FACILITATING AUTOMATIC EXCHANGE OF INFORMATION ON BLOCKCHAIN: A SOUTH AFRICAN PERSPECTIVE*

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SUMMARY

Exchange of information is a mechanism that enables tax authorities to share tax information across borders. Exchange of information curtails harmful practices such as tax evasion and tax avoidance by promoting cooperation between tax authorities. Recent world events have seen unprecedented levels of globalisation and novel income-earning structures. Taxpayers earn income from streams that were previously unavailable. These developments have led tax authorities to implement policies that focus on improved financial transparency and better multilateral cooperation. This article argues for the implementation of blockchain technology to facilitate exchange of information in South Africa. Blockchain is a ledger that records and stores information on an online network. Blockchain's features make it conducive for use in cross-border administration and exchange of tax information. Blockchain creates a platform for financial transparency because data stored on the blockchain is reliable and accurate. Tax information is exchanged in real time, thereby reducing tax authorities' administrative burden and enhancing cooperation.

1 INTRODUCTION

In recent years, there has been increased focus on the cross-border administration of taxes. Globalisation and digitalisation have enhanced a

* This article is partly based on Ruddy Kabwe's LLD thesis submitted in partial fulfilment of an LLD at the University of Pretoria.

taxpayer's income-earning capabilities. This, in turn, has resulted in taxpayers receiving income from sources across multiple jurisdictions. Taxpayers can also elect the source of their profits.[1] The use of technology has enabled taxpayers to bypass exchange controls, which has led to the concealment of income from domestic tax authorities.[2] The effect is that countries incur revenue losses owing to tax evasion and tax avoidance.[3]

To address these challenges, tax authorities resort to cross-border exchange of tax information. Exchange of information (EOI) is an initiative designed to ensure effective taxation of income.[4] EOI, coupled with cooperation between tax authorities across multiple jurisdictions, provides a mechanism that identifies non-compliant taxpayers and taxpayers who do not divulge worldwide income.[5] In addition to combating tax evasion and tax avoidance,[6] exchanging tax-related information is critical in enforcing domestic tax laws.[7]

In April 2013, a major policy shift in international taxation led to the adoption of automatic exchange of information (AEOI).[8] The shift was largely driven by developments around the world, particularly in the United States of America (US) and Europe, where there was overwhelming support for automatic exchange of information.[9] AEOI is the "systematic and periodic transmission of bulk taxpayer information by the source country to the residence country concerning various categories of income such as dividends and interest".[10] AEOI[11] aims to provide domestic tax authorities

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1 Wöhrer *Data Protection and Taxpayers' Rights: Challenges Created by Automatic Exchange of Information* (2018) 7.

2 Keen and Ligthart "Information Sharing and International Taxation: A Primer" 2006 13 *International Tax and Public Finance* 81 81–82.

3 Cockfield "Protecting Taxpayer Privacy Rights Under Enhanced Cross-Border Tax Information Exchange: Toward a Multilateral Taxpayer Bill of Rights" 2010 42(2) *UBC Law Review* 419 426.

4 Wöhrer *Data Protection and Taxpayers' Rights* 3.

5 Wöhrer *Data Protection and Taxpayers' Rights* 6.

6 Wöhrer *Data Protection and Taxpayers' Rights* 2; Cockfield "How Countries Should Share Tax Information" 2017 50(5) *Vanderbilt Journal of Transnational Law* 1091 1098–1099.

7 Cockfield 2017 *Vanderbilt Journal of Transnational Law* 1094; Ligthart and Voget "The Determinants of Cross-Border Tax Information Sharing: A Panel Data Analysis" (2008) http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.509.2744&rep=rep1&type=pdf (accessed 2021-08-11) 1.

8 OECD "A Step Change in Tax Transparency" (2013) https://www.oecd.org/ctp/exchange-of-tax-information/taxtransparency_G8report.pdf (accessed 2022-01-27) 4.

9 *Ibid*.

10 OECD "Automatic Exchange of Information: What It Is, How It Works, Benefits, What Remains to be Done" (2012) https://www.oecd.org/ctp/exchange-of-tax-information/automatic-exchange-of-information-report.pdf (accessed 2022-01-27) 5.

11 The process of automatic exchange of information works as follows. A taxpayer provides information to an employer or paying agent. The employer or paying agent reports information to the relevant tax authorities. The tax authorities consolidate information by country of residence. Information is then encrypted and bundled before it is sent to the residence country's tax authorities. The information is then received and decrypted. The residence country feeds the relevant information into an automatic or manual matching process. The residence country analyses the results and takes compliance action as appropriate. See OECD https://www.oecd.org/ctp/exchange-of-tax-information/automatic-exchange-of-information-report.pdf 9.

with timely information regarding non-compliance, particularly where tax has been evaded on an investment return. According to the Organisation for Economic Co-operation and Development (OECD), AEOI can increase voluntary compliance and encourage taxpayers to report all relevant information. AEOI can increase fiscal revenue and promote fairness by ensuring that taxpayers consistently pay their fair share of taxes.[12]

However, the adoption of AEOI imposes administrative challenges on financial institutions[13] and tax authorities. Financial institutions are required to familiarise themselves with new regulations, manage relationships with multiple tax authorities, and educate staff and clients on the relevant reporting requirements.[14] AEOI is also over-reliant on financial institutions' ability to collect complex information that may vary in format and timing from multiple jurisdictions. Non-compliance with the reporting obligations may result in penalties for financial institutions.[15] From a tax-authority perspective, AEOI requires resources and information technology (IT) systems to process and disseminate tax data. Moreover, the success of AEOI is dependent on having appropriate safeguards for the cross-border transfer of tax information. Some of the safeguards include adequate infrastructure for the storage, processing, and transmission of personal information to other jurisdictions.[16] Lastly, AEOI requires active reciprocity. In other words, a country is not obligated to send information to another country if the latter is unable to reciprocate. The inability to reciprocate is prominent in developing countries that lack the capacity and finances to implement AEOI effectively.[17]

Non-compliant taxpayers are more likely to conceal their income and activities if financial transparency is lacking.[18] A lack of transparency can inhibit the effective implementation of EOI. A restricted application of EOI enhances the possibility of tax evasion. Protracted tax-evasion schemes

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[12] OECD https://www.oecd.org/ctp/exchange-of-tax-information/automatic-exchange-of-information-report.pdf 19.

[13] For purposes of this article, financial institutions refer to banks, trusts, brokers, custodians, asset managers, private equity funds, investment vehicles, long-term insurers, and other participants in the financial system.

[14] KPMG "Automatic Exchange of Information – The Common Reporting Standard: How Financial Institutions Can Adapt to New Global Standards" (2014) https://assets.kpmg/content/dam/kpmg/pdf/2014/09/the-common-reporting-standard-v3.pdf (accessed 2022-01-27) 3.

[15] Panayi "Current Trends on Automatic Exchange of Information" *University School of Accountancy Research Paper* (2016) https://accountancy.smu.edu.sg/cet/sites/accountancy.smu.edu.sg.cet/files/Current%20Trends%20on%20Automatic%20Exchange%20of%20Information.pdf (accessed 2022-01-27) 28.

[16] Panayi https://accountancy.smu.edu.sg/cet/sites/accountancy.smu.edu.sg.cet/files/Current%20Trends%20on%20Automatic%20Exchange%20of%20Information.pdf 30–31.

[17] Knobel and Meinzer "Automatic Exchange of Information: An Opportunity for Developing Countries to Tackle Tax Evasion and Corruption" (2014) *Tax Justice Network* https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.568.218&rep=rep1&type=pdf (accessed 2021-09-26) 3; Urinov "Developing Country Perspective on Automatic Exchange of Tax Information" 2015 19(1) *Law, Social Justice & Global Development Journal* 1 13.

[18] Cockfield 2017 *Vanderbilt Journal of Transnational Law* 1098.

reduce the amount of revenue collected by tax authorities, which negatively impacts public expenditure.[19]

This article argues for the adoption in South Africa of blockchain technology for the effective implementation of international AEOI. The first section of this article introduces the concept of blockchain technology and its mechanics. The second section examines the importance of and legal basis for AEOI. The third section looks at the current South African legislative framework regarding AEOI. Lastly, the article considers how blockchain technology can enhance AEOI from a South African perspective. For purposes of this article, the words "tax authorities" and "competent authorities" are used interchangeably.

2 UNDERSTANDING BLOCKCHAIN

Blockchain is a type of distributed ledger that stores and records data. Data stored on a blockchain is grouped together in a sequence of transactions. Once the data reaches a specific size, "blocks" are created.[20] These blocks are stored on the distributed ledger. Then, a hash function is used to seal a block. A hash is a unique set of numbers and letters created by a mathematical formula.[21] Each "block" is chained to another "block" by making use of the hash function.[22] Generally, a "block" contains a hash, a previous block's hash, transaction data, and a timestamp.[23] Every time a "block" is stored on a ledger, that block is chronologically appended to the end of the blockchain.[24]

It is difficult to make changes to the blockchain because it is an append-only structure.[25] No single node[26] can change, add or delete any "blocks" on the blockchain. All nodes on the blockchain network store an identical copy of the ledger. Any alteration on the blockchain can only be made if all the nodes of the blockchain network agree to that change. For example, the addition of a new block to the blockchain requires nodes to verify simultaneously the accuracy of the information through a consensus mechanism.[27] Through consensus, the nodes oversee how new blocks are added to the blockchain.[28] Consensus ensures the reliability and integrity of

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19 Wöhrer *Data Protection and Taxpayers' Rights* 8.

20 Finck *Blockchain Regulation and Governance in Europe* (2019) 6–7.

21 OECD "OECD Blockchain Primer" (2019) https://www.oecd.org/finance/OECD-Blockchain-Primer.pdf (accessed 2021-08-21) 4.

22 OECD https://www.oecd.org/finance/OECD-Blockchain-Primer.pdf 4; Finck *Blockchain Regulation and Governance in Europe* 6–7.

23 OECD https://www.oecd.org/finance/OECD-Blockchain-Primer.pdf 4; Finck *Blockchain Regulation and Governance in Europe* 6–7; De Filippi and Wright *Blockchain and the Law: The Rule Code* (2018) 22.

24 De Filippi and Wright *Blockchain and the Law* 22; Finck *Blockchain Regulation and Governance in Europe* 7.

25 Finck *Blockchain Regulation and Governance in Europe* 7.

26 A node is a computer on the blockchain network that stores a copy of the ledger.

27 A consensus is a mechanism or a set of rules that determines how blocks are added on the blockchain.

28 Finck *Blockchain Regulation and Governance in Europe* 7.

the information stored on the blockchain. Once consensus has been reached, the ledger is updated and synchronised throughout the network. All nodes, irrespective of their location, store the same version of the ledger at any given time.

3 CHARACTERISTICS OF BLOCKCHAIN

3 1 Immutability

One of blockchain's heralded features is the inability of participants[29] to alter or delete data stored on a blockchain. It is difficult for a single party to unilaterally amend data once it has been stored on a blockchain.[30] This means that the storage of data and transactions on a blockchain cannot be undone.[31] To effect changes on a blockchain, the cooperation and consensus of most participants is required. If the required number of participants agrees to modify the blockchain, new transactional entries must be conducted in order to reflect the current state of affairs.[32]

Blockchain's immutability has several benefits. First, it is difficult for anyone to hack the blockchain. Data stored on the blockchain is not stored centrally but rather on several nodes across different locations.[33] Secondly, data on a blockchain is always reliable because no participant can tamper with the blockchain without the knowledge of the other participants on the blockchain.[34] Thirdly, all transactions are secured by cryptography.[35] As mentioned above, all "blocks" are secured by a hashing mechanism ensuring that the data stored is protected.[36]

3 2 Transparency

Blockchain relies on a peer-to-peer network and digital signatures to ensure that data stored on a blockchain remains transparent.[37] Participants with unrestricted access can download a copy of the ledger on their respective nodes. Once downloaded, a participant can view all recorded transactions since the blockchain's inception. In effect, blockchain serves as an audit platform for participants to scrutinise the authenticity of a particular transaction.[38] Participants are compelled to store accurate data on the blockchain because once a transaction is stored, that transaction must be

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29 In the context of blockchain, a participant is any person or entity that makes a transaction on a blockchain.

30 De Filippi and Wright *Blockchain and the Law* 35.

31 OECD https://www.oecd.org/finance/OECD-Blockchain-Primer.pdf 6.

32 Kianieff *Blockchain Technology and the Law Opportunities and Risks* (2019) 8.

33 *Ibid*.

34 *Ibid*.

35 Cryptography is the science of secure communications derived from applied mathematics. See Werbach *The Blockchain and the New Architecture of Trust* (2018) 40.

36 Kianieff *Blockchain Technology and the Law Opportunities and Risks* 8.

37 De Filippi and Wright *Blockchain and the Law* 37.

38 *Ibid*.

signed with a private key.[39] All participants have a private key. A participant certifies the legitimacy of the transaction by signing it.[40]

3 3 Distributed

It is possible for the nodes on a blockchain network to be situated in various locations. The nodes are connected to each other on a network consisting of a software protocol. Owing to blockchain's distributed nature, no single node controls the blockchain.[41] The lack of a central intermediary enables the sharing of the blockchain database across national borders.[42]

The blockchain's distributed and decentralised feature is beneficial because no single party can interfere with data stored on the blockchain. In addition, there is no central server that stores information. Hence, a cyber-attack on a single node does not result in data loss because all the other nodes store the exact copy of the ledger.[43] This contrasts with central databases that store data at a single location, making them susceptible to hacking and other cyber-related attacks.[44]

4 TYPES OF BLOCKCHAIN

4 1 Private blockchain

A blockchain can be designed in various ways depending on the intentions of the participants. A private blockchain is a type of blockchain that is restricted to a group of authorised nodes or participants.[45] In a private blockchain, an administrator grants access to pre-selected participants. For this reason, a private blockchain can be categorised as a "permissioned" blockchain.[46] It should be noted that a private blockchain is highly centralised. The administrator has the right to override or edit the blockchain as it sees fit.

Private blockchains are typically designed for a specific purpose.[47] For example, a private blockchain can be used to share sensitive information with vetted participants. The design of a private blockchain prevents unauthorised parties from accessing sensitive information. Since the identity of the participants is known, there is greater accountability in the unlikely event of data breaches.

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39 A private key is unique set of characters associated with a specific address. A private key uses cryptography to encrypt and decrypt data.

40 De Filippi and Wright *Blockchain and the Law* 35.

41 De Filippi and Wright *Blockchain and the Law* 34; OECD https://www.oecd.org/finance/OECD-Blockchain-Primer.pdf 6.

42 De Filippi and Wright *Blockchain and the Law* 34.

43 Finck *Blockchain Regulation and Governance in Europe* 18.

44 OECD https://www.oecd.org/finance/OECD-Blockchain-Primer.pdf 6.

45 OECD https://www.oecd.org/finance/OECD-Blockchain-Primer.pdf 5.

46 Finck *Blockchain Regulation and Governance in Europe* 15; OECD https://www.oecd.org/finance/OECD-Blockchain-Primer.pdf 5.

47 Finck *Blockchain Regulation and Governance in Europe* 15.

It is easier and faster to process transactions on a private blockchain (as opposed to a public blockchain) because of the limited number of participants.[48] As a result, a private blockchain is more efficient, making it simpler to manage. It is the view of the authors that a reduced number of blockchain participants significantly increases the chances of promoting privacy.

4 2 Public blockchain

Public blockchains are open for anyone to access the network, download, and run the blockchain on their respective nodes, without any restrictions.[49] The blockchain code can be read and written by any of the participants on the network.[50] The participants can also download a copy of the ledger and view all the transactions recorded on the blockchain.[51] Owing to the public blockchain's openness to the public, it can sometimes be referred to as "permissionless" blockchain. A public blockchain can be permissioned in the sense that, while the blockchain is open to anyone, only authorised participants can make changes to the blockchain network. These changes include adding new blocks to the chain.[52]

Generally, public blockchains are decentralised in nature. This simply means that no central administrator controls the network. Instead, participants run the blockchain. It is quite likely that the participants on a public blockchain do not know each other. The lack of familiarity does not preclude participants from trusting the blockchain network. The reason for this is that faith in the blockchain software code replaces reliance on any counterparty, intermediary, and mechanism that ordinarily makes a transaction trustworthy.[53]

4 3 Consortium/hybrid blockchain

A consortium blockchain is a hybrid system that combines the elements of a private and public blockchain. A consortium blockchain can be decentralised in nature. Selected participants can access and view the blockchain.[54] This implies that a consortium blockchain is not necessarily open to the public. Authorised participants can be selected to record transactions on the blockchain.[55] It is possible for all participants on the network to verify transactions before adding them to new blocks. Alternatively, a limited

48 Finck *Blockchain Regulation and Governance in Europe* 15; De Filippi and Wright *Blockchain and the Law* 31.
49 Finck *Blockchain Regulation and Governance in Europe* 14.
50 OECD https://www.oecd.org/finance/OECD-Blockchain-Primer.pdf 5.
51 Finck *Blockchain Regulation and Governance in Europe* 14.
52 OECD https://www.oecd.org/finance/OECD-Blockchain-Primer.pdf 5.
53 See Werbach *The Blockchain and the New Architecture of Trust* 29.
54 OECD https://www.oecd.org/finance/OECD-Blockchain-Primer.pdf 5.
55 *Ibid*.

number of participants can be selected to add new blocks to the blockchain.[56]

A consortium blockchain can have an administrator. If present, an administrator grants authorised participants access to the blockchain network. The administrator can also determine the duties of the participants. For example, the administrator can select three participants to record transactions. The three participants remain responsible for that specific task insofar as the network is functional.

5 THE IMPORTANCE OF EXCHANGE OF INFORMATION

The residence basis of taxation imposes a worldwide tax on domestic and foreign income received by resident taxpayers based on the progressive rate of a country. In terms of the source-based model of taxation, the source country imposes a tax on the domestic income received by both resident and non-resident taxpayers based on the progressive rate of the country. It can happen that income earned by a resident taxpayer in a source country is subject to double taxation. This emanates from the fact that the resident country imposes a tax on foreign income based on the worldwide taxation system while the source country taxes the same income because it originates from that country.[57] To address international double taxation, the residence country often implements a strategy in terms of which the resident taxpayer obtains a tax credit for taxes paid in the source country.

Challenges arise when taxpayers underreport, or omit to report, income received from a source country. This results in information asymmetry because the source country is in possession of tax information that is not known to the residence country. The non-compliant taxpayers are aware that their residence country does not possess extra-territorial powers to enforce domestic laws in the source country, making the possibility of being caught unlikely. The challenge is compounded by source countries that impose little or no taxation on non-residents. This encourages investment from non-residents who benefit by receiving high-mobility passive income. The presence of bank secrecy rules in source countries obfuscates tax information, which in turn attracts further foreign investments from non-residents.[58]

Tax authorities require tax information to ascertain a taxpayer's tax liability and to enforce domestic tax laws. In order for residence countries to combat tax evasion, it is essential to know whether income originates from another country. It can also happen that a taxpayer makes investments in financial institutions situated abroad. Those investments can easily remain untaxed if no information is exchanged.[59] If a taxpayer does not disclose this

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[56] *Ibid*.

[57] Garbarino and Garafi "Transparency and Exchange of Information in International Taxation" in Bianchi and Peters (eds) *Transparency in International Law* (2013) 172–173.

[58] *Ibid*.

[59] Wöhrer *Data Protection and Taxpayers' Rights* 6.

information or if the taxpayer underreports income from an international source, the domestic tax authority cannot accurately determine a taxpayer's liability. This affects a tax authority's ability to collect revenue. As a result, countries enter into bilateral agreements to exchange tax information.[60] A residence country that shares tax information with a source country makes it difficult for tax-evading taxpayers to treat the source country as a tax haven.

6 ISSUES THAT LIMIT AUTOMATIC EXCHANGE OF INFORMATION

6 1 Bank secrecy

As alluded to above,[61] bank secrecy frustrates a residence country's ability to determine a resident's tax liability. Bank secrecy refers to a bank's obligation to treat a client's information and business activities as confidential.[62] The bank's obligation to safeguard a client's personal information is based on an agreement concluded between a bank and its client, provided that all the necessary formalities are complied with. A bank's duty to keep the financial affairs of clients confidential is based on the law of contract.[63]

Generally, countries adopt rules that aim to protect the confidentiality of client's tax information. While the non-disclosure of tax information may be beneficial insofar as protecting a client's right to privacy is concerned, the non-disclosure of financial accounts has negative consequences for residence countries. Source countries take bank secrecy seriously to the extent that any disclosure of client information by bankers warrants criminal sanctions, fines and even imprisonment.[64] The heavy-handed approach towards the disclosure of financial accounts makes it difficult for bankers and financial institutions to divulge such information when requested to do so by other countries. Taxpayers and corporations, fully aware of these provisions, continue to transfer assets to these countries while maintaining income streams. The veil of secrecy in foreign countries encourages illegal activities such as money laundering and tax evasion. Residence countries cannot

60 *Ibid*.

61 Under heading 5.

62 Msimango *A Critical Study of the Bank Secrecy Rule* (LLM mini-dissertation, University of Pretoria) 2019 ii; Meyer "Swiss Banking Secrecy and Its Legal Implications in the United States" 1978 14(1) *New England Law Review* 18 27; Auwarter "Compelled Waiver of Bank Secrecy in the Cayman Islands: Solution to International Tax Evasion or Threat to Sovereignty of Nations" 1985 9(3) *Fordham International Law Journal* 680 682 fn 6; Gregory "Lax Tax: The Threat of Secrecy Jurisdictions and What the International Community Should Do About It" 2012 20(3) *Transnational Law & Contemporary Problems* 859 863.

63 Van Jaarsveld "The End of Bank Secrecy: Some Thoughts on the Financial Intelligence Centre Bill" 2001 13(4) *South African Mercantile Law Journal* 580 587.

64 Schottenstein "Is Bank Secrecy Still Bankable?: Critical Review of Bank Secrecy Law, Tax Evasion and UBS" 2010 5(1) *Entrepreneurial Business Law Journal* 351 355.

enforce their respective tax laws because enforcement requires access to information related to accounts and financial accounts.[65]

6 2 Tax havens

The term "tax haven" has no universally accepted definition. In 1998, the OECD published a report addressing harmful tax practices in tax havens and harmful preferential tax regimes in OECD and non-OECD countries.[66] The report, among other things, identified four harmful tax practices common among tax havens.[67] The first harmful practice is a regime having no or low effective tax rates.[68] The presence of no or low taxes is an attractive proposition for foreign corporations and foreign individuals to avoid or evade taxes.[69] The presence of no or low taxes *per se* is not the sole indicator that a regime is a tax haven.[70] However, if combined with one or more factors, then a regime can be considered a tax haven.[71] Often, tax havens use their "no or low" tax status as a means to attract foreign capital.[72] The second characteristic looks at whether a specific regime is ring-fenced – simply put, whether a country fully or partially insulates itself from its own domestic market. For example, a country can explicitly exclude resident taxpayers from taking advantage of tax benefits.[73] Thirdly, tax havens lack transparency. A non-transparent regime is one that has favourable application of laws and regulations, negotiable tax provisions, and a failure to make available administrative practices widely known.[74] And lastly, tax havens lack effective exchange of information channels with other countries. This factor is characterised by an inability or unwillingness of the country to provide information to other countries. For example, a source country may be unable to provide information to a resident country because secrecy laws preclude the relevant tax authorities in the former from retrieving information from its taxpayers. Moreover, there could be certain administrative practices that preclude the cross-border transfer of information to other jurisdictions.[75] Other tax haven indices include political stability, modern communication,

65 See OECD "Transparency and Exchange of Information for Tax Purposes: Multilateral Co-Operation Changing the World" (undated) https://www.oecd.org/tax/transparency/global-forum-10-years-report.pdf (accessed 2022-01-03) 11.

66 OECD "Harmful Tax Competition: An Emerging Global Issue" (1998) https://www.oecd.org/ctp/harmful/1904176.pdf (accessed 2022-01-06) 3.

67 *Ibid*.

68 OECD https://www.oecd.org/ctp/harmful/1904176.pdf 26.

69 Irish "Tax Havens" 1982 15(3) *Vanderbilt Journal of Transnational Law* 449 452; Dhammika and Hines "Which Countries Become Tax Havens?" (2009) https://ssrn.com/abstract=952721 (accessed 2022-01-07) 3.

70 Leikvang "Piercing the Veil of Secrecy: Securing Effective Exchange of Information to Remedy the Harmful Effects of Tax Havens" 2012 45(1) *Vanderbilt Journal of Transnational Law* 293 298.

71 OECD https://www.oecd.org/ctp/harmful/1904176.pdf 26.

72 Leikvang 2012 *Vanderbilt Journal of Transnational Law* 298.

73 OECD https://www.oecd.org/ctp/harmful/1904176.pdf 26–27.

74 OECD https://www.oecd.org/ctp/harmful/1904176.pdf 27.

75 OECD https://www.oecd.org/ctp/harmful/1904176.pdf 29.

and transportation systems, the availability of professional services and staff, and good business facilities.[76]

Irish categorises tax havens into three main classes. The first, a "pure tax haven", is a regime that does not impose direct tax on income, profits or capital gains. Other taxes such as death duties, succession taxes or inheritance taxes are also not imposed. Corporate and individual taxpayers take advantage of these regimes by ensuring that the transactions giving rise to the income are structured to avoid taxes in the domicile country.[77] Pure tax havens are notorious for having secrecy laws. These laws make it conducive for pure tax havens to act as offshore financial centres where funds borrowed from foreign entities are advanced to other foreign entities through the intermediation of financial institutions. In addition, these transactions are conducted without the necessary exchange controls.[78]

A second class of tax haven, a "liberal tax haven", imposes direct taxes but promotes activities that advance favourable tax treatment. The tax preference activities are often promoted by government policies.[79] A third class, "tax treaty havens", are regimes that are part of tax treaties that grant favourable markets and tax terms to foreign corporations and individuals. Tax treaty havens are often used as conduits for international financing and investment transactions.[80]

As alluded to above, tax havens threaten the sovereignty of other countries. While tax havens exercise sovereignty by commercialising their own territories, they do so at the expense of other countries' ability to tax their residents efficiently. Tax havens promulgate laws that invite financial institutions to hold, receive and manage assets belonging to non-residents without providing the relevant information to authorities in the home countries.[81] These arrangements make it easier for residents to evade taxes because assets and income are not declared when filing income tax returns in the domestic country.[82] Tax havens erode a domestic country's tax base, which in turn distorts trade and investment patterns resulting in loss of revenue for the domestic country.[83]

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76 Irish 1982 *Vanderbilt Journal of Transnational Law* 454; Leikvang 2012 *Vanderbilt Journal of Transnational Law* 300; Dhammika and Hines https://ssrn.com/abstract=952721 7–13.

77 Irish 1982 *Vanderbilt Journal of Transnational Law* 454–455.

78 Irish 1982 *Vanderbilt Journal of Transnational Law* 456.

79 Irish 1982 *Vanderbilt Journal of Transnational Law* 456–458.

80 Irish 1982 *Vanderbilt Journal of Transnational Law* 459–460.

81 Meinzer "Automatic Exchange of Information as the New Global Standard: The End of (Offshore Tax Evasion) History?" (2017) *Tax Justice Network* https://mpra.ub.uni-muenchen.de/77576/1/MPRA_paper_77576.pdf (accessed 2022-01-10) 2.

82 Meinzer https://mpra.ub.uni-muenchen.de/77576/1/MPRA_paper_77576.pdf 3.

83 Leikvang 2012 *Vanderbilt Journal of Transnational Law* 307.

6 3 Lack of adequate infrastructure/resources

AEOI is often characterised by the exchange of large volumes of data.[84] This presupposes the availability of relevant information technology infrastructure within tax administration systems to collect, process and disseminate data.[85] A lack of infrastructure can significantly impede a tax authority's ability to disseminate data to a requesting authority. Without the necessary resources, a tax administrator's administrative costs can increase significantly. The reason is clear. The absence of resources compels the tax administrator to use manual systems for the collection, processing and dissemination of data. The manual processing of data is time-consuming and costly for tax authorities. In addition, a lack of adequate infrastructure can make it difficult for certain countries to perform reciprocal obligations in terms of AEOI agreements. Put simply, certain countries focus on transmitting data to outside their borders but elect not to receive data. Rather, these countries focus on the compliance aspect of the AEOI agreements.[86]

To implement AEOI efficiently, digitalisation[87] of tax administration is required. Countries must invest in resources to modernise their tax administration by adopting new technologies.[88] The need to modernise the tax administration can be attributed to the increasing demand for tax collection, improved efficiency in the management of tax operations, and the bolstering of tax-compliance measures. The obligation imposed by exchange-of-information multilateral treaties coupled with the globalisation of business activities has contributed towards governments' push towards modernising the tax administration process.[89]

In addition to acquiring IT systems, digitalisation requires skilled personnel to address tax administration operations.[90] The appointment or training of personnel, particularly in the field of AEOI, is crucial to the successful execution of AEOI. If current personnel lack the relevant expertise in technical processes, then the cross-border administration of taxes can become complex and challenging. In some African countries, participation in AEOI is low for several reasons. Some countries' response to requests is delayed owing to a lack of skilled personnel or lack of infrastructure. Other countries are not convinced that AEOI can tackle not only tax evasion and

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84 Gueydi and Abdellatif "The Transformation of Tax Administration Functions in the Automatic Exchange of Information Era: A Developing Country's Perspective" 2019 16(3) *eJournal of Tax Research* 780 790.

85 Gueydi and Abdellatif 2019 *eJournal of Tax Research* 793; Bird and Zolt "Technology and Taxation in Developing Countries: From Hand to Mouse" 2008 61(4) Part 2 *National Tax Journal* 791 798.

86 Gueydi and Abdellatif 2019 *eJournal of Tax Research* 793.

87 Digitalisation can be defined as "a sociotechnical process of applying digitizing techniques to broader social and institutional contexts that render digital technologies infrastructural". Digitisation is the "process of converting analog signals into digital form, and ultimately into binary digits (bits)". See Tilson, Lyytinen and Sorensen "Research Commentary: Digital Infrastructures: The Missing IS Research Agenda" 2010 21(4) *Information Systems Research* https://doi.org/10.1287/isre.1100.0318 (accessed 2022-01-13) 749.

88 Gueydi and Abdellatif 2019 *eJournal of Tax Research* 784.

89 Gueydi and Abdellatif 2019 *eJournal of Tax Research* 790.

90 Gueydi and Abdellatif 2019 *eJournal of Tax Research* 784.

transfer pricing but also be extended to improve aspects of the general tax administration system. The reluctance to implement AEOI in some African countries can also be attributed to policy makers' resistance to introduce AEOI legislative frameworks in jurisdictions that lack resources and personnel.[91]

A lack of resources can also affect taxpayers' compliance. For example, the Common Reporting Standards (CRS) AEOI obligations require financial institutions to verify financial accounts and report those accounts to the domestic tax authority. The financial institution cannot comply with this obligation if it does not have the necessary tools to perform this function. Some financial institutions may be reluctant to comply owing to the significant costs associated with modernising their IT systems.[92] Without compliance, a tax authority may be unable to fulfil its obligations in terms of the relevant CRS AEOI.

6 4 Lack of transparency

The need for transparency came to the fore after the events of the 2008 global financial crisis (GFC). The GFC was characterised by a shadow financial structure that comprised tax havens, disguised corporations, money laundering, anonymous trust accounts, false documentation and secret jurisdictions. These structures promoted illicit financial flows across borders.[93] The problem was compounded by a lack of good corporate governance and risk management by financial institutions and multinational enterprises (MNEs). Public outcry coupled with government scrutiny led to increased calls for accountability, particularly for MNEs and financial institutions. For their part, tax administrators sought increased financial transparency from MNEs.[94]

It should be noted that there is a difference between "tax transparency" and "financial transparency". Although the two terms have been used interchangeably and inconsistently, it is submitted that the two terms are mutually exclusive. Tax transparency refers to a "government's openness regarding its tax rules, agency interpretations, decision making processes, and enforcement practices".[95] The purpose of tax transparency is to ensure that governments are held accountable by empowering citizens to monitor the activities of tax authorities. In addition, tax transparency provides citizens

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[91] Von Haldenwnag, Ibrahim, Davis and Monkam "Tax Transparency and Exchange of Information (EOI): Priorities for Africa" (2019) https://www.g20-insights.org/wp-content/uploads/2018/07/TF5-5.2-Taxation_FINAL-1.pdf (accessed 2022-01-13) 6–7.

[92] Gueydi and Abdellatif 2019 *eJournal of Tax Research* 790–791.

[93] Task Force on Financial Integrity and Economic Development "Economic Transparency: Curtailing the Shadow Financial System" (2009) http://www.financialtransparency.org/wp-content/uploads/2009/10/the-case-for-global-financial-transparency-updated.pdf (accessed 2022-01-02) i; Tajan "Emerging From Secrecy Space: From Bank Secrecy to Financial Transparency" 2010 55(2) *Ateneo Law Journal* 447 452.

[94] D'Ascenzo "Global Trends in Tax Administration" 2015 1(1) *Journal of Tax Administration* 81 92.

[95] Blank "The Timing of Tax Transparency" 2017 90(3) *Southern California Law Review* 449 453.

with the awareness of the practical aspects of tax laws and policies. Citizens, with the requisite knowledge of how tax laws and policies function, are then able to partake in debates regarding government rules and actions.[96] In contrast, financial transparency refers to accessing financial accounts drawn in accordance with accepted accounting standards for purposes of auditing and filing.[97] Financial transparency also refers to tax authorities' ability to access information regarding the beneficial owners of all types of entities, and relevant information from financial institutions.[98] The Financial Transparency Coalition (FTC)[99] defines financial transparency as comprising "public records, multiple oversight mechanisms to review financial structures, a genuine curtailment of tax-evading activities, and trade conducted without disadvantaging weaker nations".[100] A closer look at the two terms indicates that the term "financial transparency" is relevant for purposes of AEOI.

It is the authors' view that financial transparency does not necessarily mean providing bulk data to tax authorities.[101] The issue is not the exchange of bulk data *per se* but rather providing high-quality and accurate data so that the relevant authorities can correctly identify beneficial ownership, bank accounts and account holders. The authors' view is supported by Cockfield, who argues that possessing more information is not necessarily ideal because tax authorities may be overwhelmed by the quantity of data that is available. The challenge is compounded by a lack of available resources to analyse the relevant data.[102] Abrahams correctly points out that the transfer of excess data can be costly and time-consuming, especially where the relevant information cannot be retrieved.[103] Merely sharing information with tax authorities because of an apparent obligation imposed by a Tax

[96] Blank 2017 *Southern California Law Review* 459.

[97] Garbarino and Garafi in Bianchi and Peters *Transparency in International Law* 175.

[98] *Ibid*.

[99] The FTC was set up in 2009 under the name "Task Force on Financial Integrity and Economic Development". The primary role of the FTC is to advocate for a more transparent financial system. The FTC uses expertise and wide reach to influence global norms and standards for financial transparency, and to close loopholes in the global financial system. See https://financialtransparency.org/about/ (accessed 2022-01-31).

[100] Task Force on Financial Integrity and Economic Development http://www.financialtransparency.org/wp-content/uploads/2009/10/the-case-for-global-financial-transparency-updated.pdf 2.

[101] The proliferation of cross-border tax information exchange raises concerns around obtaining accurate and relevant tax information. As correctly pointed out by Bossa and de Paiva Gomes, accessing more information does not necessarily translate to accurate and reliable tax information. The importance of acquiring accurate tax information cannot be overstated. With accurate tax information, tax authorities can correctly depict an individual's taxable income. In the author's view, the accuracy of personal income data can be a factor in determining the amount of revenue collected by a tax authority at any given time. A lack of information or the acquisition of inaccurate information can lead to losses in revenue. See Bossa and De Paiva Gomes "Blockchain: Technology as a Tool for Tax information Exchange or an instrument Threatening the Taxpayer's Privacy?" (2019) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3540277 (accessed 2021-11-05) 9–13.

[102] See Cockfield 2017 *Vanderbilt Journal of Transnational Law* 1109.

[103] Abrahams *An International Comparative Study of Transparency and Exchange of Information Measures* (MCom mini-dissertation, North-West University) 2021 18.

Information Exchange Agreement (TIEA) is insufficient. The information provided by a taxpayer or legal entity must accurately depict the true identity, beneficial ownership and real management of an entity or a person conducting a financial transaction. It requires legal entities or persons conducting transactions to record the capacity in which those transactions are conducted. The legal entities' financial accounts must be accessible and prepared in accordance with internationally accepted standards to reveal the substance and form of that transaction. The relevant authorities must be able to access bank accounts, financial information and true identities without delay. Any enquiry pertaining to the accuracy of the supplied information must be performed in a timely manner with the assistance of other countries. Exemptions to international cooperation should only be invoked under exceptional circumstances.[104]

Financial transparency is crucial for the effective implementation of AEOI. The United States (US) Supreme Court in *Thor Power Tool Co v Commissioner*[105] emphasised the importance of transparency in the financial accounting process. The court held: "The primary goal of financial accounting is to provide useful information to management, shareholders, creditors, and others properly interested; the major responsibility of the accountant is to protect these parties from being misled."[106] Without financial transparency, the relevant authorities cannot know the true substance of a transaction. Financial transparency assists relevant authorities in ascertaining the nature of the transaction and, in so doing, determining whether the transaction is licit or illicit.[107] Access to financial records enables tax authorities to discern the tax-compliance levels of corporate and individual taxpayers. This can be seen as an external verification process to determine the accuracy of tax returns filed by taxpayers. Furthermore, information on beneficial ownership, combined with banking and accounting records can strengthen tax authorities' role in the enforcement and administration of taxes.[108]

7 INFORMATION EXCHANGE INSTRUMENTS

7 1 Double tax agreements

A double tax agreement (DTA) is the most prevalent form of exchanging information. DTAs are primarily based on the OECD Model Tax Convention on Income and Capital,[109] and on the United Nations Model Double Taxation

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104 Murphy and Sagar "What Is Financial Transparency?" (2009) *Mapping the Faultlines, Tax Justice Network* https://fsi.taxjustice.net/Archive2011/Notes%20and%20Reports/FinancialTransparency.pdf (accessed 2022-01-02) 9–10.

105 439 U.S. 522 (1979).

106 *Thor Power Tool Co v Commissioner* 439 US 522 (1979) 542; see also Oortwijn "International Tax Transparency: Past, Present and Future" 2013 24(8) *International Tax Review* 10 10.

107 Tajan 2010 *Ateneo Law Journal* 453.

108 See OECD https://www.oecd.org/tax/transparency/global-forum-10-years-report.pdf 10.

109 The OECD Model Tax Convention on Income and Capital (tenth edition) was published on 18 December 2017.

Convention Between Developed and Developing Countries.[110] These agreements always contain provisions that aim to reduce double taxation.[111] DTAs are largely based on article 26 of the OECD Model Tax Convention.[112] DTAs provide relief from double taxation and incorporate information exchange provisions.[113]

7 2 Bilateral information exchange agreements

Depending on the circumstances, countries can elect to enter into bilateral information exchange agreements as opposed to DTAs. For example, a country may elect to enter into a bilateral exchange agreement with another country because the latter imposes little or no tax.[114] Bilateral information exchange agreements are also referred to as Tax Information Exchange Agreements (TIEAs). Bilateral information exchange agreements contain exchange-of-information provisions but do not necessarily contain provisions to prevent double taxation.[115] TIEAs can be used to strengthen the provisions in an existing applicable DTA by, for example, providing for structured exchange programmes specifying the type of information to be exchanged, the sharing of costs, and the use of information in criminal investigations.[116] TIEs make provision for procedural safeguards in both countries to ensure that tax information is kept confidential.[117]

7 3 Multilateral Convention on Mutual Administrative Assistance in Tax Matters

The Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the Multilateral Convention),[118] as the name suggests, is a convention that is entered into between multiple countries. In doing so, countries mitigate the costs and risks that would normally have been incurred when negotiating with each participating jurisdiction.[119] The Multilateral Convention was jointly developed by the OECD and the Council

[110] This United Nations Model Double Taxation Convention Between Developed and Developing Countries was updated in 2017.

[111] Knobel and Meinzer https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.568.218&rep=rep1&type=pdf 18.

[112] See art 26 of the OECD Model Tax Convention on Income and Capital.

[113] Keen and Ligthart 2006 *International Tax and Public Finance* 91.

[114] Tanzi and Zee "Taxation in Borderless World: The Role of Information Exchange" 2000 28(2) *Intertax* 58 60.

[115] Knobel and Meinzer https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.568.218&rep=rep1&type=pdf 19.

[116] Keen and Ligthart 2006 *International Tax and Public Finance* 92.

[117] Cockfield 2010 *UBC Law Review* 424.

[118] OECD/Council of Europe *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (2011).

[119] Knobel and Meinzer https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.568.218&rep=rep1&type=pdf 20.

of Europe in 1988. The original Multilateral Convention was amended by a Protocol in 2010.[120] According to the OECD, the Multilateral Convention

> "facilitates international co-operation for a better operation of national laws, while respecting the fundamental rights of taxpayers. It provides for all possible forms of administrative co-operation between states in the assessment and collection of taxes. This co-operation ranges from exchange of information, including automatic exchanges, to the recovery of foreign tax claims."[121]

Countries who sign the Multilateral Convention also sign the Multilateral Competent Authority Agreement (MCAA).[122]

8 TYPES OF INFORMATION EXCHANGE

8 1 Information exchange upon request

Tax information upon request is the most common form of information exchange.[123] Here, the requesting country creates and sends an information request to the tax authorities in the domestic country. The domestic country considers the request and if all requirements are met, the domestic country retrieves the requested information and sends it to the requesting country.[124]

Generally, any exchange of information upon request is subject to a tax authority's ability to identify the taxpayer and the relevant financial institution.[125] Any information supplied by the requesting country to the domestic country must be clear and concise to enable the latter to accurately identify the taxpayer. If the contents of the information are ambiguous, that request can be treated as a "fishing expedition"[126] and the domestic country may decline such a request.[127] It can happen that exchange of information upon request necessitates notifying the taxpayer. If that is the case, the

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120 See OECD "Convention on Mutual Administrative Assistance in Tax Matters" (2021) https://www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm (accessed 2022-01-17); Knobel and Meinzer https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.568.218&rep=rep1&type=pdf 20.

121 See OECD https://www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm.

122 The MCAA "is a multilateral framework agreement that provides a standardised and efficient mechanism to facilitate the automatic exchange of information in accordance with the Standard for Automatic Exchange of Financial Information in Tax Matters. It avoids the need for several bilateral agreements to be concluded". See OECD "What Is the Multilateral Competent Authority Agreement" (date unknown) https://www.oecd.org/tax/transparency/documents/whatisthemultilateralcompetentauthorityagreement.htm (accessed 2023-09-06).

123 Knobel and Meinzer https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.568.218&rep=rep1&type=pdf 20.

124 Knobel and Meinzer https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.568.218&rep=rep1&type=pdf 20; Oberson *International Exchange of Information in Tax Matters* (2015) 27.

125 Oberson *International Exchange of Information in Tax Matters* 21.

126 According to Oberson, a "fishing expedition" is a request that merely seeks to corroborate information that already exists. See Oberson *International Exchange of Information in Tax Matters* 21.

127 Oberson *International Exchange of Information in Tax Matters* 21.

taxpayer can elect to frustrate the administration process by concealing or destroying important information.[128]

It is important to note that the requested information must be relevant at the time a request is made. The foreseeability requirement ensures that the requesting jurisdiction does not go on fishing expeditions. In other words, there should be a close link between the information requested and the reason for the request. A domestic country is not obligated to provide information where it can be shown that the request for information was irrelevant.[129]

Knobel and Meinzer correctly argue that this type of information exchange is costly and time-consuming, imposing a further administrative burden on the domestic tax authorities. They argue that tax authorities are required to retrieve, ascertain and send tax information to the requesting country.[130] Where such information is not readily available to the tax authority, reliance is placed on information supplied by financial institutions.

8 2 Spontaneous exchange of information

A spontaneous exchange of information occurs when a contracting country unilaterally initiates the supply of tax information to another country. Such information has not been requested before.[131] The successful implementation of this model depends on the cooperation and active participation of domestic tax officials.[132] The domestic tax officials may have actively to identify information that is relevant to an active tax audit investigation in another country. Once the relevant information has been identified, the tax officials send that information to the other country where it can be of use.[133] Generally, a spontaneous request is considered more effective than other models because the tax information is obtained through a detection and investigative process. The effectiveness of this model depends on the motivation of the tax officials. In this context, tax authorities may be required to implement measures to encourage the spontaneous exchange of information by tax officials.[134]

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128 Knobel and Meinzer https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.568.218&rep=rep1&type=pdf 22.

129 OECD "Model Tax Convention on Income and on Capital 2017 (Full Version) (commentary on Article 26)" (2019) https://doi.org/10.1787/g2g972ee-en (accessed 2021-09-26) 489.

130 Knobel and Meinzer https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.568.218&rep=rep1&type=pdf 21.

131 OECD "Manual on the Implementation of Exchange of Information Provisions for Tax Purposes: Module 2 on Spontaneous Exchange of Information" (2006) https://www.oecd.org/tax/exchange-of-tax-information/36647914.pdf (accessed 2021-09-26) 3; Oberson *International Exchange of Information in Tax Matters* 27–28; Keen and Ligthart 2006 *International Tax and Public Finance* 83.

132 OECD https://www.oecd.org/tax/exchange-of-tax-information/36647914.pdf 3.

133 OECD https://www.oecd.org/tax/exchange-of-tax-information/36647914.pdf 3; Oberson *International Exchange of Information in Tax Matters* 27–28.

134 *Ibid*.

8 3 Automatic exchange of information

In 2013, the Group of Twenty (G20)[135] countries made a commitment to combat tax avoidance and tax evasion and to promote trust in the international tax system.[136] The G20, in collaboration with the OECD, developed a single global standard for the automatic exchange of information. In terms of the standards, tax authorities are required to obtain tax information from their respective financial institutions and then exchange that information automatically with another jurisdiction. The annual submission process requires financial institutions to exchange bank account numbers, and the different accounts held by taxpayers, and to comply with common due-diligence procedures.[137]

Automatic exchange of information occurs when a country, without request, periodically transmits tax information to another country.[138] The efficacy of this model depends on the routine reporting of payments such as interest, royalties, and capital gains by financial institutions and employers. In addition, a taxpayer's change of residence, value-added tax (VAT) refunds, and dispositions of immovable property can be exchanged with the relevant country.[139] Upon receipt of this information, the domestic country can cross-check and determine if a taxpayer is compliant with its domestic tax laws.[140]

To effectively implement AEOI, four "building blocks" must be present in the domestic state. First, and perhaps evidently, AEOI can only occur if the domestic country has an international exchange agreement with the residence country. Secondly, both countries should have a domestic legislative framework that protects and safeguards the confidentiality of taxpayer information. Thirdly, domestic legislation should be amended to

[135] The G20 was originally established by G7 Finance Ministers in 1999 because of the 1997 economic crisis. The Group has since grown to include 20 countries. After the 2008 financial crisis, the United States (US) proposed that participation of the G20 be raised to the level of Heads of Government. The G20 members account for more than 80% of the world's gross domestic product (GDP), 75% of the world's global trade and 60% of the world's population. The primary goal of the G20 is to address issues such as the global economy, tax issues and financial stability. Currently, the members include Argentina, Australia, Brazil, Canada, China, France, Germany, Japan, India, Indonesia, Italy, Mexico, Russia, South Africa, Saudi Arabia, South Korea, Turkey, the United Kingdom (UK), US and the European Union (EU). Spain is invited as a permanent guest. See https://www.g20.org/about-the-g20.html (accessed 2021-09-26).

[136] See OECD "OECD Delivers New Single Global Standard on Automatic Exchange of Information" (2014) https://www.oecd.org/ctp/exchange-of-tax-information/oecd-delivers-new-single-global-standard-on-automatic-exchange-of-information.htm (accessed 2021-09-26).

[137] See OECD https://www.oecd.org/ctp/exchange-of-tax-information/oecd-delivers-new-single-global-standard-on-automatic-exchange-of-information.htm.

[138] OECD "Manual on the Implementation of Exchange of Information Provisions for Tax Purposes: Module 3 on Automatic (Or Routine) Exchange of Information" (2006) https://www.oecd.org/tax/exchange-of-tax-information/36647914.pdf (accessed 2021-09-26) 3; Oberson *International Exchange of Information in Tax Matters* 28.

[139] OECD https://www.oecd.org/tax/exchange-of-tax-information/36647914.pdf 3; Oberson *International Exchange of Information in Tax Matters* 28.

[140] OECD https://www.oecd.org/tax/exchange-of-tax-information/36647914.pdf 3.

enforce and give effect to the international exchange agreements. And lastly, the source country should be in possession of administrative and information technology (IT) capabilities.[141]

8 4 Tax examination abroad

Tax examination abroad, as the name suggests, occurs when authorised tax officials from a requesting country conduct tax examinations in the domestic country.[142] Depending on arrangements between the two countries, the authorised foreign tax officials can conduct a passive examination by merely cooperating with domestic tax officials. Active participation by a foreign tax official entails conducting interviews with taxpayers and examining the latter's tax information. The tax authorities in the domestic country can always insist on the availability of one of their representatives during the interview process. However, a foreign tax official may not compel a taxpayer to disclose information.[143]

The use of tax examination abroad for exchange of information has benefits. First, the taxpayer's compliance burden is decreased. A taxpayer need not spend time and money complying with complex tax laws in different jurisdictions. Instead, the corresponding tax authorities collaborate on matters pertaining to the taxpayer.[144] Secondly, the collaboration between the two different tax authorities decreases the likelihood that administrative work will be duplicated.[145]

8 5 Simultaneous examinations

A simultaneous examination is an extensive examination of taxpayer-related information conducted by two or more countries. The process takes place independently and simultaneously in the respective countries' territories.[146] Conducting a simultaneous examination presupposes that the countries share a mutual taxpayer – in other words, that a taxpayer is a tax resident in more than one country.[147] According to Schenk-Geers, the purpose of a simultaneous examination is to exchange information as quickly as possible

141 See SARS Requirements for implementing AEOI https://www.sars.gov.za/businesses-and-employers/third-party-data-submission-platform/automatic-exchange-of-information/requirements-for-implementing-aeoi/ (accessed 2021-11-12).

142 OECD *Manual on the Implementation of Exchange of Information Provisions for Tax Purposes: Module 6 on Conducting Tax Examinations Abroad* (2006) https://www.oecd.org/ctp/exchange-of-tax-information/36648066.pdf (accessed 2021-09-27) 4.

143 OECD https://www.oecd.org/ctp/exchange-of-tax-information/36648066.pdf 4.

144 *Ibid*.

145 *Ibid*.

146 OECD *Manual on the Implementation of Exchange of Information Provisions for Tax Purposes: Module 5 on Conducting Simultaneous Tax Examinations* (2006) https://www.oecd.org/tax/exchange-of-tax-information/36648057.pdf (accessed 2021-10-04) 4.

147 OECD https://www.oecd.org/tax/exchange-of-tax-information/36648057.pdf 4.

to prevent third parties from altering information that was previously requested during an initial investigation.[148]

A simultaneous examination is usually preceded by a request for information.[149] Once the relevant taxpayer has been identified, the examination seeks to determine the taxpayer's liability by: analysing tax avoidance patterns; ascertaining any unreported income; uncovering any tax avoidance and tax evasion schemes; identifying general issues relating to transfer pricing; establishing multinational business practices, complex transactions and non-compliance trends; and exchanging information in instances where profit allocation occurs in global trading.[150]

8 6 Industry-wide exchange of information

An industry-wide exchange of information is specifically designed to cater for a particular industry.[151] For this reason, industry-wide exchange of information is not meant to address a specific taxpayer.[152] The aim of an industry-wide exchange of information is for tax authorities to familiarise themselves with industry practices and operating patterns. The information retrieved by tax authorities can facilitate effective examination of industry taxpayers.[153]

To effect an industry-wide exchange, a tax authority in one jurisdiction requests information from another tax authority. The request is made in writing and usually contains details of the subject matter of the exchange, the parameters of the exchange, and the designated personnel of the respective tax authorities authorised to meet and exchange information.[154]

9 EXCHANGE OF INFORMATION WITHIN THE SOUTH AFRICAN LEGAL FRAMEWORK

9 1 The Tax Administration Act 28 of 2011

The primary enabling legislation for the exchange of information in South Africa is the Tax Administration Act 28 of 2011 (TAA). The South African Revenue Service (SARS) is responsible for the administration of the TAA.[155] In terms of the TAA, SARS is obliged to exchange information with other

[148] Schenk-Geers *International Exchange of Information and the Protection of Taxpayers* (2009) 109.
[149] OECD https://www.oecd.org/tax/exchange-of-tax-information/36648057.pdf 5.
[150] OECD https://www.oecd.org/tax/exchange-of-tax-information/36648057.pdf 6.
[151] Examples include the banking, pharmaceutical, oil and gas, insurance, information technology, and commodities and telecommunications industries. See OECD *Manual on the Implementation of Exchange of information Provisions for Tax Purposes: Module 4 on Industry-Wide Exchanges of Information* (2006) https://www.oecd.org/ctp/exchange-of-tax-information/36648040.pdf (accessed 2021-10-04) 3.
[152] OECD https://www.oecd.org/ctp/exchange-of-tax-information/36648040.pdf 2.
[153] *Ibid*.
[154] *Ibid*.
[155] S 3(1) of the Tax Administration Act 28 of 2011.

countries subject to international tax agreements.[156] For purposes of the TAA, an international tax agreement[157] is an agreement entered into with the government of another country in accordance with a tax Act. This also includes any agreement concluded between SARS and a competent authority of another country relating to AEOI.[158]

In terms of the TAA, natural persons and public entities are required to submit returns in the prescribed form and manner to SARS.[159] Third parties such as employers or a party that pays an amount to another person are also required to submit tax returns.[160] South African financial institutions that receive amounts on behalf of another person or have control of assets of another person are required to submit tax returns. When submitting a tax return to SARS, South African financial institutions are required to comply with the due-diligence requirements set out in a tax Act, an international tax standard or in an international tax agreement.[161] A person may be required to register as a taxpayer to submit a return in terms of the TAA, an international tax agreement or an international tax standard.[162] Although the word "person" in the TAA does not specifically refer to financial institutions, it should be noted that financial institutions are registered by mere fact that they are South African taxpayers.

Moreover, the TAA states that a foreign country's tax authority can make a request to SARS to supply the latter with information pertaining to the administration of taxes under its respective tax laws. Depending on the type of information requested, SARS is obligated to treat such information as taxpayer information.[163] SARS can also be requested by a foreign country's tax authority to collect a foreign tax debt due to the latter in terms of section 185 of the TAA.[164] Lastly, a foreign tax authority can request SARS to send a

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156 S 3(3)(*a*) of the TAA.

157 It should be noted that an international agreement becomes law in South Africa once it is approved by Parliament, and the agreement is published in the *Government Gazette*. Thereafter, the agreement is enacted by Act of Parliament. See s 108(2) of the Income Tax Act 58 of 1962 read with s 231(4) of the Constitution of the Republic of South Africa, 1996 (Constitution).

158 See the definition of "international tax agreement" in s 1 of the TAA.

159 See s 25 of the TAA.

160 S 26(1) of the TAA.

161 S 26(1) and (2) of the TAA.

162 S 26(3) of the TAA.

163 S 3(3)(*a*) of the TAA.

164 S 3(3)(*b*) of the TAA. S 185 of the TAA reads: "(1) If SARS has, in accordance with an international tax agreement, received – (*a*) a request for conservancy of an amount alleged to be due by a person under the tax laws of the other country where there is a risk of dissipation or concealment of assets by the person, a senior SARS official may authorise an application for a preservation order under section 163 as if the amount were a tax payable by the person under a tax Act; or (*b*) a request for the collection from a person of an amount alleged to be due by the person under the tax laws of the other country, a senior SARS official may, by notice, call upon the person to state, within a period specified in the notice, whether or not the person admits liability for the amount or for a lesser amount. (2) A request described in subsection (1) must be in the prescribed form and must include a formal certificate issued by the competent authority of the other country stating – (*a*) the amount of the tax due; (*b*) whether the liability for the amount is disputed in terms of the laws of the other country; (*c*) if the liability for the amount is so disputed, whether such dispute has been entered into solely to delay or frustrate collection of the amount alleged to

document to the latter. SARS must treat the request for such a document as if it were a document required to be issued by SARS under a South African tax Act.[165]

9 2 The USA (FATCA) Intergovernmental Agreement

In 2010, the US Congress passed Foreign Account Tax Compliance Act (FATCA) for non-compliant American taxpayers who owned foreign bank accounts.[166] In terms of FATCA, foreign financial institutions (FFIs)[167] must report financial accounts[168] held by American taxpayers, or any other foreign

be due; and (*d*) whether there is a risk of dissipation or concealment of assets by the person. (3) In any proceedings, a certificate referred to in subsection (2) is – (*a*) conclusive proof of the existence of the liability alleged; and (*b*) *prima facie* proof of the other statements contained therein. (4) If, in response to the notice issued under subsection (1)(*b*), the person – (*a*) admits liability; (*b*) fails to respond to the notice; or (*c*) denies liability but a senior SARS official, based on the statements in the certificate described in subsection (2) or, if necessary, after consultation with the competent authority of the other country, is satisfied that - (i) the liability for the amount is not disputed in terms of the laws of the other country; (ii) although the liability for the amount is disputed in terms of the laws of the other country, such dispute has been entered into solely to delay or frustrate collection of the amount alleged to be due; or (iii) there is a risk of dissipation or concealment of assets by the person, the official may, by notice, require the person to pay the amount for which the person has admitted liability or the amount specified, on a date specified, for transmission to the competent authority in the other country. (5) If the person fails to comply with the notice under subsection (4), SARS may recover the amount in the certificate for transmission to the foreign authority as if it were a tax payable by the person under a tax Act. (6) No steps taken in assistance in collection by any other country under an international tax agreement for the collection of an amount alleged to be due by a person under a tax Act, including a judgment given against a person in the other country for the amount in pursuance of the agreement, may affect the person's right to have the liability for the amount determined in the Republic in accordance with the relevant law."

165 S 3(3)(*c*) of the TAA.

166 US Department of Treasury "Foreign Account Tax Compliance Act" (date unknown) https://home.treasury.gov/policy-issues/tax-policy/foreign-account-tax-compliance-act (accessed 2021-11-11).

167 A financial institution is defined as "a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company". See art 1(g) of the "Agreement between the Government of the United States of America and the Government of the Republic of South Africa: To Improve International Tax Compliance and to Implement FACTA" (2015) https://www.sars.gov.za/wp-content/uploads/Legal/Agreements/LAPD-IntA-EIA-2014-04-FATCA-IGA.pdf (accessed 2021-11-12) 3.

168 A financial account is defined as: "an account maintained by a Financial Institution, and includes: (1) in the case of an Entity that is a Financial Institution solely because it is an Investment Entity, any equity or debt interest (other than interests that are regularly traded on an established securities market) in the Financial Institution; (2) in the case of a Financial Institution not described in subparagraph 1(s)(1) of this Article, any equity or debt interest in the Financial Institution (other than interests that are regularly traded on an established securities market), if (i) the value of the debt or equity interest is determined, directly or indirectly, primarily by reference to assets that give rise to U.S. Source Withholdable Payments, and (ii) the class of interests was established with a purpose of avoiding reporting in accordance with this Agreement; and (3) any Cash Value Insurance Contract and any Annuity Contract issued or maintained by a Financial Institution, other than a noninvestment-linked, non-transferable immediate life annuity that is issued to an individual and monetizes a pension or disability benefit provided under an account that is excluded from the definition of Financial Account in Annex II. Notwithstanding the foregoing, the term "Financial Account" does not include any account that is excluded from the definition of

entity in which an American taxpayer holds a substantial ownership interest, to the Inland Revenue Service (IRS).[169]

South Africa signed an intergovernmental agreement (IGA) with the US on 9 June 2014. The purpose of this agreement is to improve tax compliance and implement the relevant provisions of the FACTA agreement.[170] The FATCA agreement was gazetted on 13 February 2015 and the agreement came into force on 28 October 2014.[171] The US government uses two separate Model frameworks[172] as the basis upon which it enters into IGAs with other jurisdictions.[173] Currently, South Africa and the US have entered into a Model 1 agreement, in which financial institutions based in South Africa are required to identify and report any information pertaining to a US Reportable Account[174] to SARS. It should be noted that this agreement is reciprocal in that SARS can request tax information from the IRS. Above all, SARS is required to exchange tax information automatically pursuant to

Financial Account in Annex II. For purposes of this Agreement, interests are "regularly traded" if there is a meaningful volume of trading with respect to the interests on an ongoing basis, and an "established securities market" means an exchange that is officially recognised and supervised by a governmental authority in which the market is located and that has a meaningful annual value of shares traded on the exchange. For purposes of this subparagraph 1(s), an interest in a Financial Institution is not "regularly traded" and shall be treated as a Financial Account if the holder of the interest (other than a Financial Institution acting as an intermediary) is registered on the books of such Financial Institution. The preceding sentence will not apply to interests first registered on the books of such Financial Institution prior to July 1, 2014, and with respect to interests first registered on the books of such Financial Institution on or after July 1, 2014, a Financial Institution is not required to apply the preceding sentence prior to January 1, 2016." See art 1(s) of the "Agreement between the Government of the United States of America and the Government of the Republic of South Africa: To Improve International Tax Compliance and to Implement FACTA" https://www.sars.gov.za/wp-content/uploads/Legal/Agreements/LAPD-IntA-EIA-2014-04-FATCA-IGA.pdf 3.

169 US Department of Treasury https://home.treasury.gov/policy-issues/tax-policy/foreign-account-tax-compliance-act.

170 SARS "Guide on the US Foreign Account Tax Compliance Act (FATCA)" (2017) *Issue 2* https://juta.co.za/media/filestore/2017/03/15_Guide_on_US_Foreign_Account_Tax_Compliance_Act_FATCA_-_External_Guide....pdf (2021-11-12) 3.

171 See *GG* 38466 of 2015-02-13.

172 Model 1 entails that the financial institutions identify and report information pertaining to each US taxpayer and a US Reportable Account to the relevant revenue service. Model 2 requires the financial institutions to report the relevant information directly to the IRS coupled with information exchange upon request. See SARS https://juta.co.za/media/filestore/2017/03/15_Guide_on_US_Foreign_Account_Tax_Compliance_Act_FATCA_-_External_Guide....pdf 3.

173 SARS https://juta.co.za/media/filestore/2017/03/15_Guide_on_US_Foreign_Account_Tax_Compliance_Act_FATCA_-_External_Guide....pdf 3.

174 A US Reportable Account is defined as a "Financial Account maintained by a Reporting South African Financial Institution and held by one or more Specified U.S. Persons or by a Non-U.S. Entity with one or more Controlling Persons that is a Specified U.S. Person". See art 1(z)(cc) of the "Agreement between the Government of the United States of America and the Government of the Republic of South Africa: To Improve International Tax Compliance and to Implement FACTA" https://www.sars.gov.za/wp-content/uploads/Legal/Agreements/LAPD-IntA-EIA-2014-04-FATCA-IGA.pdf.

article 26 of the Double Taxation Convention between the Government of the Republic of South Africa and the US Government.[175]

9 3 Common Reporting Standards (CRS)

9 3 1 Origin of the CRS

On 15 July 2014, the OECD (with the backing of the G20 countries) approved a set of standards for domestic countries to obtain financial information from their respective financial institutions. These are known as the Common Reporting Standards (CRS). Once obtained, the financial information can be automatically exchanged with a residence country on an annual basis.[176] There are two important considerations pertaining to the CRS that must be noted. First, they were designed to give effect to the residence country's tax compliance. Simply put, the CRS seek to aid residence countries in their efforts to combat tax evasion and strengthen revenue collection. Secondly, the CRS are standardised to cater for the maximum number of residence countries and financial institutions.[177] Adopting different reporting standards can increase the administrative costs for tax collection on tax authorities and increase the compliance burden on businesses. Implementing standards reduces these costs and improves efficiency for all the parties involved.[178]

Upon the adoption of CRS, a financial institution is required to collect and exchange financial information such as interest, dividends, capital gains or unreported assets upon which tax has not been declared.[179] It should be noted that the scope of CRS is not limited to individual taxpayers. The application of CRS requires financial institutions to look at shell companies, trusts or other similar legal entities to ascertain whether individual taxpayers have income or any other unreported assets in those establishments.[180] It is possible for financial institutions other than banks to report financial information to the relevant domestic tax authority or directly to the residence country. Examples of other financial institutions include certain collective

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175 See the Schedule to the "Agreement between the Government of the United States of America and the Government of the Republic of South Africa: To Improve International Tax Compliance and to Implement FACTA" https://www.sars.gov.za/wp-content/uploads/Legal/Agreements/LAPD-IntA-EIA-2014-04-FATCA-IGA.pdf; SARS https://juta.co.za/media/filestore/2017/03/15_Guide_on_US_Foreign_Account_Tax_Compliance_Act_FATCA_-_External_Guide....pdf 3.

176 See OECD "Automatic Exchange Portal" (date unknown) https://www.oecd.org/tax/automatic-exchange/common-reporting-standard/ (accessed 2021-11-15).

177 OECD "Standard for Automatic Exchange of Financial Account Information in Tax Matters" 2ed (2017) https://www.oecd-ilibrary.org/docserver/9789264267992-en.pdf?expires=1636959583&id=id&accname=oid011488&checksum=D3706B3F096F975BD1B5FB5B9C166378 (accessed 2021-11-15) 11.

178 *Ibid*.

179 OECD https://www.oecd-ilibrary.org/docserver/9789264267992-en.pdf?expires=1636959583&id=id&accname=oid011488&checksum=D3706B3F096F975BD1B5FB5B9C166378 12.

180 *Ibid*.

investment vehicles, brokers and certain insurance companies.[181] Once all the relevant information has been retrieved, the financial institution is required to perform due-diligence procedures to identify the account holder and the reportable accounts for purposes of reporting to the residence country.[182]

9 3 2 CRS within the South African legal framework

South Africa published Regulations pertaining to the CRS on 2 March 2016. The South African Regulations (CRS SA Regulations) were signed into law by then-Minister of Finance Pravin Gordhan.[183] The SA Regulations inserted a definition for an "international tax standard" in the TAA. In terms of the TAA, an "internal tax standard" means:

> "(*a*) the OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters;
> (*b*) the Country-by-Country Reporting Standard for Multinational Enterprises specified by the Minister; or
> (*c*) any other international standard for the exchange of tax-related information between countries specified by the Minister."[184]

It should be noted that SARS, as the relevant competent authority, can enter into an international agreement for AEOI using the CRS with any country other than the US.

9 4 Country-by-Country reporting

9 4 1 Origin of CbC reporting

Country-by-Country (CbC) reporting is an international initiative aimed at combating tax avoidance and transfer pricing. MNE groups are required to report on operations in every jurisdiction in which they operate.[185] The initiative came about after the release of the OECD's 2013 report *Addressing Base Erosion and Profit Shifting*.[186] G20 countries implemented an Action Plan to address Base Erosion and Profit Shifting. They released a total of 15 Action Plans that were based on improving transparency, bolstering existing international standards, and introducing coherent domestic rules pertaining to cross-border activities.[187] The Action Plan that is relevant to this

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181 *Ibid*.
182 *Ibid*.
183 *GG* No 39767of 2016-03-02 read with s 257 of the TAA.
184 See the definition of "international tax standard" in s 1 of the TAA.
185 See SARS "Country-by-Country (CbC)" (2021) https://www.sars.gov.za/types-of-tax/corporate-income-tax/country-by-countrycbc/ (accessed 2021-12-30); ATO "Country-by-Country" (2021) https://www.ato.gov.au/business/international-tax-for-business/in-detail/transfer-pricing/country-by-country-reporting/ (accessed 2021-12-30).
186 See OECD "Addressing Base Erosion and Profit Shifting" (2013) https://read.oecd-ilibrary.org/taxation/addressing-base-erosion-and-profit-shifting_9789264192744-en#page1 (accessed 2021-12-30).
187 See OECD "Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 – 2015 Final Report OECD/20 Base Erosion and Profit Shifting Project*"* (2015)

discussion is the OECD's Action Plan 13: 2015 Final Report on Transfer Pricing Documentation and CbC (Action Plan 13).

In terms of Action Plan 13, MNEs are required to furnish tax administrators with information regarding their business operations and transfer pricing policies. This information must be contained in a "master file" that is made available to the relevant competent authority. Secondly, a second file called the "local file" that contains detailed transactional transfer pricing documentation specific to each country must be provided to the relevant competent authority. Thirdly, MNEs must file an annual CbC report for each tax jurisdiction in which they do business, including the total amount of revenue, income tax paid, and profit before income tax. And lastly, MNEs must identify all the entities within the group that conduct business in every tax jurisdiction and provide a description of the activities of that entity.[188] Thereafter, should a jurisdiction require information regarding the activities of a particular MNE or any of its entities in another jurisdiction, the former jurisdiction can request that the information be exchanged between participating jurisdictions.[189]

9 4 2 Country-by-Country reporting within the South African legal framework

On 23 December 2016, the then-Minister of Finance Pravin Gordhan signed Regulations for the CbC Reporting Standard for MNEs (the CbC Regulations).[190] Prior to that, South Africa had signed the Multilateral Competent Authority Agreement on the exchange of CbC reports (CbC MCAA) on 27 January 2016. As of 5 September 2023, there are 100 signatories to the CbC MCAA agreement.[191]

10 HOW BLOCKCHAIN CAN SIMPLIFY AEOI IN SOUTH AFRICA

South Africa, like most countries, relies on exchange-of-information agreements or conventions to transfer tax information to competent authorities. This multilateral approach imposes a significant administrative

https://www.oecd-ilibrary.org/docserver/9789264241480-en.pdf?expires=1640857006&id=id&accname=guest&checksum=DE1BCEBA407E953DA5952CB5DBA4AFEA (accessed 2021-12-30) 3.

188 OECD https://www.oecd-ilibrary.org/docserver/9789264241480-en.pdf?expires=1640857006&id=id&accname=guest&checksum=DE1BCEBA407E953DA5952CB5DBA4AFEA (accessed 2021-12-30) 9.

189 See ATO "Country-by-Country Reporting" (2021) https://www.ato.gov.au/business/international-tax-for-business/in-detail/transfer-pricing/country-by-country-reporting/ (accessed 2021-12-30).

190 See par (*b*) of the definition of "International Tax Standard" in s 1 of the TAA read with *GG* 40516 of 2016-12-23.

191 See the Preamble of the CbC Regulations; see also OECD "Signatories of the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (CbC MCAA) and Signing Dates" (2023) https://www.oecd.org/tax/automatic-exchange/about-automatic-exchange/CbC-MCAA-Signatories.pdf (accessed 2023-09-06).

burden on SARS. To simplify the process, SARS could use a consortium blockchain to transfer tax information automatically to selected competent authorities.[192] A consortium blockchain is suitable because it can be set up to allow only certain countries or competent authorities to participate in the network.[193] This setup can be secure and promote confidentiality because tax information is exchanged with pre-selected competent authorities. The pre-selected competent authorities can also verify the data without other participating competent authorities knowing the content of the data.[194] For example, if SARS signed a Multilateral Convention with Argentina, Brazil, Venezuela and Chile, using the MCAA and blockchain technology, SARS could exchange tax information with these countries. Since the pre-selected competent authorities form part of the same multilateral treaty, they would obtain access to the same tax information in real time. SARS would not have to take additional steps to execute a bilateral exchange.[195] In other words, there would be no delays in the transmission and receipt of tax information because the process would occur automatically through computer software known as a smart contract.[196] Moreover, once tax information has been exchanged, it would be synchronised throughout the blockchain network.

SARS could benefit from using blockchain because tax data retrieved on the blockchain is transparent and easily accessible. SARS could actively use the data to administer taxes and combat cross-border tax evasion and avoidance. Important information such as the identity of the beneficial owners of companies, accounting information, arrangements like partnerships and trusts, and bank account information would be easily accessible.[197] Data transparency would make it easier for SARS and other tax authorities to trust each other because the data would originate from a trusted source. The competent authority would validate the data before it was exchanged on the blockchain. Data transparency could also boost tax authorities' audit capabilities in the process. For example, tax authorities could cross-check new tax information with data already in their possession to determine a taxpayer's tax liability.

Owing to blockchain's features, SARS could analyse tax information that is exchanged in bulk.[198] In doing so, SARS could efficiently determine whether tax information is relevant. SARS could use data analytics techniques on the blockchain to analyse tax data and possibly predict taxpayer compliance trends. In doing so, SARS could identify potential high-

[192] Kim recommends a consortium blockchain for international exchange of tax information. See Kim "Blockchain Initiatives for Tax Administration" 2022 69(1) *UCLA Law Review* 240 299.

[193] Kim 2022 *UCLA Law Review* 289.

[194] *Ibid*.

[195] Kim 2022 *UCLA Law Review* 300.

[196] Kim 2022 *UCLA Law Review* 300. A smart contract is a computer program that automatically executes once all the conditions are met.

[197] Duperrut, Thevoz, Ilves, Migai and Owens "Why – and How – African Countries Should Use Technology for Automatic Information Exchange" 2019 96(2) *Tax Notes International* 919 921.

[198] See Cockfield 2010 *UBC Law Review* 459.

risk non-compliant taxpayers. These procedures could ensure that time spent scrutinising tax data would be significantly reduced.

11 CONCLUSION

AEOI has proven to be an effective tool in the fight against tax evasion and tax avoidance. The move towards AEOI and greater financial transparency has provided tax authorities with necessary tools to collect taxes that would otherwise go uncollected.

AEOI has challenges. It places a heavy compliance burden on financial institutions and other similar entities. Financial institutions are obligated to decipher taxpayer accounts and documentation to ascertain the latter's tax residency. This can be costly and time-consuming. If not done efficiently, it can frustrate the AEOI procedure. This can impose an additional burden on tax authorities. Countries that lack the necessary infrastructure and skilled personnel are unlikely to participate in AEOI. It should be noted that the adoption of blockchain for AEOI does not address these issues. In fact, adopting blockchain presupposes the availability of skilled personnel and infrastructure to facilitate a smooth adoption of blockchain technology.

This article has demonstrated that the adoption of blockchain for exchange of information purposes can be used to strengthen cooperation between authorities of different jurisdictions, improve tax collection, and promote interaction between tax authorities and taxpayers.[199] It should also be noted that blockchain is not a tool that resolves issues relating to banking secrecy and tax havens. These issues can be resolved by implementing a legislative framework that curbs rules and practices that promote a lack of transparency and which promote secrecy.

[199] Bossa and De Paiva Gomes https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3540277 12.