

Developing countries and the automatic exchange of information standard – a “one-size-fits-all” solution?

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Abstract

Recently, the Organisation for Economic Co-operation and Development (OECD), at the invitation of G20 countries, developed what it refers to as the new single global standard for the automatic exchange of information (AEOI) between key revenue authorities worldwide. This standard, if adopted by a country, would require the annual AEOI relating to financial accounts obtained from financial institutions and exchanged in a common reporting format or standard. Theoretically, the adoption of the AEOI standard on a global scale would equip all countries to address the illicit flow of money to locations which result in tax avoidance and other forms of non-compliance. However, the success of the AEOI standard relies on countries to be able to first,

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collect and supply the information required and second, effectively use and benefit from the information provided to them. This means that such an adoption places an onerous administrative burden on a country and this is arguably especially the case for developing countries which do not have the same level of administrative resources and intellectual capital as developed countries.

Studies have revealed that developing countries support the AEOI and view it as an opportunity to address illicit financial flows. However, the implementation of such a regime, according to the OECD, requires a sound legal framework, technical know-how, infrastructure and personnel capacity. Consequently, developing countries are most concerned about the lack of capacity to: (1) collect the information locally to allow full reciprocal information exchange; (2) analyse the information received; and (3) deal with information technology. The purpose of this article is to critically analyse the OECD's AEOI standard and assess the standard from the perspective of developing countries and emerging economies, including Global Forum members. It does so with the aim of revealing the "unique" administrative and enforcement issues which may arise for those countries and offering possible solutions. These possible solutions offered adopt a case study approach to the Asia-Pacific region.

1. Introduction

Suggested measures to counter international tax avoidance and evasion are numerous. Many proposals focus on substantive regulatory and policy amendments to ensure that aggressive tax planning measures are adequately dealt with. Complementing such measures is the call for greater disclosure and reporting requirements. In particular, the Organisation for Economic Co-operation and Development (OECD), at the invitation of G20 countries,¹ has recently developed what it refers to as the new single global standard for the automatic exchange of information (AEOI) between key authorities worldwide. This standard, if adopted by a country, would require the annual AEOI relating to financial accounts obtained from financial institutions and exchanged in a common reporting format or standard. The OECD defines AEOI as the systematic and periodic transmission of “bulk” taxpayer information by the source country to the residence country concerning various categories of income. As of 23 July 2015, 56 jurisdictions have committed to undertaking their first exchanges by 2017, with another 38 indicating they would do so by 2018.²

International tax cooperation is one dimension to international economic policy and it is vital that it be advanced in a meaningful way to address tax evasion if developed countries are to maintain their revenue base and developing countries are to become fiscally self-sustaining. While tax evasion is a problem for all jurisdictions, the problem is exacerbated for developing countries compared to developed countries.³ Secrecy is one of the biggest factors enabling the illicit financial flows of funds from developing countries, and the lack of funds significantly contribute to the lack of basic human rights in many of these countries.⁴ As such, increased global transparency is an important step in addressing revenue needs, corruption, tax evasion and fraud.⁵ While exchange of information by request may in part address some of the issues, effective AEOI is likely to reap significant benefits, particularly in identifying

1 The G20 comprises Argentina, Australia, Brazil, Canada, China, France, Germany, Indonesia, India, Italy, Japan, Korea (Republic of), Mexico, Russia, Saudi Arabia, South Africa, Turkey, United Kingdom, United States and the European Union. Brazil, China, Indonesia, Mexico and South Africa are developing countries.

2 See www.oecd.org/tax/transparency/AEOI-commitments.pdf.

3 OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, *Automatic exchange of information: a roadmap for developing country participation* (2014), 3. See further www.oecd.org/tax/exchange-of-tax-information/multilateral-competent-authority-agreement.htm.

4 A Knobel and M Meinzer, *Automatic exchange of information: an opportunity for developing countries to tackle tax evasion and corruption*, Tax Justice Network (2014). Available at www.taxjustice.net/wp-content/uploads/2013/04/AIE-An-opportunity-for-developing-countries.pdf.

5 See OECD, above n 3, 3.

undetected offshore income. As such, AEOI is seen as complementary to exchange of information upon request.⁶

Theoretically, the adoption of the AEOI standard on a global scale would equip all countries with the ability to address the illicit flow of money to locations which result in tax avoidance. The principal purpose of exchanging information is to provide countries with information which allows them to protect their tax base and limit their exposure to revenue leakage. However, the success of the AEOI standard relies on countries being able to first, collect and supply the information required and second, effectively use and benefit from the information provided to them. This means that such an adoption places an onerous administrative burden on a country and this is arguably especially the case for developing countries which do not have the same level of administrative resources and intellectual capital as developed countries. Nor are these countries at the same existing standard as developed countries in terms of systems already in place for the exchange of information.

Studies have revealed that developing countries support the AEOI and view it as an opportunity to address illicit financial flows.⁷ However, according to the OECD,⁸ the implementation of such a regime requires a sound legal framework, technical know-how, infrastructure and personnel capacity. Consequently, developing countries are most concerned about the lack of capacity to:

- (1) collect the information locally to allow full reciprocal information exchange;
- (2) analyse the information received; and
- (3) deal with information technology.

The purpose of this article is to critically analyse the OECD's AEOI standard and assess the standard from the perspective of developing countries and emerging economies, including Global Forum members.⁹ It does so with the aim of revealing the "unique" administrative and enforcement issues which may arise for those countries and then offering some possible solutions. The focus of the article, in relation to these possible solutions, is on the Asia-Pacific region, being one which the authors are most familiar with. In this regard, the approach adopted is normative, recognising that any solutions need to be pragmatic to reflect both the political and practical constraints facing developing countries as they grapple with AEOI.

6 Ibid p 5.

7 See Knobel and Meinzer, above n 4.

8 See OECD, above n 3.

9 The Global Forum, with it 126 members, is an international body for ensuring the implementation of the internationally agreed standards of transparency and exchange of information in the tax area. See further www.oecd.org/tax/transparency/.

The remainder of this article is organised as follows. In the next section, the authors review the development of the mechanism of AEOI, and follow this in section 3 with an examination of the standard for AEOI and the concerns of developing countries. In section 4, the authors explore further the situation faced by developing countries when confronted with AEOI observing, through a case study approach of the Asia-Pacific region, that developing countries are not all similarly placed to deal with AEOI. By adopting this case study approach to the Asia-Pacific region, in section 5 the authors offer some possible solutions in addition to those currently under development. Concluding comments are provided in section 6.

2. The development of AEOI

International tax cooperation among countries is not new and for decades both developing and developed countries have recognised its importance. In fact, cooperation initiatives can be traced back to the 1920s when model tax conventions were first designed, with more sophisticated models developing over the years.¹⁰ Traditionally, cooperation between countries was intended to prevent double taxation. However recently, the inadequacy of existing measures to deal with less than single taxation has become apparent. Currently, cooperation is seen as “critical in the fight against tax evasion and protecting the integrity of the tax systems” with the exchange of information seen as a key aspect of that cooperation.¹¹ In this context, whatever the source of cooperation, the aim is broadly the same — to prevent tax evasion, tax avoidance and aggressive tax competition. Arguably, one of the most effective ways to avoid double non-taxation and ensure that income from offshore capital is appropriately taxed is through administrative measures. This, in turn, requires an effective and uniform international exchange of information regime.¹² The OECD’s proposed common reporting standard for AEOI aims to achieve this.

10 The League of Nations was established in 1919 with the aim of developing cooperation among nations and to guarantee them peace and security. One major initiative to encourage cooperation was to develop a draft *Treaty on Mutual Administrative Assistance on Matters of Taxation* in 1928.

11 See www.oecd.org/ctp/exchange-of-tax-information/automaticexchange.htm.

12 R Eccleston, “Revolution or evolution: sovereignty, the financial crisis and the governance of international taxation” (2011) *Journal of Applied Law and Policy* 13 at 15. As Eccleston notes, the alternative is to rely on information provided by the taxpayers themselves who have an incentive to underreport their income.

2.1 *The role of the OECD in developing a common reporting standard*

Recently, the most notable and influential response to international tax avoidance has come from, and been overseen by, the G20 with it adopting an enhanced role designed to achieve a coordinated global response. The G20 Summit, created in part as a reaction to the global financial crisis, has at each of its annual meetings discussed the need for international tax cooperation.¹³ While as far back as 2009, the G20 indicated that it would “stand ready to take agreed action against those jurisdictions which do not meet international standards in relation to tax transparency”,¹⁴ it was not until 2013 that the OECD partnered with the G20 in relation to international tax matters. Specifically, the broad tax agenda of this partnership was articulated at the 2013 G20 St Petersburg Summit where members endorsed the OECD BEPS Action Plan, welcomed the establishment of the G20/OECD BEPS project, committed to the AEOI as the new global standard and, of particular significance to this article, acknowledged that developing countries should also be able to benefit from greater tax information exchange. The G20 Leaders’ Declaration broadly outlined these outcomes and commitments from the St Petersburg Summit but left much of the technical work to the OECD.¹⁵ On 19 April 2013, the G20 finance ministers formally endorsed AEOI as the new standard.¹⁶ At their annual summit later in the same year, the G20 leaders also committed to AEOI and supported the joint work of the OECD and G20 to develop a single or common reporting standard for AEOI to be presented in 2014.¹⁷

A rapid succession of events ensued. On 23 February 2014, the G20 finance ministers endorsed the newly designed common reporting standard for AEOI. Forty-four countries indicated that they would be prepared to be early adopters of the new

13 Although, it is arguable that the G20 had started to assert its authority prior to the GFC. As Spencer noted in 2006, “Some developing countries, such as through the Group of Twenty, have begun to assert their positions on trade matters more aggressively. This process has entailed organising, recognising the importance of the relevant issues, developing the necessary technical skills, gathering the applicable information, mobilising any necessary political support, and presenting their case in the appropriate forum”: D Spencer, “The United Nations: a forum for global tax issues?” (2006) 12 *New Zealand Journal of Taxation Law and Policy* 224 at 261.

14 G20, *Declaration: strengthening the financial system*, London, UK, 2 April 2009.

15 The G20 Leaders’ Summit was held from 5–6 September 2013 in St Petersburg, Russia. See, in particular, paras 50–52 of the G20 Leaders’ Declaration. Available at www.g20.org/sites/default/files/g20_resources/library/Saint_Petersburg_Declaration_ENG_0.pdf.

16 Communiqué of the Meeting of Finance Ministers and Central Bank Governors, held in Washington, 18–19 April 2013, para 14. Available at <http://en.g20russia.ru/news/20130419/781301866.html>.

17 The G20 Leaders’ Summit was held from 5–6 September 2013 in St Petersburg, Russia. See in particular paras 50–52 of the G-20 Leaders’ Declaration. Available at www.g20.org/sites/default/files/g20_resources/library/Saint_Petersburg_Declaration_ENG_0.pdf.

standard. This was followed by the OECD release of the full version of the common reporting standard on 21 July 2014.¹⁸ It is this standard which countries are now expected to adopt. Broadly, it sets out:

- the types of investment income, account balances and sale proceeds from financial assets which will need to be reported;
- the financial institutions which need to report including banks, brokers, collective investment vehicles and insurance companies;
- reportable accounts, including those held by individuals and entities with a requirement to look through passive entities to the ultimate controller; and
- due diligence procedures to be followed by financial institutions to identify reportable accounts.

While the G20 had indicated its earlier commitment to developing countries in the AEOI process, the OECD made its position clear on 22 September 2014. At that stage, the OECD made a commitment to pursue efforts to curb multinational tax avoidance and offshore tax evasion in developing countries and, at the same time, deepen the involvement of those same countries in the OECD/G20 BEPS project. On the same day, the Global Forum delivered its roadmap to the G20 Development Working Group proposing a stepped approach to help developing countries transition to AEOI and a possible path for developing countries to take.¹⁹ It also described options for how the Global Forum, World Bank Group, and G20 countries could support developing countries in their implementation of AEOI. A little over a month later, on 29 October 2014, 51 countries signed a mutual competent authority agreement to automatically exchange information.²⁰ As of 4 June 2015, 61 countries have signed the agreement to exchange information automatically, with 94 jurisdictions committed to the implementation of the standard in 2017 or 2018.²¹ This agreement is a multilateral framework agreement which details the information that will be exchanged and was endorsed by the G20 leaders at the Leaders’ Summit in Brisbane on 15–16 November 2014.²²

18 See www.oecd.org/tax/oecd-releases-full-version-of-global-standard-for-automatic-exchange-of-information.htm.

19 A copy of the August 2014 report is available at www.oecd.org/tax/publicationsdocuments/reports/.

20 For a copy of the media release, see www.oecd.org/ctp/exchange-of-tax-information/major-new-steps-to-boost-international-cooperation-against-tax-evasion-governments-commit-to-implement-automatic-exchange-of-information-beginning-2017.htm.

21 OECD press release. Available at www.oecd.org/newsroom/australia-canada-chile-costa-rica-india-indonesia-and-new-zealand-join-multilateral-agreement-to-automatically-exchange-tax-information.htm.

22 See G20 Leaders’ Communiqué, Brisbane Summit, 15–16 November 2014. Available at www.g20.org/sites/default/files/g20_resources/library/brisbane_g20_leaders_summit_communique.pdf.

In August 2015, the OECDs *Common reporting framework implementation handbook* was published, providing practical guidance in the implementation of the AEOI standard.²³ This 118-page handbook is designed to assist government officials by setting out the necessary steps to implement the standard and addressing such issues as consistent use of optional provisions, alignment with the United States (US) *Foreign Account Tax Compliance Act* (FATCA)²⁴ and the operational and transitional challenges of the staggered implementation. The handbook fails to mention any specific difficulties which may be encountered by developing countries in the implementation of the common reporting framework.

2.2 *Parallel initiatives for information sharing and transparency*

Often, the G20 and OECD's AEOI is confused with the BEPS program.²⁵ While there are obvious overlaps and the broad objective of addressing situations where less than single taxation has been incurred is the same, the common reporting standard for AEOI should be viewed as a separate, standalone, initiative. Transparency and disclosure measures are emerging from the BEPS program as demonstrated by the work being undertaken in:

- action item 11 (establish methodologies to collect and analyse data on BEPS and the actions to address it);
- action item 12 (require taxpayers to disclose their aggressive tax planning arrangements); and
- action item 13 (re-examine transfer pricing documentation), and the recommendations coming from these action items will complement the information obtained through the common reporting standard.

However, the common reporting standard is in no way dependent on the work of the G20 and OECD in relation to BEPS. As such, it is likely that the common reporting standard will be seen as a forerunner to the disclosure recommendations coming out of BEPS. In particular, how both developed and developing countries deal with the challenges in relation to the implementation and operation of the common reporting standard for AEOI is likely to guide the G20 and OECD in relation to further transparency and disclosure measures. Further, many of the challenges faced by developing countries in relation to the common reporting standard will be similar

23 See www.oecd.org/ctp/exchange-of-tax-information/implementation-handbook-standard-for-automatic-exchange-of-financial-information-in-tax-matters.pdf.

24 See *Hiring Incentives to Restore Employment Act of 2010* (US), Pub L No 111-147, 124 Stat 71 (18 March 2010). The FATCA comprises ss 1471-1474 of the *Internal Revenue Code of 1986* (US) (IRC).

25 For further details about the BEPS programme, see www.oecd.org/ctp/beps.htm.

to those in relation to country-by-country reporting proposed under action item 13.²⁶ It also seems that the G20 and OECD inclusionary approach and the treatment of developing countries on an equal footing in relation to the BEPS project may be a response to some of the perceived shortcomings of the consultation process for the development of the common reporting standard for AEOI.

3. One standard – many countries

The common reporting standard is designed to be a coordinated approach to AEOI between all countries, whether developed or developing. To be successful on a global scale and incorporate all types of economies, three key factors are required. First, a common standard on information reporting, due diligence and exchange of information must exist and be able to be implemented and applied by all countries. Second, a legal and operational basis needs to be implemented both globally and domestically for the exchange of information and that system must be both robust and adaptable. Third, common or compatible technical solutions need to be put in place to ensure that information sharing is effective.²⁷ Within each of these components, different countries will face unique challenges depending on various factors such as the relative sophistication of their legal system, administrative regime, technological ability and intellectual capital. The OECD recognises that these problems, where they arise, will be most acute in developing countries. It also recognises that developing countries share a concern about achieving practical implementation.²⁸

3.1 *Specific concerns of developing countries*

The global scale of the OECD’s proposed AEOI means that developing countries will be involved in its adoption. As such, prior to a consideration of the details of the common reporting standard for AEOI outlined in the OECD document, the specific concerns of developing countries need to be examined. Literature outlining potential concerns and difficulties for developing countries adopts a global rather than regional approach. As such, this discussion discusses the concerns of developing countries globally. However, as sections 4 and 5 of this article take on an Asia-Pacific focus, it should be noted that the region accounts for 25% of all developing countries and has 13 of the least developed countries globally. In other words, these are countries which are expected to face the greatest challenges in meeting the standards proposed by the OECD.

26 For details of the action items, see OECD, *Action plan on base erosion and profit shifting*, (OECD Publishing, 2013). Available at www.oecd.org/ctp/BEPSActionPlan.pdf.

27 OECD, *Automatic exchange of information: what it is, how it works, benefits, what remains to be done* (OECD, 2012), at 11.

28 See OECD, above n 3, 3.

It cannot be suggested that developing countries have been ignored in the considerations by the OECD and G20 around international tax issues, and specifically the implementation of the common reporting standard for AEOI. In particular, at the St Petersburg Summit in 2013,²⁹ G20 leaders took steps to establish an action plan to assist developing countries. This was done via a request to the Development Working Group (DWG) in conjunction with the Finance Track, to work with the OECD, the Global Forum and other international organisations to develop a roadmap to assist developing countries and report to the 2014 G20 Summit. Specifically, the DWG, led by the Global Forum Secretariat, was tasked to first, identify the obstacles that developing countries would need to overcome to successfully participate in the AEOI using the common reporting standard and second, consider steps that would need to be taken to assist these countries to meet the standard as established by the OECD.³⁰ Feeding into this work by the Global Forum, bodies such as the World Bank Group also recognised the key challenges faced by developing countries. In particular, the World Bank Group recognised the five key challenges as:³¹

“[T]he urgency of other basic domestic reforms; high costs of information technology infrastructure; human resources needs for analysing and using received data efficiently; difficulty of making legislative changes; and limited awareness of exchange of information practices.”

Studies have revealed that developing countries themselves also have concerns about the common reporting standard. This is not to suggest they are not supportive of its introduction, as the case is quite the opposite. The actions of developing countries in their active participation of the project to date, along with previous studies, indicate that developing countries support the introduction of AEOI using the common reporting standard and that they recognise the significant advantages of its implementation. Knobel and Meinzer, in their report for the Tax Justice Network on AEOI for developing countries, found that it was consistently supported by both developing countries and countries which already had AEOI.³² While their sample size was small (eight developing countries, and 11 countries with AEOI in place), responses were consistently positive with the advantages of greater revenue collection and tax evasion deterrence cited as reasons for its introduction. However, concerns, mainly focused around implementation and compliance, were also identified.

29 The G20 Leaders' Summit was held from 5–6 September 2013 in St Petersburg, Russia. See in particular paras 50–52 of the G-20 Leaders' Declaration. Available at www.g20.org/sites/default/files/g20_resources/library/Saint_Petersburg_Declaration_ENG_0.pdf.

30 See www.dfat.gov.au/trade/g20/terms-of-reference-roadmap-for-developing-country-participation.pdf.

31 See OECD, above n 3, 12.

32 See Knobel and Meinzer, above n 4.

Knobel and Meinzer report that the biggest concern of developing countries in the implementation and application of AEOI is their capacity to comply with the agreed requirements. In particular, their concerns centre on the need to establish local collection systems to allow for reciprocal exchange of information, the ability to analyse the information received, and the information technology requirements.³³ The need to keep information confidential will also be an agreed requirement of AEOI and is similarly seen as being a particularly pronounced issue for developing countries. The OECD emphasises that “countries need a high degree of comfort that the information is kept confidential both in law and in practice and is only used for the purposes allowed under the applicable exchange instrument”.³⁴ As such, developed countries are likely to put pressure on developing countries to provide assurances as to confidentiality.

Consistent with the findings of Knobel and Meinzer, administrative concerns by developing countries are also seen as rating high, particularly the financial costs associated with information technology needs as well as human resources.³⁵ It is well known that developing countries have much less sophisticated information technology systems for the purposes of tax administration and also have less well trained staff. In addition to the administrative issues facing revenue authorities, administrative concerns and compliance costs will extend to financial institutions affected by the reporting requirements imposed.

3.2 *Developed country genesis of the common reporting standard*

While the OECD’s proposal is the first time that there has been an attempt to implement a common reporting standard for AEOI on a global scale, there are earlier examples, which are developed nation focused, that provide the foundation for the current proposals.³⁶ These earlier examples provide context to the common reporting standard and highlight the fact that the current proposal builds on much of the existing disclosure requirements including bilateral treaties,³⁷ tax information exchange agreements (TIEAs)³⁸ and the *Multilateral Convention on Mutual Administrative*

33 Ibid.

34 See OECD, above n 27, 6.

35 See OECD, above n 3, 10.

36 See www.oecd.org/ctp/exchange-of-tax-information/automatic-exchange-of-financial-account-information.htm.

37 OECD, *Model Tax Convention on Income and Capital* (OECD, 2013), art 26; and UN, *Model Double Taxation Convention between Developed and Developing Countries* (UN, 2011), art 26.

38 OECD, *Model Agreement on the Exchange of Information on Tax Matters* (OECD, 2002). Available at www.oecd.org/ctp/harmful/taxinformationexchangeagreementstieas.htm.

Assistance in Tax Matters.³⁹ The common reporting standard also draws on prior work such as intergovernmental agreements (IGAs) and industry specific reporting requirements; in particular the US FACTA⁴⁰ and the European Union (EU) Savings Directive.⁴¹

Given this genesis, many developed countries are part of the programs which formed the basis of the current common reporting standard proposal, while very few developing countries are involved. Further, where there is involvement by developing countries, it tends to be limited to the supply of information rather than receipt and use of information. In particular, FACTA is a reporting requirement aimed at US citizens with foreign accounts and investments. From 1 July 2014, it requires foreign financial institutions to report to the Internal Revenue Service information about US accounts and their holders. Consequently, while several developing countries in the Asia-Pacific region such as India, the Philippines, and South Korea have signed agreements with the US, those agreements simply deal with the supply of information. On the other hand, the EU Savings Directive, introduced with effect from 2015, which requires credit and financial institutions to provide information on interest income where it is earned in the EU and also certain non-EU countries for automatic exchange, involves no developing countries within the Asia-Pacific region.

Despite a limited and potentially homogeneous representation of countries within these programs, the full version of the common reporting standard for AEOI, designed to apply globally, was developed. It was released by the OECD on 21 July 2014 and provides the standard itself, along with a Model Competent Authority Agreement and commentary.⁴²

3.3 *The proposed common reporting standard*

As previously stated, AEOI involves the systematic and periodic transmission of bulk taxpayer information by the source country to the residence country concerning various categories of income. This AEOI will be done within a common reporting framework with each country adopting the common reporting standard being both

39 OECD, *Multilateral Convention for Mutual Administrative Assistance in Tax Matters* (OECD, 1988), as amended in 2011 (CETS 127). As at 31 August 2015, there are 87 signatories to this convention.

40 See further www.irs.gov/Businesses/Corporations/FATCA-Governments. For a discussion on FATCA as it affects Australasia, see A Sawyer, "Assessing the implications of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and the Foreign Account Tax Compliance Act: an Australasian perspective", (2015) 44(2) *Australian Tax Review* 99–119.

41 European Council, *Directive on taxation of savings income in the form of interest payments*, Directive 2003/48/EC (2003).

42 See www.oecd.org/ctp/exchange-of-tax-information/automatic-exchange-of-financial-account-information.htm.

a source and a residence country. Consequently, the current OECD proposal has two elements: first, the actual AEOI and second, the exchange of that information in a common format. The two components have their own advantages which, in theory, will be relevant to both developed and developing countries. It is for these reasons that developing countries support the adoption of the common reporting standard for AEOI. As such, the section below outlines the perceived theoretical benefits before considering implementation issues.

3.3.1 Theoretical benefits of the common reporting standard for AEOI

The overarching advantage of the common reporting standard is the standardisation of the information that is captured and exchanged as there is then the possibility of one technical solution which can be used by all countries for all reporting. Theoretically, this means that a developing country will be able to use the same systems as a developed country and can effectively leverage off the work done by those who are more advanced with the implementation and operation of AEOI. If successfully implemented, such a system will free up scarce tax administration resources which may be significant for developing countries. Further, reduced compliance costs are recognised for both reporting institutions and tax administrations. However, this necessarily assumes that a mechanism for exchange of information is currently in place, which is likely for developed countries but may not be the case with developing countries.

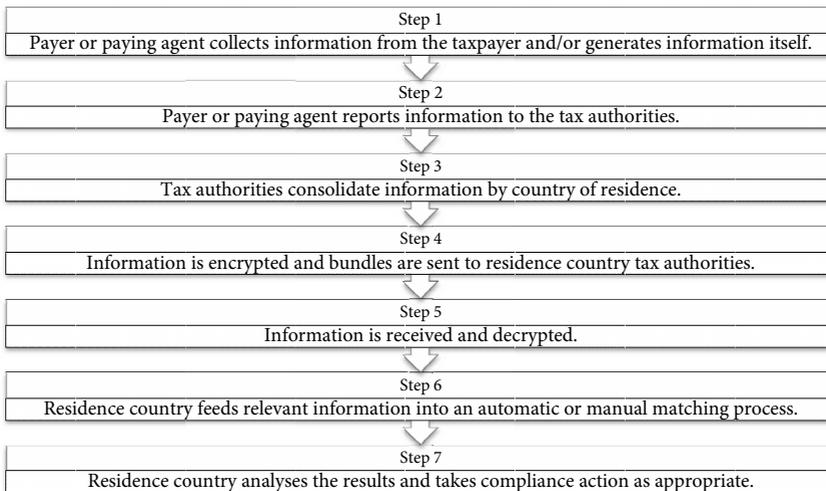
If effective, the common reporting standard for AEOI also has numerous substantive theoretical advantages for both developed and developing countries. It can provide timely information on non-compliance, detect cases of non-compliance where receiving countries had no indication of the non-compliance, act as a deterrent thereby increasing voluntary compliance, educate taxpayers about their reporting responsibilities, and, in some cases, allow for the pre-filing of tax returns.⁴³ In fact, many of these advantages are likely to significantly benefit developing countries more so than developed countries given the base from which developing countries are operating within the realm of tax avoidance. However, to achieve successful outcomes from the AEOI, data distributed to the receiving country must be able to be matched and used within a domestic administration, that is, information needs to be aligned. It is for this reason that a common reporting standard has been developed. These theoretical benefits also assume that developing countries have been able to achieve practical implementation of the common reporting standard.

43 Ibid, 19.

3.3.2 Implementation of the common reporting standard

Ultimately, for the theoretical benefits to convert to practical benefits, AEOI first requires collection mechanisms, and this is where difficulties begin to surface for developing countries. The usual practice is for source countries to collect the information on a routine basis and pass the information on to allow tax authorities in residence countries to verify the accurate reporting of foreign source income by its residents.⁴⁴ As simple as this may appear, the implementation, administration and compliance requirements are highly complex for countries which have not begun to consider such a regime. There is the process of AEOI itself, along with due diligence requirements and also legal and regulatory requirements. To this end, developed countries are much more likely to have been involved in the history of the development of exchange of information and be participating in some form of exchange already. The proposed model discusses all of the elements, each of which potentially highlights difficulties for developing countries. The AEOI involves seven broad steps, as set out in Figure 1:

Figure 1: Steps involved in automatic exchange of information⁴⁵



Steps 1 to 4, as set out in the above figure, are undertaken by the sending country, while steps 5 to 7 are undertaken by the receiving country. At step 6, matching may

44 OECD, *Automatic exchange of information: what it is, how it works, benefits, what remains to be done* (OECD, 2012), 7.

45 Adapted from OECD, above n 27, 11.

range from a manual process to sophisticated automatic matching systems. At any stage, feedback can also be given to the sending country by the receiving country. Within the stepped framework, it is necessary to consider which entities must report, what must be reported, which accounts are covered and the due diligence process for ensuring compliance. Rather than the process of automatically exchanging information, these are the elements of the common reporting standard which can, in theory, be done on a different basis for different countries. However, in the authors' view, it is the common reporting standard which is the most significant advancement in the exchange of information under the OECD proposed model.

Under the common reporting standard, the financial information required to be reported is broad ranging and covers investment income such as interest and dividends, as well as reporting requirements for account balances in order to address hidden capital. Specifically, interest, dividends, account balance or value, income from certain insurance products, sales proceeds from financial assets and other income generated with respect to assets held in the account or payments made in respect of the account will need to be reported.⁴⁶ A look-through approach is adopted in relation to account holders subject to reporting. Reportable accounts will include those of individuals and entities with a requirement to look through those entities which are passive to also report the relevant controlling persons.⁴⁷ The financial institutions required to report include custodial institutions, depository institutions, investment entities and specified insurance companies, unless they present a low risk of being used for evading tax and are excluded from reporting.⁴⁸

Robust due diligence requirements are necessary to ensure that accounts and account holder information is identified. The OECD's common reporting standard divides due diligence requirements into four categories: pre-existing individual accounts, new individual accounts, pre-existing entity accounts and new entity accounts. For pre-existing individual accounts, financial institutions will be required to review all accounts and, depending on whether the account is classified as low value or high value, either consider documentary evidence of residence or extend procedures to include a paper record search and an actual knowledge test. New accounts will be subject to self-certification. Where there are pre-existing entity accounts, the financial institution will need to determine whether the entity itself is a reportable person and whether the entity is a passive entity thereby requiring an investigation into the residence of controlling persons, either by considering available information or self-certification. Jurisdictions may opt to allow their financial institutions to apply a

46 Ibid, 15.

47 Ibid, 15.

48 Ibid, 15.

de minimis test (US\$250,000) if considered appropriate. The same assessments will need to be undertaken for new entity accounts.⁴⁹

Finally, the AEOI requires a legal basis to operate and again, developing countries are likely to be much less prepared for such a basis than developed countries. Traditionally, the required legal framework has been achieved using double tax agreements (DTA) which incorporate art 26 of the OECD's and UN's Model Tax Conventions or art 6 of the *Convention on Mutual Administrative Assistance in Tax Matters*.⁵⁰ However, the OECD proposes that countries sign a competent authority agreement which will then allow the sharing of information under existing arrangements. This is only the first step as the common reporting standard will be required to be translated into domestic law in order to impose obligations on the reporting entities. As such, where agreements are reciprocal, which is the aim of the common reporting standard, countries need to have in place both the domestic legal framework and the administrative capacity to ensure that as a sending country material can be collected and as a receiving country material can be used effectively. At each of the specific stages, developing countries have concerns and face hurdles. However, it is this last stage, relating to domestic implementation, which is likely to cause the most problems and be where developing countries need the most assistance.

3.4 *Current support to address the concerns*

The previous section outlined the theoretical benefits and components to the common reporting standard as well as the likely difficulties in transforming those theoretical benefits into practical benefits for developing countries. The OECD recognises that the successful implementation of AEOI requires “knowledge, political will, information technology human resources, legal frameworks, rigorous confidentiality and data protection safeguards and resources dedicated to ensuring information received is put to effective use”.⁵¹ Various suggestions have been offered to assist developing countries in the implementation of the common reporting standard for AEOI. Familiar suggestions include a commitment to funds from developed countries, training and technology support, and non-reciprocity provisions to allow developing countries to only receive information rather than have to supply it as well.

Current support can be divided into two categories: first, the development of a high level implementation policy by the OECD to broadly address the concerns of developing countries and actions needs to address those concerns; and second, the practical ground level or grass roots assistance offered by various international organisations and developed countries.

49 Ibid, 16.

50 EU member countries also enact domestic laws to implement ER directives which provide for exchange of information.

51 Ibid, 3.

3.4.1 Global Forum roadmap

On 5 August 2014, the Global Forum delivered its report to the G20 DWG outlining a roadmap for developing country participation in the AEOI.⁵² This roadmap focuses on general themes and challenges and proposes a stepped approach to help developing countries move to an AEOI system. It also outlines the assistance various international organisations and G20 countries can take to support developing countries. The discussion above which outlines the functional requirements of the common reporting standard for AEOI, while outlining implementation requirements, does little in the way of describing and aiding the implementation processes. However, before developing countries are even faced with the challenges of applying the standard, effective implementation must occur.

The OECD roadmap for developing country participation provides four key principles to assist in the implementation of the common reporting standard for AEOI. First, based on the recognition that each jurisdiction will be starting from a different base, a tailor-made approach for each jurisdiction will be applied. Second, domestic synergies should be achieved with domestic resource mobilisation and capacity building. Third, sufficient time should be allowed, taking into account the capacity building required. Fourth, a priority should be to focus on developing countries which are also financial centres to ensure that there is advancement towards a truly global system.⁵³

Implementation, which was discussed in section 3.3.2, requires four separate steps to be taken, all of which impose considerable costs on developing countries. First, the reporting and due diligence requirements must be translated into domestic law. Second, countries must decide on a legal basis for the exchange of information, whether through double tax agreements or the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters* and, in addition, a Model Competent Authority Agreement set out in the standard. Third, administrative and technology infrastructure needs to be put in place to enable both the collection and exchange of information. Fourth, confidentiality and data safeguards need to be put in place at both a legal and operational level.⁵⁴

While the Global Forum roadmap is useful in terms of identifying high level problems, it does little in the way of offering “grass roots” solutions and assistance towards achieving the four separate steps outlined above. There are, however, some examples of this occurring.

52 Ibid, 3.

53 Ibid, 13.

54 Ibid, 7–8.

3.4.2 “Grass roots” assistance

On 10 May 2012, the OECD launched its concept of *Tax Inspectors Without Borders* designed to help developing countries bolster their domestic revenues by making their tax systems fairer and more effective. On 13 July 2015, the initiative was launched with the objective of transferring tax audit knowledge and skills to tax administrations in developing countries through a real time, “learning by doing” approach.⁵⁵ The OECD has also stated that it would establish an independent foundation that provides international auditing expertise and advice to help developing countries better address tax base erosion, including tax evasion and avoidance.⁵⁶ This seems to demonstrate the change in strategic direction of the OECD towards a more global, rather than member-based, approach.

Various other international bodies have recognised the need for greater international tax cooperation. In December 2010, the International Monetary Fund (IMF) launched its Topical Trust Fund on Tax Policy and Administration aimed at financing technical assistance to contribute to the development of tax systems in 12 low and lower-middle income countries, using the IMF fund’s expertise and infrastructure.⁵⁷ The IMF also provides its members with technical assistance on request. Other organisations such as the World Bank Group also offer technical assistance to its members as part of a broader public sector development program.⁵⁸ Regional development banks such as the African Development Bank, Asian Development Bank and the Inter-American Development Bank, also provide technical assistance to developing countries.⁵⁹

The Global Forum is encouraging developing countries to apply for membership, volunteer for a pilot project, work on developing the building blocks towards the common reporting standard for AEOI, and in due course, implement the standard and undergo peer review. The Global Forum and World Bank will continue to build awareness of AEOI, develop resource materials and undertake one or more pilot projects. G20 members will work alongside developing countries in a partnership-like

55 See www.oecd.org/tax/taxinspectors.htm.

56 OECD, *Tax: OECD launches Tax Inspectors Without Borders* (OECD, 2012). Available at www.oecd.org/newsroom/taxoecdlaunchestaxinspectorswithoutborders.htm.

57 IMF, “Donors agree to support the IMF’s Topical Trust Fund on Tax Policy and Administration”, press release no. 11/133, (April 13, 2011). Available at www.imf.org/external/np/sec/pr/2011/pr11133.htm.

58 United Nations, *Strengthening of institutional arrangements to promote international cooperation in tax matters, including the Committee of Experts on International Cooperation in Tax Matters*, E/2011/76, (UN, 2011), para 21.

59 G Michielse and V Thuronyi, “Overview of cooperation on capacity building in taxation”, in *Committee of Experts on International Cooperation in Tax Matters*, United Nations, Sixth Session, October 2010, E/C 18/2010/CRP.11. Also see V van Kommer, *Norms and policy setting, identification of gaps, and exploration of opportunities for creating greater synergies in respect of technical assistance in tax matters*, (IBFD, 2012).

manner. The OECD is also providing support through the Task Force on Tax and Development, which incorporates exchange of information within its terms of reference.⁶⁰

To date, six developing countries have indicated their interest in participating in pilot projects for AEOI (Albania, Colombia, Morocco, Pakistan, the Philippines and Uganda). As at July 2015, three of these pilot partnerships have commenced. The first two projects being undertaken involve Albania and Colombia, collaborating with Italy and Spain, respectively, as pilot partners. The third is the Philippines, which has Australia as its pilot partner.⁶¹ While France is to partner with Morocco, work has yet to commence. The proposed projects with Pakistan and Uganda remain under evaluation, with developed country partners yet to be identified.⁶²

One important pilot project with AEOI is the Africa Initiative, which involves the joint efforts of African Tax Administration Forum, the Centre de Rencontres et d'Études des Dirigeants des Administrations Fiscales, the Global Forum, the OECD, the World Bank Group, and various other international organisations and individual African members of the Global Forum. A medium-term objective is to raise awareness, and then developing tools to build effective AEOI systems. The five core objectives are: raising awareness, building political buy-in, increasing membership, building capacity and creating a legacy.⁶³ This type of pilot project has not to date been expanded on beyond the African region.

4. Developing countries – not all the same

It was established in the discussion above that developing countries are supportive of the common reporting standard for AEOI. It was also demonstrated that there are varying levels of concern about the implementation and operation of the regime. Further compounding the problems is the fact that developing countries have competing tax reform priorities.⁶⁴ To that end, different countries have different needs. For example, some countries, such as Argentina and India, have been actively

60 OECD, *Tax and development summary* (OECD, 2014). See also Global Forum, *Automatic exchange of information: pilot project outline* (OECD, April 2015). Available at www.oecd.org/tax/transparency/technical-assistance/aeoi/AEOI-pilot-project-briefing.pdf.

61 For an early comment on this partnership, see APEC, “Value of automatic exchange of information”, paper submitted by Australia for the Workshop on Fiscal Management through Transparency and Reforms, Bagac Philippines (9–10 June 2015). Available at http://mddb.apec.org/Documents/2015/FMP/WKSP1/15_fmp_wksp1_024.pdf.

62 OECD Secretary General, *Report to G-20 finance ministers, Istanbul, Turkey* (OECD, February 2015), 21. See also www.oecd.org/tax/transparency/technical-assistance/aeoi/.

63 OECD Global Forum, *Africa initiative: summary note* (OECD, 2014).

64 See OECD, above n 3, 3.

engaging in the AEOI and recently signed agreements with other countries to do so. However, this is not the case with many developing countries and as such, can be explained by the fact that developing countries should not be considered to represent a single category. The Global Forum recognises that low income countries have particularly acute needs in term of implementing the common reporting standard for AEOI⁶⁵ but goes no further in categorising developing countries.

Consequently, it is helpful to review how developing countries or nations are categorised, partly to gain an appreciation of how many countries come within the category, but also to recognise that the group is not static. Developing countries are defined according to their gross national income (GNI) per capita per year. According to the World Bank, countries with a GNI of US\$11,905 and less per capita are defined as developing (as for the period 1 January to 31 December 2015).⁶⁶ As of July 2025, 135 countries are deemed to be developing by the World Bank using the GNI data.⁶⁷

Given the substantial number of developing countries globally, and that the authors are located within the Asia-Pacific region, this article adopts a case study approach to solutions for those countries within this region, which the authors argue is significant in terms of the successful implementation of the common reporting standard for AEOI. While such an approach excludes Africa, which is considered to have the poorest and the most in need of the developing countries, within the Asia-Pacific region, there are 25 developing countries in Asia and 11 in the Pacific, totalling 36 countries (approximately 25% of all developing countries).⁶⁸ By aggregating the World Bank list of Asia-Pacific developing countries with the OECD list of AEOI status commitments, we obtain a clearer picture as to the current position of the adoption of the common reporting standard for AEOI within the region. The list of Asia-Pacific developing countries, along with their AEOI status as at 23 July 2015, appears in Table 1 below.

65 Ibid, 5.

66 See World Bank, *GNI per capita, Atlas Method* (current US\$) (2014). Available at <http://data.worldbank.org/indicator/NY.GNP.PCAP.CD>. This is the latest available data.

67 See <http://databank.worldbank.org/data/download/GNIPC.pdf>.

68 Other lists of developing nations include: American Samoa, Cook Islands, Nauru, Niue, Tokelau and Wallis & Futuna on the list of Pacific developing countries. If these nations were to be included, then there would be 29% of all developing nations in the Asia-Pacific region.

Table 1: Developing countries in the Asia-Pacific region (2014)⁶⁹

Asia	AEOI status at 23 July 2015	Asia cont...	AEOI status at 23 July 2015	Pacific	AEOI status at 23 July 2015
Afghanistan	Not committed	Mongolia	Not committed	Federated States of Micronesia	Not committed
Bangladesh	Not committed	Myanmar	Not committed	Fiji	Not committed
Bhutan	Not committed	Nepal	Not committed	Kiribati	Not committed
Cambodia	Not committed	Pakistan	Not committed	Marshall Islands	First exchanges by 2018
China (excl. HK SAR)	First exchanges by 2018	Philippines	Not committed	Palau	Not committed
India	First exchanges by 2017	Sri Lanka	Not committed	Papua New Guinea	Not committed
Indonesia	First exchanges by 2018	Tajikistan	Not committed	Samoa	First exchanges by 2018
Kazakhstan	Not committed	Thailand	Not committed	Solomon Islands	Not committed
Korea, Dem. Rep.	First exchanges by 2017	Timor-Leste	Not committed	Tonga	Not committed
Kyrgyz Rep.	Not committed	Turkmenistan	Not committed	Tuvalu	Not committed
Laos PDR	Not committed	Uzbekistan	Not committed	Vanuatu	Not committed
Malaysia	First exchanges by 2018	Vietnam	Not committed		
Maldives	Not committed				

69 China, India and Indonesia are also members of the G20, reflecting in part the absolute size of their economies, but also the need for a closer relationship between developed and developing countries.

4.1 Degrees of sophistication

Of the developing countries set out in Table 1, *Afghanistan*, Bangladesh, Bhutan, *Cambodia*, India, Indonesia, Kiribati, Laos PDR, Micronesia (Federated States of), Myanmar, *Nepal*, Pakistan, Papua New Guinea, the Philippines, Samoa, Solomon Islands, Sri Lanka, Timor-Leste, Tuvalu and Vanuatu are classified among the less and least developed countries.⁷⁰ Collectively, these comprise 20 of the 36 (56%) developing countries in the Asia-Pacific region, and collectively 20 of the 80 (25%) of the less and least developed countries (the vast majority being located in the African region) globally. An analysis of the AEOI status indicates that none of the least developed countries in the region have committed to the common reporting standard for AEOI. Seven developing countries within the region have committed to implementation, with three of those (China, India and Indonesia) being members of the G20.

Least developed countries are expected to face the greatest challenges in meeting the standards proposed for AEOI by the OECD and G20 and, therefore, are arguably in the greatest need of assistance. It may also explain in part their reluctance to commit to the implementation of AEOI. However, the more fundamental question that needs to be considered is: why should developing countries be concerned about AEOI and its associated requirements? One key issue is that developing countries depend on tax earned on income sourced in their jurisdiction by multinational enterprises (MNEs), with the risk that MNEs may look to invest elsewhere, and that developing countries may be missing out on opportunities in collecting tax that is due to them. Furthermore, there is some evidence to support perceptions that developing countries are synonymous with corruption, illicit trade, and overall deficiencies in core infrastructure. In addition to the benefits that AEOI will bring to developing countries, in this new world of AEOI, these same countries should expect to receive requests from other jurisdictions (both developing and developed countries) for information, and to become a party to the new standard of AEOI. As such, even if these countries are not proactive in adopting AEOI themselves, it is likely that it will be expected by other countries.

Developing countries' tax administrations need assistance in identifying potential cases for investigation and to generate information to help respond to global tax threats and international schemes. Developing countries also need assistance in expanding their ability to effectively implement bilateral and multilateral agreements to allow AEOI with other countries. However, just how this will occur is a major issue that needs to be considered. The G20 and OECD, through the Global Forum, provide opportunities for this assistance, but are viewed as primarily interested in the

70 Data is from the UN's World Economic Situation and Prospects (WESP) data set based on the situation as at the end of 2014, using the World Bank's Atlas Method (dated 1 July 2015). Those countries in italics are the least developed (defined as having GNP per capita of \$US1,045 or less). For less developed, GNP per capita is defined as being \$4,125 or less.

matters facing developed countries. While the OECD and G20 are reaching out, more practical and potentially long-standing support may come from various regional and organisational administration groupings that incorporate developing countries.

4.2 Regional and organisational groupings

Regional groupings of tax administrators are becoming increasingly important in terms of administration capacity building. Notable regional groupings include the African Tax Administration Forum, the Association of Tax Authorities of Islamic Countries, the Commonwealth Association of Tax Administrators, the Inter-American Centre of Tax Administrations, the Centre de Rencontres et d'Études des Dirigeants des Administrations Fiscales, the Intra-European Organisation of Tax Administrations, the Pacific Islands Tax Administrators Association (PITAA), and the Study Group on Asian Taxation Administration and Research (SGATAR).⁷¹ To date, the only regional body to offer guidance to countries in its region is the African Tax Administration Forum. The African Tax Administration Forum, with the support of the OECD, recently released document entitled: *A practical guide on exchange of information for developing countries*,⁷² which describes the advantages of AEOI for developing countries and provides guidance on the implementation of the regime in an effective and efficient manner. While this work is useful in terms of guidance, it does not directly assist in the Asia-Pacific region.

Of particular interest to our study are PITAA and SGATAR. The idea of an association of Pacific Islands' tax administrators (which became known as PITAA) first emerged during a seminar organised by the Pacific Financial Technical Assistance Centre⁷³ in Tonga in May 2003 that was attended by the tax representatives of eight Pacific Island countries. The Eleventh Annual Conference of PITAA was hosted by the Fiji Revenue

71 United Nations, *Strengthening of institutional arrangements to promote international cooperation in tax matters, including the Committee of Experts on International Cooperation in Tax Matters*, E/2011/76, (UN, 2011), para 31. Also mentioned are the African Development Bank, the Asian Development Bank and the Asian Development Bank Institute, as well as the Inter-American Development Bank, the European Union, the Southern African Development Community and the Caribbean Community.

72 African Tax Administration Forum, *A practical guide on exchange of information for developing countries: an ATAF publication* (ATAF, 2013).

73 Pacific Financial Technical Assistance Centre (PFTAC) is an office of the IMF that is responsible for providing technical assistance and training to Pacific Island countries. It is a collaborative venture between the IMF, the recipient countries, and bilateral and multilateral donors. PFTAC's focus is to improve economic management and facilitate sustainable economic growth across the Pacific Island countries it supports. PITAA released its first newsletter in June 2015. Available at http://pitaa.pftac.org/filemanager/files/Newsletters/TaxPasifika_Issue1.pdf.

and Customs Authority in July 2014.⁷⁴ PITAA has sixteen member countries: *Cook Islands*, Fiji, Kiribati, Marshall Islands, Federated States of Micronesia, *Nauru*, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Timor-Leste, *Tokelau*, Tonga, Tuvalu and Vanuatu.⁷⁵

Australia, New Zealand, the OECD and the World Bank all made a number of presentations to this conference, and continued their offer of support to PITAA members with regard to tax administration and OECD initiatives, including the common reporting standard for AEOI. One area that PITAA is currently assisting its members is through benchmarking national tax administrations against the requirements of the model tax office, which will be vital to implementing AEOI.

All of these Pacific Island nations are least developed countries, and likely to be some of the countries that are the most challenged by AEOI expectations. The OECD acknowledges that issues with the common reporting standard for AEOI facing developing countries include the complexity of the standard, the costs (information technology, human resources and legal changes required), competing priorities and the need to build substantial capacity (as outlined in a Global Forum survey⁷⁶). To that end, they will require sustained support from developed countries in the region, along with the OECD and the G20.

SGATAR was initiated by the Philippines in 1970, and first met in 1971. Its official members are the tax administration bodies of 17 jurisdictions in East and Southeast Asia and Oceania/Pacific. The current membership comprises: Australia, Cambodia, China (PR), Chinese Taipei, Hong Kong (SAR), Indonesia, Japan, Korea (Republic), Macao (SAR), Malaysia, Mongolia, New Zealand, Papua New Guinea, Philippines, Singapore, Thailand, and Vietnam. There are currently seven observer nations: Fiji, France, *Guatemala*, Laos PDR, Maldives, Myanmar and Vanuatu.⁷⁷ Observer organisations include *CAFAT*, the IMF, OECD, the UN and the World Bank.

SGATAR aims to provide an opportunity for members to get together annually and exchange information, ideas and experience in the field of taxation. Australia hosted

74 Representatives from PFTAC, International Finance Corporation (IFC)/World Bank, IMF, New Zealand Inland Revenue Department (NZIRD), New Zealand Ministry of Foreign Affairs, Australia Ministry of Foreign Affairs and Trade, Fiji's New Zealand High Commission Office, OECD, PACTAM, and Australia Department of Foreign Affairs and Trade (DFAT) also attended.

75 Those nations emphasised by italics are not specifically identified in the World Bank's developing country list.

76 OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, *Automatic exchange of information: a roadmap for developing country participation* (2014), 35.

77 There is some overlap in membership between PITAA and SGATAR, with Papua New Guinea, Fiji and Vanuatu having common membership/observer status.

the 2014 meeting of SGATAR in November 2014,⁷⁸ which coincided with the seventh meeting of Heads of Training Institutions.⁷⁹ Commissioner of Taxation, Chris Jordan AO, indicated that one aim of the 2014 meeting is for attendees to work together to ensure that all SGATAR members are ready to adopt the OECD’s common reporting standard, as the new global model for the AEOI.⁸⁰ The 44th SGATAR meeting agreed to create a new ongoing taskforce to:⁸¹

- enable our region to engage in effective discussions and to keep abreast of international developments and issues including base erosion, profit shifting and tax transparency. There is unprecedented and powerful global collaboration on these issues and this Taskforce gives all members a platform to play a role, including relaying their views to international forums; and
- enable cooperation and support for the development of robust, cohesive tax systems in each jurisdiction. SGATAR members can use the Taskforce to *coordinate sharing of best practice and experience and seek assistance on implementing initiatives such as exchange of information.*” (emphasis added)

While SGATAR members have come together to meet once a year, this new taskforce will provide year-round support to SGATAR members. A valuable feature of SGATAR in relation to implementing AEOI in the developing country members is that Australia, Japan, Korea (Rep), New Zealand, and Singapore will be able to share their expertise and experience as developed countries that are committed to AEOI and also members of the OECD.

Another regional cooperative framework on taxation in the Asia-Pacific region is the ASEAN Forum on Taxation, established by the Association of South-East Asian Nations (ASEAN).⁸² This forum is intended to be a platform to support regional dialogue on taxation issues for regional integration, particularly related to withholding tax and double taxation. In April 2011, the ASEAN finance ministers

78 Information on SGATAR was taken from the following website: <https://www.sgatar2014.org/>. SGATAR will be hosted by Singapore in 2015 and New Zealand in 2016.

79 The Heads of Training Institutions (MHTI) was established in 2001 and is held alongside the SGATAR meeting every two years. It aims to strengthen international training cooperation to build the future capability of SGATAR members in addressing challenging tax issues. SGATAR members shared their experiences, issues and solutions to identifying and building the necessary capability requirements. In Australia in November 2104, one theme under discussion was the opportunities for cross-jurisdictional automatic information exchange and analysis; see further <https://www.sgatar2014.org/daily-summary>.

80 See M Swire, *Asia-Pac Tax Commissioners meeting in Sydney* (24 November 2014). Available at www.tax-news.com/news/AsiaPac_Tax_Commissioners_Meeting_In_Sydney___66489.html.

81 See www.sgatar2014.org/media/communique.

82 ASEAN comprises: Brunei, Cambodia, Indonesia, Laos PRC, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam. All countries except for Brunei and Singapore are developing nations. The first joint communique was released in March 2105; see www.asean.org/news/

called for enhanced exchange of information on the tax regime and instruments among member states.⁸³ In order to discuss this and other issues, they established an ASEAN Forum on Taxation which involves the tax authorities of member states. The ASEAN Forum met in 2011.⁸⁴

Outside of the AEOI context, Sharkey proposes ASEAN as a regional tax organisation as a further step towards economic and fiscal development in the region, as well as a radical way to overcome many of the challenges of international taxation.⁸⁵ With ASEAN being a well-established regional organisation, it too may play a key role in assisting its developing country members in grappling with AEOI.

A further regional organisation is the South Asian Association for Regional Cooperation (SAARC), which has been promoting regional cooperation on tax issues. SAARC has a Limited Multilateral Agreement on Avoidance of Double Taxation and Mutual Administrative Assistance in Tax Matters, which was signed in 2005 and ratified by all eight SAARC member countries in 2006.⁸⁶ This agreement actually commenced with effect from April 2011. The first SAARC Meeting of Competent Authorities on Avoidance of Double Taxation and Mutual Administrative Assistance in Tax Matters was held at the SAARC secretariat in Nepal in April 2011, and since then, various training seminars on tax administration have been provided under the framework of the SAARC.⁸⁷ A seminar that included exchange of information

asean-statement-communiques/item/joint-statement-of-the-1st-asean-finance-ministers-and-central-bank-governors-meeting-afmgm-kuala-lumpur-malaysia-21-march-2015-theme-our-people-our-community-our-vision.

83 See www.asean.org/communities/asean-economic-community/item/joint-media-statement-of-the-15th-asean-finance-ministers-meeting-afmm-bali-indonesia-8-april-2011-2. The focus of cooperation has been to address double taxation concerns and withholding tax issues.

84 The ASEAN Forum on Taxation has been exploring opportunities for increasing regional cooperation in dealing with international tax evasion and collaboration with external parties to further enhance regional dialogue among regulators to complete a network of bilateral tax treaties. AEOI does not appear to feature in the dialogue as yet. See further www.asean.org/news/asean-statement-communiques/item/joint-ministerial-statement-of-the-18thasean-finance-ministers-meeting-afmm-nay-pyi-taw-myanmar-5-april-2014.

85 See N Sharkey, "A South East Asian tax organisation" (2013) 2 *British Tax Review* 175–191. See also, N Sharkey (ed), *Taxation in ASEAN and China: local institutions, regionalism, global systems and economic development*, (New York, NY: Routledge, 2012).

86 See further www.saarc-sec.org/areaofcooperation/detail.php?activity_id=45. The eight members of SAARC are: Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka, all of which are developing nations. Article 5 of the SAARC Agreement on Avoidance of Double Taxation and Mutual Administrative Assistance in Tax Matters provides for exchange of information. The most recent meeting, as at the time of writing, was in April 2015. There are nine observers to SAARC: Australia, China, the European Union, Iran, Japan, the Republic of Korea, Mauritius, Myanmar, and the USA.

87 See further S Araki, "Enhancing cooperation among tax administrators in Asia-Pacific" (2014) *International Tax Review* (January). Available at www.internationaltaxreview.com/Article/3302780/Enhancing-cooperation-among-tax-administrators-in-Asia-Pacific.html.

developments was held at the Directorate of Training & Research of the Inland Revenue for Pakistan in April 2014.⁸⁸ SAARC, as at the time of writing, is still considering a draft Model Tax Information Exchange Agreement (SAARC TIEA) for its members. While there is an active agenda for work in the tax area, with the limited membership and broad scope of this organisation, it may not lend itself well to being a key player in assisting developing countries to enhance their ability to work with AEOI beyond its membership.

The OECD, through the Global Forum, has included the African Tax Administration Forum as part of the technical working groups and participating in the Committee for Fiscal Affairs. The OECD is also setting up regional networks of tax policy and administration officials to be part of a structured dialogue with a wider group of developing countries. These groups are to be based in Africa, Asia, Latin America, the Caribbean, French speaking countries, Central Europe and the Middle East. One region not specifically identified by the OECD is the Pacific; while it may be assumed they will be included within Asia, most countries in the Pacific are very small and culturally different to developing countries in Asia. This apparent “gap” may suggest that Australia and New Zealand will need to provide a leading role in supporting these small Pacific developing countries, although the role of PITAA will also be crucial.

5. Further possible solutions

5.1 *The challenges*

The OECD recognises that many developing countries are not in a position to benefit from AEOI.⁸⁹ Its recent survey indicated that only three developing countries currently send information automatically compared to 50 developed countries, and 17 developing countries had received information automatically but had limited capacity to match and use the information.⁹⁰ The Global Forum’s roadmap highlights the steps that can be taken by different stakeholders. The developing countries themselves are stakeholders in the process, but need assistance from other stakeholders such as the Global Forum and/or G20 and other developed countries. In particular, it is suggested that G20 and other developed countries should encourage Global Forum membership, raise awareness in the region, partner to provide data, partner to provide knowledge and/or funding and to support pilot projects.⁹¹ In this part of the article, the authors offer some possible solutions for the Asia-Pacific region.

What are the major challenges for developing countries that are need of solutions? Indeed, is AEOI at or near the top of the list? Developing countries may face more

88 See further http://saarc-sec.org/areaofcooperation/detail.php?activity_id=45.

89 See OECD, above n 3, 12.

90 Ibid, 12.

91 Ibid, 14.

challenging issues such as securing the domestic revenue base by dealing with large informal sectors and illicit activities. Potentially of greatest concern to effective implementation of AEOI is the preparedness of the least developed and low income developing countries. For some developing countries, their administrations are still paper-based and transitioning to electronic platforms requires substantial work and time (or perhaps they are not even at a point yet to contemplate electronic systems). For others, there is a need for extensive modernisation of their information technology infrastructure so as to enable or support AEOI. Of fundamental importance is the need for this infrastructure to have sufficient compatibility with systems in other countries for which they may need to exchange information. Tax authorities in developing countries are frequently under-resourced both in terms of staff numbers and staff with the appropriate skills. In many cases, the tax administrations are spread across large geographical areas, which create challenges within the organisation.

Similar to developed countries, an issue facing developing countries is how do they ensure the confidentiality of information they have received? This will require, in most instances, substantial resources to develop and implement changes to domestic laws to reflect the international standard.

One suggestion from the G20's International Tax Symposium⁹² is for developed countries to automatically exchange information with developing countries on a non-reciprocal basis as a pilot, perhaps for a transitional period to start. However, this would still require developing countries to have adequate safeguards to maintain the confidentiality of information, and to be able to effectively use the information they have received so as to gain some benefit from it. Further, developing countries are likely to feel pressure to conform to what is becoming internationally accepted and experience adverse consequences if the common reporting standard for AEOI is not adopted. Members of the international community who do adopt the standard may treat non-conforming countries differently and/or perceive those countries as being uncooperative. The negative effects on both competitiveness and reputation are likely to force developing countries into a position of adoption, without necessarily having the means to do so. The authors now turn to offer some possible solutions.

5.2 *Regional groupings with a leader*

Focusing on the two regions of developing countries examined in this article, Asia has a number of potential organisations with a "leader" that could advance the case for the common reporting standard for AEOI within the members of that region. For example, ASEAN, as mentioned previously, represents ten Asian countries, all apart from Brunei and Singapore are developing countries. Economic integration is one of the aims of ASEAN, with the end goal being a single unified market comparable to

92 G20, *International Tax Symposium report* (G-20, May 2014), at 25–27. Available at https://www.g20.org/sites/default/files/g20_resources/library/G20%20International%20Tax%20Symposium%20Report.pdf.

the European Union (EU).⁹³ As discussed earlier, Sharkey uses this mandate as the foundation for a proposed South East Asian Regional Tax Organisation (SEARTO) which would contribute towards economic integration of ASEAN countries, but not seek political harmonisation as is seen in the EU.⁹⁴ The motivation for such a change is the interconnected nature of the regional economies, with globalisation and the elimination of harmful regional tax competition argued to be better served by the establishment of a SEARTO. Furthermore, Sharkey proposes the establishment of a “regional” concept of source and residence, not restricted by national or geographical borders.⁹⁵ Sharkey then proposed that a regional common tax rate be set, with the administration and collection of SE Asian taxes being undertaken by the SEARTO before being distributed to the various countries.⁹⁶

Sharkey’s proposal extends far beyond what would be necessary to assist ASEAN members to utilise AEOI, and indeed is a radical proposal.⁹⁷ Nevertheless, should something akin to Sharkey’s proposal emerge, it would serve the ASEAN members well in meeting the AEOI standard. Singapore has the potential to be a leader in ASEAN, being a member of the OECD and having a well-developed tax administration. Nevertheless, with the variance of sophistication of tax administrations with ASEAN and individual members’ aspirations, it is difficult to see that Singapore could be an effective leader of ASEAN. Furthermore, the world does not yet appear to be ready for the emergence of regional taxing authorities, although less formalised regional groupings of tax administrators may serve as useful vehicles for assisting member countries with implementing AEOI.

In this regard, SGATAR seems much better placed as an organisation to advance the readiness for AEOI for a number of Asian (and some Pacific) countries. Australia, Japan, Korea (Rep), New Zealand and Singapore collectively (perhaps through some rotational basis) would be well placed to lead this group in support of the developing country members, if only initially in regard to effective AEOI implementation.

Likewise PITAA is the most appropriate grouping for Pacific nations, although it has no developed countries within its membership. In that regard, Australia and New Zealand would be obvious candidates to provide a mentoring role to PITAA’s

93 ASEAN (1997), *Vision 2020*, ASEAN. Available at www.asean.org/news/item/asean-vision-2020.

94 N Sharkey, “A South East Asian tax organisation” (2013) 2 *British Tax Review* 175–191.

95 This idea is discussed by N Sharkey and K Bain, “Tax residence and regions: addressing South East Asian transnationalism through ASEAN”, in N Sharkey (ed), *Taxation in ASEAN and China: local institutions, regionalism, global systems and economic development*, (New York, NY: Routledge, 2012), 236–258,

96 See Sharkey, above n 94.

97 For further discussion on Sharkey’s proposal, and the need for some form of regional tax organisation in Asia, see T Brand, A Hodson, and A Sawyer, “South East Asian tax administration issues in the struggle to attract foreign direct investment: is a regional tax authority the way forward?”, (2015) 13(2) *eJournal of Tax Research* 285–316.

members, perhaps formalising the current arrangements of technical support and education. PITAA will require greater support from without than within, when compared to SGATAR, for example, in supporting its members.

5.3 *Developed country mentoring*

As part of educating developing countries with respect to AEOI, observer status may be granted in a project whose information is foreseeably relevant to the developing country's compliance activity. This, in turn, could lead to developed countries mentoring the observer thereby extending the educational role to live cases. One such example within the G20 is Australia forming a mentoring relationship with the Philippines. Within the Pacific, New Zealand has traditionally had a close relationship with most of the Pacific nations, including in particular the Cook Islands, Fiji, Kiribati, Samoa, Solomon Islands, Timor-Leste, and Tonga, and could undertake a mentoring role with one or more of these nations.

5.4 *Developing countries expanding their network of agreements and joining multilateral agreements*

Developing countries could look to build on what are usually very limited networks of DTAs and TIEAs. The former is particularly important with regard to their major trading partners, and the latter if they are looking to join the Global Forum. *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters* would assist developing countries in expanding their networks, but for many, they will not have the necessary infrastructure and expertise in their tax administrations to meet their membership obligations. Thus, this should be considered a medium-term approach in conjunction with utilising their membership of regional tax associations, and follow after effective mentoring from developed countries in the region, and also effective leadership through the work of regional-based organisations of tax administrations concerning AEOI.

6. Conclusion

AEOI has emerged as the new global standard in exchange of information between countries. The common reporting standard is a critical aspect of AEOI with regard to assisting each country to make the best use of information and that it is provided in a consistent manner to facilitate its use by countries. In this article, the authors have traced the major developments in AEOI and the development of the common reporting standard. The focus has been on the implications for developing countries, which to date have received minimal attention in the literature and by the proponents of AEOI, namely the Global Forum and the G20.

Steps are now being made to recognise the challenges faced by developing countries, although they have largely been considered to be homogeneous with respect to the issues they face and their preparedness for implementing AEOI. The authors have sought to make the point that developing countries are not all facing the same degree of challenges with respect to AEOI, and indeed for many, AEOI is not a high priority. Furthermore, the focus on AEOI by the OECD has largely been on African countries, where work is beginning with AFTA. The article, through a case study approach, has focused on the Asia-Pacific area, partly due to this area having less attention paid to it by the OECD, but also because it is one that the authors are most familiar with.

The analysis has demonstrated that many of the Asia-Pacific developing countries are among the least developed, and therefore expected to face greater challenges in grappling with understanding the implications of the common reporting standard for AEOI for their tax administrations and what they need to do to modify their domestic laws to enable effective AEOI. A key facilitator for Asia-Pacific developing countries will be the existing groups of tax administration organisations in these regions, in particular SGATAR and PITAA, as well as potentially ASEAN and SAARC. Critical to the effective assistance for these organisations will be the OECD members of SGATAR (Australia, Japan, Korea (Rep), New Zealand and Singapore), and the indirect assistance to PITAA from Australia and New Zealand (especially their tax administrations). Within ASEAN, Singapore may be able to take a lead with regard to AEOI, and SAARC will need to look to external assistance as all of its members are developing countries.

This article is not without its limitations. Unsurprisingly, the area of AEOI and the common reporting standard is far from static and as such, almost the moment this article is complete, there will be further developments. Inevitably, with the vast amount of material in this area, there will be information that has been overlooked which may provide further insights and suggest modifications to the authors' suggested potential solutions. Nevertheless, the article seeks to contribute to the solution(s) to assisting developing countries' preparedness for effective use of AEOI. Furthermore, the analysis is based on publicly available information and the authors' knowledge of the Asia-Pacific area; as such, the authors are not able to bring insights from confidential discussions and reports within any of the organisations referred to in the article.

In terms of future research, there remains considerable scope in this area, not only to examine the ongoing developments in this area, but also to extend the analysis to other regional groupings of developing countries, especially Africa. In due course, it will be important to assess the experiences of developing countries with using AEOI, although this may be several years in the future.

