate and a wide pool of potential signatory partners. There are, however, dv.

loss before tax, tax paid, subsidies received, average number of employees.[47] EU Member states must domestically enact rules to require the reporting.[48]

In some cases, efforts to combat corruption prompted the push for transparency and disclosure initiatives. Where transparency and disclosure serves an anti-corruption role, the public release of disclosed information can be important. Not surprisingly, the nature and scope of any public disclosure of taxpayer data has generated debate and objection in the business community.

Although the issue of public disclosure of taxpayer information has been raised by some advocates in the BEPS context, the OECD does not anticipate that Action Item 13 files would be made available to the public. But corruption concerns have surfaced as a possible factor in some countries' limited collection of income tax, and public disclosure of at least some information in the master file, template, and local file could play a role in improving tax enforcement.

4.5. Intergovernmental Agreements ("IGAs") and Related Developments

In 2010, the United States enacted the Foreign Account Tax Compliance Act ("FATCA").[49] Prompted by the number of U.S. taxpayers using offshore financial accounts to avoid U.S. income tax, the new legislation effectively requires a wide range of financial institutions (foreign and domestic) to provide data to the United States regarding U.S. taxpayers holding accounts at those institutions. The FATCA legislation imposes due diligence and reporting burdens on these third party entities, and failure to comply can result in negative U.S. tax consequences for the financial institution's own U.S. source income.

In an effort to streamline compliance for foreign financial entities required to report under FATCA, and to address various disclosure and confidentiality concerns, a number of countries entered into intergovernmental agreements ("IGAs") with the United States that provided specific guidance on the type of information that their own domestic financial institutions would gather on U.S. taxpayers and detail how that information would be provided to the United States.[50] These IGAs were negotiated under the legal framework of each country's existing tax bilateral tax treaty with the United States. With the increasing number of IGAs being signed with the United States, other countries have expressed interest in receiving the same type of tax

[47] See, e.g., http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:176:0338:0436:EN:PDF

[48] See, e.g., United Kingdom reporting rules came into effect in January 2014, with the first reporting required 1 July 2014. See Final UK regulations available at http://www.legislation.gov.uk/uksi/2013/3118/made, see final UK guidance available at https://www.gov.uk/government/publications/capital-requirements-country-by-country-reporting-regulations-2013-guidance/capital-requirements-country-by-country-reporting-regulations-2013-guidance

[49] U.S. Internal Revenue Code Sections 1471

the transparency and disclosure projects currently underway, nonetheless sought to enhance a tax administration's access to vital taxpayer data. A brief review of these existing mechanisms which support and facilitate tax transparency and disclosure provides: (1) a better understanding of what may be needed in *new* mechanisms, and (2) the role that these current agreements or structures can play in supporting any new developments in transparency and disclosure.

5.2 Model Treaty Article 26 .

Both the UN Model Treaty and the OECD Model Treaty include an Article 26 Exchange of Information provision that outlines the primary terms governing exchange of information between the two signatories: the duty to exchange, the duty to protect taxpayer information, the grounds upon which a request for information can be declined, and the grounds which do not form an appropriate basis for refusal to exchange information. Although the UN and OECD version of Article 26 (and their respective Commentaries) do differ in some respects, their common features are reflected in many countries own bilateral tax treaties and on balance share several common deficits. Moreover, as referenced below, both treaties have made changes to Article 26 in an effort to increase the likelihood of meaningful exchange of information.

5.2.1 Standard Governing Requests. As noted earlier, neither the UN nor the OECD Model Article 26 ar72od 4 Tw 2(nf)3(or0au Tw Tw 0 a 2(hhu]TJ 0 To)4((ndt(26 ()om)-2(m)-2(e)4-7(a)4(nd)-2

authorities' investigation. The automatic receipt of specified bulk data effectively would place no such constraints on jurisdictions seeking information in the designated categories. Additionally, the current, "on request" process requires an allocation of the requesting country's potentially limited resources, which would be alleviated under automatic exchange of information.

5.2.2 Bank Secrecy. Historically, states have declined to comply with a request for information

that *taxpayers*

bilateral treaties with Article 26, TIEAs can serve as the legal foundation for countries to commit to automatic exchange. To the extent that some developing countries have a limited network of comprehensive tax treaties but do have a network of TIEAs, this role for TIEAs could become important.

5.4 Multilateral Convention on Mutual Administrative Assistance in Tax Matters .

This Convention, which originally was developed by the OECD and the Council of Europe in 1988, was amended in 2010 to welcome all countries as participants. At present over 60 countries have signed the convention, including developing countries. To take effect, the Convention must be signed and ratified by a country and countries can make individual reservations to the basic terms of the Convention. As a result, reliance on the Convention depends on whether the countries in question have ratified it and whether they have made any relevant reservations to significant terms. But, as a multilateral framework, the Convention offers a potentially valuable legal foundation for countries looking to pursue enhanced transparency and disclosure among a group of nations in a relatively simultaneous and efficient way.

With respect to exchange of information, the Convention includes a comprehensive consideration of (1) prerequisites to exchange, (2) what can be exchanged, and (3) the mechanism for exchange.[56] As drafted, the Convention envisions exchange of information on request, spontaneously, and automatic ea w.D [(si)-1(g)]TJ 0 Tc e(ma)6(tic 2 Tc 0.008 Tw5c e)vbll(a)-20

Taxation and the Prevention of Fiscal Evasion (Article 24). However, a major limitation of regional agreements is their membership. Both the requesting state and the country from which it is seeking information must be members of the applicable regional agreement. To the extent a country's taxpayers conduct business or hold their assets and accounts in other jurisdictions, regional agreements offer little assistance. Moreover, their relatively abbreviated exchange of information provisions do not detail the expectations regarding the delivery mechanism for information and do not call for automatic exchange.

5.6 Global Forum on Transparency and Exchange of Information .

5.6.1 Overview.

Input is sought from all members of the Global Forum during the process of reviewing a specific country.[59] Members complete an extensive questionnaire about their own practical experience in working with the country under review. The review is performed by an assessment team of two (or three) expert assessors from peer jurisdictions, along with a coordinator from the Global Forum Secretariat). The team's report is presented to the 30-member Peer Review Group (PRG), and upon approval becomes a formal report of the PRG. At that stage, the entire membership of the Global Forum is asked to approve the report. To date, over 100 countries have participated in the Peer Review process and been the subject of a completed and published report. As p8f8FThe

would help guarantee that developing countries are not just providers of information but also knowledgeable "consumers" of exchanged information.[62]

5.7 Summary of Existing Support for Transparency and Disclosure :

Transparency and disclosure is not new to international tax. Article 26 of the OECD Model Treaties calls for exchanging information "upon request" and in recent years changes made to the provision enhance the likelihood that effective and useful information exchange can take place. Among the most important reforms were: (1) elimination of domestic bank secrecy rules as a justification for denying a request for information; (2) lowering of the threshold that the requesting State must meet to demonstrate that the information requested is "foreseeably relevant for carrying out the provisions of the Convention or the administration or enforcement of domestic tax laws of the contracting States;" and (3) elimination of the argument that requested information need not be provided because the requested State does not need the information. Additionally, the work of the Global Forum on Transparency and Exchange of Information, particularly the Peer Review Process, has the potential to help countries seeking to improve their own transparency and disclosure laws (which will improve both their own enforcement capacity and their ability to participate globally in the transparency and disclosure projects). Moreover, to the extent the Peer Review Process improves the transparency and disclosure capacity of countries from which a developing country is seeking information, the developing countries need not expend resources to encourage such reform in its partners. See § 2(e) do

assets, and foreign business activities. The final recommendations emerging from the BEPS Project, in particular those grounded in Action Items 12 and 13, may prove especially useful as guides for countries exploring domestic reform. Additionally, the Global Forum on Transparency and Disclosure's Peer Review Process provides a mechanism for both assessing and facilitating domestic improvements in transparency and disclosure.

Second, countries may face domestic enforcement impediments to their effective acquisition and use of information. Developing countries that are resource constrained (e.g., limited audit staff, limited international tax expertise, limited technological resources) might find it difficult to seek and acquire the information necessary to effectively audit all of the major multinational businesses operating in their jurisdiction. To the extent proposed reforms can ease these constraints or burdens, the reforms may be particularly useful to developing countries. Conversely, if reforms require resources or treaty relationships not currently available to many countries then their formal adoption will likely have less impact on resource constrained states.

Third, effective responses to base erosion and profit shifting will require engagement with the broader tax community. Information can be sought directly from taxpayers, but often important information will be needed from other countries. Thus, the crucial question is whether a state has treaty relationships (bilateral, TIEA, or other) with the countries from which it is most likely to need information. If the transparency and disclosure reforms rely less on bilateral relationships, and more on multilateral approaches, jurisdictions with more limited treaty networks can more readily enjoy the benefits of the new reforms.

Among the most prominent proposals for transparency and disclosure reform currently underway are the documentation reforms of BEPS Action Item 13 (focused on improved reporting for transfer pricing documentation and the global activities of a multinational group). The

Of course, the BEPS project is not the sole avenue for potential reform in transparency and disclosure. The OECD and G20 have advocated for increased use of automatic exchange of information To further this goal, in 2014 the OECD released a proposed Common Reporting Standard ("CRS"), a Model Competent Authority Agreement, and a Commentary for automatic exchange of information. As with the work under Action Item 13, reforms that increase uniform provision of information more directly to states can be disadvantageous for developing countries trying to maximize the impact of their available tax administration resources. A critical question will be the legal framework under which the automatic exchange would occur. A multilateral mechanism for sharing information (that included countries from which information would likely be sought) would best serve states with limited treaty partners. But allowing developing countries temporary access to automatic exchange on a reciprocal basis would allow these countries to start tackling base erosion immediately, with relatively little risk to other countries.

Finally, countries can continue to explore the use of existing bilateral treaties and TIEAs to seek taxpayer information. The U.N. and OECD Model Treaties both incorporate new standards that reject bank secrecy as a ground for refusing to share information and reduce the requesting State's burden to show the precise use of the information sought.

Ultimately, transparency and disclosure of information remain vital to the effective enforcement of tax laws in a global economy. All countries should be attentive to the existing techniques for obtaining needed information, and should evaluate active reform proposals for their relevance, effectiveness, and required capacity building. Transparency and disclosure have center stage in international tax policy reform and the goal is to ensure that the outcomes of this focus meaningfully reduce the base erosion and profit shifting faced by jurisdictions around the world.