

The transformation of tax administration functions in the automatic exchange of information era – a developing country's perspective

Salah Gueydi* and Mahmoud M Abdellatif**

Abstract

Automatic Exchange of Information (AEOI) results in tax administrations sending and receiving large amounts of data on an automatic basis, which will have a substantial impact on their functions and the way they operate. From the perspective of taxpayers, AEOI puts a greater focus on tax administration functions of assistance, providing services, lowering the compliance burden on taxpayers and enforcement. From the perspective of the tax administration, AEOI creates pressure on the ability of tax administrations to perform their functions of risk assessment, audit, data management and tax collection. AEOI will not create new functions for tax administrations. Developing countries, including Qatar, should embrace the policy objectives that led to the development of the AEOI standard and focus not only on facilitating compliance with the obligations but also on effectively using the information received in improving their functions of risk assessment, audit, collection, and so forth.

Key words: Automatic Exchange of Information, tax administration, common reporting standards, developing countries, tax audit

* Director of Tax Department, Qatar Financial Center Authority. Email: s.gueydi@qfc.qa.

** Assistant Professor of Economics and Director of the Center for Entrepreneurship, College of Business and Economics, Qatar University, Doha, Qatar. Email: m.abdellatif@qu.edu.qa.

1. INTRODUCTION

Tax authorities are empowered under tax laws and regulations to conduct a number of functions which range from providing guidance and assistance to taxpayers to monitoring compliance and imposing penalties, the ultimate aim being to ensure a fair, transparent and efficient operation of the tax system. The way these functions are performed has been influenced by the increasingly rapid changes introduced by disruptive technologies on business models and taxpayers' behaviour. Hence, the digitisation of business transactions, the increasing mobility and volatility of capital and the opportunities for tax avoidance and tax evasion they offer have induced tax authorities to develop new international standards to combat base erosion and profit shifting (BEPS) and improve transparency and exchange of information.¹

A key component of these standards is the Automatic Exchange of Information (AEOI), which results in tax administrations sending and receiving large amounts of data on an automatic basis. This will have a significant impact on the operation of tax administrations, the extent to which they rely on technology, their processes, job descriptions of their members, etc. Such developments in both technology and tax obligations will likely affect the traditional operations of tax administrations in both developed and developing countries. However, tax administrations in developing countries will likely face unique critical challenges in transforming their functions compared to those in developed countries, which raises the following question: How would the implementation of automatic exchange of information standards affect the functions of tax administrations in developing countries?

Answering this question will involve a number of objectives, namely:

- A brief review of the traditional functions of tax administrations in developed and developing countries and related challenges potentially impacting AEOI;
- Understanding the impact of AEOI on tax administration functions;
- Reviewing tax administration functions in Qatar and identifying AEOI-related challenges;
- Proposing specific recommendations to restructure/redesign tax administration functions to cope with AEOI in Qatar, with potentially broader application.

This article addresses these objectives based on the assumption that tax administrations in developing countries are in a position to fulfil their commitments under international AEOI standards, and uses a normative methodology.

Using this approach, this article first analyses the functions of the tax authority of Qatar, a developing country that has implemented both the FATCA Inter-Governmental

¹ The Global Forum on Transparency and Exchange of Information for Tax Purposes identified two key types of exchange of information, namely: (1) the Exchange upon request (the standard being Article 26 of the OECD Model Convention and the model tax information exchange agreement (TIEA)), and (2) Automatic Exchange of Information (the standard being the Common Reporting Standard). For more details see: Organisation for Economic Co-operation and Development (OECD), *Exchange of Information on Request: Handbook for Peer Reviews 2016-2020* (OECD, 3rd ed, 2016); OECD, *Standard for Automatic Exchange of Financial Information in Tax Matters - Implementation Handbook* (OECD, 2nd ed, 2018).

Agreement (IGA) with the US and the Common Reporting Standard (CRS),² and which has committed to implement recommended actions under the BEPS project of the Organisation for Economic Co-operation and Development (OECD). The analysis assesses current practices in terms of strengths and weaknesses and reviewing and assessing the transformation witnessed by the Qatari tax administration.

The structure of this article following this introduction is as follows: section 2 reviews the scholarly works related to tax administration functions in the light of technological changes, exchange of information and globalisation of the economy. Section 3 reviews the challenges raised by the automatic exchange of information regime. Section 4 provides an overview of Qatar's practices related to automatic exchange of information, and section 5 provides specific policy recommendations to policy-makers to reform the functions of tax administration in Qatar as well as other developing countries.

2. TAX ADMINISTRATION FUNCTIONS AND THE DRIVERS OF CHANGE

2.1 Tax administration functions potentially impacting AEOI

Tax administration is undertaken by the government agency or department mandated to enforce tax legislation. In some countries, there is a single tax administration which enforces direct and indirect taxes, while in others there are two departments/bodies, one for direct taxes (mainly income/corporate tax) and the other for indirect/consumption taxes (eg, value-added tax (VAT)).³ Implementation of tax legislation includes carrying out a number of activities, such as registration, assessment, collection, and resolution of tax disputes. All these activities focus on compliance as a key driver of tax administration processes.

In developed countries, tax administrations generally work to improve tax compliance through different forms of taxpayer service initiatives. These include, for example: (1) educating taxpayers through training programs and awareness sessions; (2) using media to disseminate information about the tax system, and (3) answering their queries through call centres or online assistance. Such activities are known as pre-filing activities.⁴ Post-filing activities include identifying non-compliant taxpayers, tax audit and criminal investigations.⁵ In developing countries, tax administrations tend to pay more attention to post-filing than pre-filing activities, which affects their operations and increases their inefficiency. Besley and Persson examined the reasons behind the low ratio of tax revenues to GDP in developing countries compared to developed countries.⁶ They found that factors such as lower GDP per capita, lack of transparency and poor norms of tax

² On 10 November 2017, Qatar joined the Mutual Administrative Assistance Convention (MAAC) and the Multilateral Competent Authorities Agreement (MCAA), which set the (international) legal basis for implementing the CRS. In addition, Qatar issued a CRS Circular on 9 May 2018 (Circular No 1 of 2018 implementing the Common Reporting Standard). Qatar also joined the BEPS Inclusive Framework on 14 November 2017.

³ OECD, *Tax Administration 2017: Comparative Information on OECD and Other Advanced and Emerging Economies* (OECD, 2017).

⁴ International Monetary Fund (IMF), 'Current Challenges in Revenue Mobilization: Improving Tax Compliance' (IMF Staff Report, 15 April 2015) 16-19, <https://www.imf.org/external/np/pp/eng/2015/020215a.pdf>.

⁵ For more details, see Y Helhel and Y Ahmed, 'Factors Affecting Tax Attitudes and Tax Compliance: A Survey Study in Yemen' (2014) 6(22) *European Journal of Business and Management* 48.

⁶ Timothy Besley and Torsten Persson, 'Why Do Developing Countries Tax So Little?' (2014) 28(4) *Journal of Economic Perspectives* 99.

compliance adversely affect tax collection levels in developing countries. Poor tax compliance indicates not only insufficient focus on pre-filing activities but also certain inefficiency in carrying out post-filing activities.

The low level of tax compliance in developing countries makes tax administrations focus on easy-to-tax activities, for example, corporate taxation, and tend to ignore hard-to-tax activities, for example, taxing small businesses, the informal sector, agriculture, etc, which represent a significant part of the GDP in the majority of developing countries.⁷ When it comes to tax collection per type of tax in developing countries, the bulk of tax revenues derive from indirect taxes and corporate income tax. This impacts tax policy, such as a tendency to tax corporations at higher rates, which may discourage investments.⁸

Bahl and Bird identified a number of factors (mostly related to availability of resources) that ultimately affect tax administration functions in developing countries.⁹ In this context, they concluded that factors such as lack of trained tax officers, lack of technology and the use of inefficient old ways for tax assessment are the reason why tax administrations in developing countries are lagging behind their counterparts in developed countries. They noted that '[s]taff was underpaid and under-skilled, recordkeeping was manual, modern procedures for assessment and collections were not in place, and tax systems were often so complex that they made a bad situation worse'.¹⁰

To these must be added newer challenges from developments and innovation in information technology and the movement towards digitalisation of business activities in a globalised economy. This is the context for implementing AEOL.

2.2 Tax administrations and digitalisation

Information technology has had a significant impact on social and economic aspects of life. Governments in developed countries and a number of developing countries rely on digital systems for providing government services through e-government gateways whereby households and businesses can obtain government services and pay for them online. This situation has facilitated access to government transactions and minimised transaction costs in terms of time and money.

Tax administrations like other government agencies have invested in using modern technology to facilitate compliance with, and minimise operating costs of, the tax system. This has been reflected in a number of activities such as online registrations of taxpayers, e-filing of tax returns, e-payment of tax, reporting of information on financial accounts, etc.¹¹

⁷ James Alm, Jorge Martinez-Vazquez and Sally Wallace (eds), *Taxing the Hard-to-Tax: Lessons from Theory and Practice* (Elsevier, 2004).

⁸ Roy W Bahl and Richard M Bird, 'Tax Policy in Developing Countries: Looking Back – and Forward' (2008) 61(2) *National Tax Journal* 279, 284.

⁹ Ibid.

¹⁰ Ibid.

¹¹ For more details, see Institute of Chartered Accountants in England and Wales (ICAEW), *Digitalisation of Tax: International Perspectives* (ICAEW, 2016), <https://www.icaew.com/technical/technology/technology-and-the-profession/digitalisation-of-tax-international-perspectives>.

Scholars such as Bird and Zolt have analysed how technology affects the functions of tax administration. Registration, for instance, is performed in many countries using Tax Identification Numbers (TINs).¹² Using TINs helps to trace taxpayers' transactions and to manage withholding tax and tax payments in general as tax administrations connect directly with the payers and tax withheld is electronically transferred to the tax administration. Importantly, tax audit and tax payment have significantly benefited from technology. Because information is now available through online exchange between different government agencies, financial institutions and the tax administration, tax audit's efficiency has improved significantly through using technology for cross-matching of financial transactions and payments. This enables tax administrations to identify under-reporting cases and improve taxpayer compliance. In addition, electronic payment systems implemented by tax administrations shorten the period for collecting tax and enhance the efficiency of collection.¹²

Digitalisation of tax seeks to bridge the tax gap by assisting tax authorities to obtain additional insights into the economy and taxpayers' affairs. In the long run, digitalised processes benefit both the collecting authority and taxpayers in terms of better compliance and reduced administrative costs. Furthermore, digitalisation can revolutionise the processes of tax systems. Pre-populating tax returns, for instance, alters the tax compliance platform by generating a system where the government automatically prepares the returns and citizens are accountable to review and confirm them.¹³

In most developing countries, digitalisation of tax administration faces a number of challenges, such as: (1) lack of resources in terms of new technologies; (2) lack of qualified staff to deal with technology and utilise it in tax administration operations, and (3) lack of political will. Nevertheless, a number of developing countries have achieved significant success in this area, such as Chile and Brazil. Other countries are progressing such as sub-Saharan African countries.¹⁴

Developing countries are required to invest resources to modernise their tax administrations though employing new technologies and move to digitalisation because of internal and external pressures. The need to increase tax collection, stimulate tax compliance and improve efficiency in managing tax operations, represent examples of internal pressures. On the other hand, the globalisation of business activities and the need for exchange of information in order to fight international tax evasion and avoidance represent international (ie, external) pressures on tax administration.

2.3 Tax Administration and globalisation

Multinational enterprises (MNEs) are moving from developed to developing countries, attracted by large markets, inexpensive labour, tax incentives, etc. Migration of MNE business operations from developed to developing countries can lead to a leakage of tax revenues through tax evasion and avoidance.¹⁵ Both source and residence countries therefore address tax evasion through bilateral/multilateral arrangements and measures.

¹² Richard Bird and Eric M Zolt, 'Technology and Taxation in Developing Countries: From Hand to Mouse' (2008), 61(4), *National Tax Journal* 791, 798.

¹³ ICAEW, above n 11.

¹⁴ Bird and Zolt, above 12, 794.

¹⁵ Olatunde J Otusanya, 'The Role of Multinational Companies in Tax Evasion and Tax Avoidance: The Case of Nigeria' (2011) 22(3) *Critical Perspectives on Accounting* 316.

This has been manifested in an increasing interest by developing countries to conclude multilateral/bilateral tax treaties with developed countries to obtain information and avoid, as much as possible, cases of double non-taxation.¹⁶

Increased MNE activities in developing countries raise a number of challenges to tax administrators. Such challenges are attributed to three main factors: (1) the highly technical nature of international tax issues, such as transfer pricing, thin capitalisation, treaty shopping, etc; (2) the lack of experienced tax officers/auditors to handle such issues, and (3) lack of resources, especially modern technology and communications.

The lack of technology and modern communications prevents many developing country tax administrations from dealing with online transactions, implementing modern techniques to collect information and properly handle taxpayers' payments.¹⁷ As a result, these tax administrations cannot improve tax compliance in general and compliance of MNEs in particular. The tax compliance rate is generally low, and the bulk of tax administration activities are carried out post filing, which limits the efficiency of tax administrations and causes challenges for MNEs.¹⁸

The introduction of the new mechanism for automatic exchange of information, as a new international obligation, is expected to create significant challenges to tax administrators in developing countries. This is analysed in the coming sections.

3. CHALLENGES RAISED BY AUTOMATIC EXCHANGE OF INFORMATION (AEOI)

To assess the impact of AEOI on the functions of tax administrations, it is necessary to understand how the AEOI standard has been developed and endorsed by tax administrations around the world as well as how it impacts the activities of tax administrations and taxpayers.

3.1 Development of the AEOI standard

Following the Global Financial Crisis (GFC) in 2008, governments needed revenue to keep fulfilling their functions and stimulate depressed economies. Large stimulus packages were adopted in a number of developed countries,¹⁹ with the inevitable consequence of deepening budget deficits. For obvious reasons, increasing tax rates was not an option. The more sensible route was to increase revenues through improving tax collection and closing leakages caused by tax evasion and tax avoidance.

In this context, the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) took the first action in 2009 with a primary focus on Exchange of Information on Request (EoIR). Between 2010 and 2016, the Global Forum conducted a large number of reviews covering both the legal framework and

¹⁶ Kevin Holmes, *International Tax Policy and Double Tax Treaties – An Introduction to Principles and Application* (IBFD, 2nd ed, 2014).

¹⁷ Richard M Bird, 'Tax Challenges Facing Developing Countries' (Georgia State University Andrew Young School of Policy Studies Working Paper 08-02, March 2008), <https://icepp.gsu.edu/files/2015/03/iswp0802.pdf>.

¹⁸ IMF, above n 4.

¹⁹ Michael Grunwald, '5 Years After Stimulus, Obama Says It Worked', *Time* (17 February 2014), available at: <http://time.com/8362/economic-stimulus-recovery-act-anniversary-obama/> (accessed 10 January 2019).

practice for EoIR.²⁰ The review looked to three main areas, namely: (i) availability of information; (ii) access to information, and (iii) exchange of information. Each area was further divided into essential elements. Overall, there are 36 essential elements covering all aspects of effective EoIR.²¹ A first round of reviews took place in 2010 and was completed in 2016.²²

Subsequently, the OECD developed the international standard on AEOI (also known as the Common Reporting Standard (CRS)), which was endorsed by the G20 Finance Ministers and Governors of Central Banks as part of the international standard on EoIR in February 2014.²³

The US, on the other hand, tackled tax evasion through offshore financial accounts by enacting the Foreign Account Tax Compliance Act (FATCA) in 2010, which was later implemented in other jurisdictions by way of Inter-Governmental Agreements (IGAs) with the US.

In response to the challenges raised by tax avoidance, the OECD also developed an action plan to tackle Base Erosion and Profit Shifting (BEPS – the BEPS project), composed of 15 action points, some of which involve exchange of information.²⁴

3.1.1 *The Common Reporting Standard (CRS)*

Once the EoIR standard was globally recognised, the OECD focused on the other key area in exchange of information, namely the AEOI regime. The OECD developed the Common Reporting Standard (CRS) as the international standard on AEOI, taking the FATCA IGA²⁵ as a reference.

The CRS has both international and domestic sources. While tax agreements may still constitute a valid international legal basis to implement reporting obligations under CRS,²⁶ Article 6 of the Multilateral Convention on Mutual Administrative Assistance (MCMAA) is the main international legal source of CRS, as it specifically provides for AEOI. In order to operationalise the exchange, the OECD proposed a Multilateral Competent Authority Agreement (MCAA),²⁷ which lays down the obligation of member jurisdictions to automatically exchange financial account information on an annual basis. Furthermore, due diligence procedures needed to review and identify

²⁰ A first round of reviews covering all the members of the global forum (currently 149) was completed between 2010 and 2016. See Global Forum on Transparency and Exchange of Information for Tax Purposes, *Tax Transparency 2017: Report on Progress* (OECD, 2017), <http://www.oecd.org/tax/transparency/global-forum-annual-report-2017.pdf>.

²¹ OECD, *Exchange of Information on Request: Handbook for Peer Reviews 2016-2020*, above n 1.

²² Global Forum on Transparency and Exchange of Information for Tax Purposes, 'Phase 1 and Phase 2 Reviews' (November 2016), available at: <http://www.oecd.org/tax/transparency/GFratings.pdf> (accessed 10 January 2019).

²³ Ibid.

²⁴ Automatic exchange of Information is included in a number of action items of the BEPS project, including Action 5 (Harmful Tax Practices) and Action 13 (Country-by-Country Reporting (CbCR)).

²⁵ See OECD, 'Automatic Exchange Portal: Online Support for the Implementation of Automatic Exchange of Information in Tax Matters', <http://www.oecd.org/tax/automatic-exchange/common-reporting-standard/standard-for-automatic-exchange-of-financial-account-information-in-tax-matters-second-edition-9789264267992-en.htm>.

²⁶ DTAs based on the OECD and UN models and TIEAs based on the 2015 Model do not prevent AEOI.

²⁷ For more details see the OECD guidelines for AEOI: <http://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/multilateral-competent-authority-agreement.pdf>.

reportable accounts and reporting obligations are detailed in a separate section of the CRS.

The MCMAA and MCAA create the obligation on the concerned jurisdiction to exchange information under the CRS. The obligation on Financial Institutions (FIs) to review (and report on reportable) financial accounts must be translated into the domestic tax law (see below, in section 4.2.2). This law contains, among other things, enforcement provisions and determines the position of the concerned jurisdiction in relation to the options available under a number of aspects of the CRS.

Determining the information that needs to be reported under CRS requires identifying both reportable accounts and reportable persons. This requires, first, determining what is a financial account. The CRS defines this as an account maintained by a Financial Institution. It includes depository accounts, custodial accounts, equity and debt interests and cash value insurance and annuity contracts.

A reportable account is a financial account held by a reportable person or by a passive Non-Financial Entity (NFE) with one or more controlling persons who are reportable persons. A passive NFE is defined as an entity (other than an FI) that is not active. NFEs are qualified as active under the CRS for a variety of reasons including, composition of income and assets, or being publicly traded, government entities, start-ups, not-for-profits, etc.²⁸

On the other hand, a reportable person is generally a person who is resident for tax purposes in a reportable jurisdiction.²⁹ A controlling person is the person who exercises control over the entity.

The definitions of reportable account and reportable person allow the determination of reportable information, which includes:

- Account holder information: Name, Address (and jurisdiction of residence) and Tax Identification Number (TIN). For individuals, date and place of birth may also be required;
- Account information: account number (or functional equivalent) and name and identifying number of the financial institution; and
- Financial information: account balance, interest, dividends or other income paid in relation to the account, gross proceeds from the sale or redemption of financial assets paid or credited to the account, etc.

Around 108 jurisdictions have already implemented or committed to implement the CRS, 49 of which implemented it in 2017, 51 jurisdictions in 2018, and 8 committed to implement in 2019/2020.³⁰ The first wave of exchange took place on 30 September 2017

²⁸ OECD, *Standard for Automatic Exchange of Financial Information in Tax Matters - Implementation Handbook*, above n 1, 68.

²⁹ Ibid 106.

³⁰ Global Forum on Transparency and Exchange of Information for Tax Purposes, 'AOEI, status of commitments (November 2018)', <http://www.oecd.org/tax/automatic-exchange/commitment-and-monitoring-process/AEOI-commitments.pdf> (accessed 10 January 2019).

in relation to 2016 data. The second wave took place on 30 September 2018 and covered 2017 data.

While the instruments governing the exchange are multilateral by nature (MCMAA and MCAA), the exchange itself takes place on a bilateral basis between jurisdictions that are interested to exchange with each other. These are determined on the basis of lists of jurisdictions with which a given jurisdiction is interested to exchange information. The OECD's Coordinating Body runs a matching exercise determining the jurisdictions between which the exchange can be activated.

3.1.2 *FATCA*

The US concluded 113 IGAs to implement FATCA.³¹ Under Model 1 of the agreement, the exchange takes place between competent authorities in the same way as for the CRS. Model 2 allows the exchange to take place directly between the FI and the US Internal Revenue Service (IRS).

The due diligence and reporting obligations and the reportable information are very similar to those under the CRS. There are still differences between FATCA and CRS, but they relate mainly to the multilateral nature of the CRS (compared to the bilateral nature of the IGA) and to certain particularities of the US tax system.³²

3.1.3 *Exchange of information in BEPS*

Even though the work on exchange of information was presented as the global response to tackle tax evasion, whereas the OECD's BEPS project was developed and presented as the global response to tackle tax avoidance, a number of recommendations of the BEPS action plan still involve exchange of information. These include: (1) Action 13 on Country-by-Country Reporting (CbCR); (2) Action 5 on Harmful Tax Practices, and (3) Action 12 on Mandatory Disclosure Rules.³³

The final report on Action 13 of the BEPS Action Plan on Transfer Pricing and CbCR,³⁴ which is a minimum standard, requires MNEs to provide all relevant jurisdictions with certain information on the allocation of their global activity amongst countries in which they operate.

This CbCR was introduced as part of a new three-tiered approach to transfer pricing documentation. First, a 'master file' has to be prepared, including high-level information on the global business operations and transfer pricing policies of the MNE. Second, a 'local file' containing details of material related party transactions has to be prepared for each jurisdiction in which the MNE operates. Third, the CbC report has to be prepared by large MNEs and contain, for each jurisdiction in which they operate, such information as the amount of revenues, profits, taxes, number of employees,

³¹ For more details, see US Department of the Treasury, <https://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx> (accessed 10 January 2019).

³² OECD, *Standard for Automatic Exchange of Financial Account Information in Tax Matters* (OECD, 2nd ed, 2017) 10, <http://dx.doi.org/10.1787/9789264267992-en>.

³³ OECD, *OECD/G20 Base Erosion and Profit Shifting Project, Explanatory Statement: 2015 Final Reports* (OECD, 2015), <http://www.oecd.org/ctp/beps-explanatory-statement-2015.pdf>.

³⁴ OECD, *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report* (OECD, 2015) 29, 37, <http://www.oecd.org/tax/transfer-pricing-documentation-and-country-by-country-reporting-action-13-2015-final-report-9789264241480-en.htm>.

capital, retained earnings, the list of member entities doing business in a particular jurisdiction, etc.³⁵

While the master file and the local file will be submitted directly by the MNE to the local tax jurisdictions, the CbC reports will be filed with the competent authority of the State of residence of the MNE's parent entity (or its surrogate). The report will then be exchanged with relevant jurisdictions through AEOI. In the same way as for the CRS, the MCMAA offers a suitable legal basis for the exchange. A Competent Authority Agreement and model legislation were developed to help jurisdictions implement this action.

To sum up, the CbCR will provide tax administrations with very useful information on the activities of the MNE and allow them to better assess transfer pricing risks and allocate audit resources accordingly.³⁶

Two aspects were covered in the final report on action 5 (which is a minimum standard), namely review of preferential regimes to ensure they are not harmful and a transparency framework on tax rulings.³⁷ Under the latter, a number of rulings were identified as possibly giving rise to BEPS concerns, including rulings relating to preferential regimes, transfer pricing rulings, permanent establishment rulings, etc.

Information on these rulings must be spontaneously exchanged between concerned jurisdictions without undue delay.³⁸

The Action 12 final report³⁹ recommends the development of mandatory disclosure rules allowing tax jurisdictions to know, at an early stage, about aggressive or abusive tax planning arrangements, transactions or structures.

The report also encourages exchange of information obtained under these rules, particularly in relation to international tax schemes, between interested jurisdictions on a spontaneous basis, and recommends using the platform offered by the Joint International Taskforce on Shared Information and Collaboration (JITSIC)⁴⁰ Network.

3.2 The impact of AEOI on the functions of tax administrations

The implementation of AEOI gives rise to significant challenges for tax administrations in both developed and developing countries. These challenges are attributed to constraints related to domestic tax laws, international tax agreements and the

³⁵ Ibid 10-11.

³⁶ Ibid 48.

³⁷ OECD, *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report* (OECD, 2015), http://www.oecd-ilibrary.org/taxation/countering-harmful-tax-practices-more-effectively-taking-into-account-transparency-and-substance-action-5-2015-final-report_9789264241190-en.

³⁸ This means, generally, that if there are no legal impediments to exchange the information, the exchange must take place within three months from the date the ruling becomes available to the competent authority of the jurisdiction that granted the ruling. If there are legal impediments such as an obligation to notify the taxpayer, and the right of the latter to appeal against the exchange of information, the exchange must be made as soon as the impediments cease to exist.

³⁹ OECD, *Mandatory Disclosure Rules, Action 12 - 2015 Final Report* (OECD, 2015), <http://dx.doi.org/10.1787/9789264241442-en>.

⁴⁰ The JITSIC Network is an international platform open (to members of the Forum on Tax Administration) on a voluntary basis to enhance bi-lateral and multi-lateral co-operation and collaboration between tax administrations.

implementation of the AEOI itself.⁴¹ To grasp these challenges and understand the impact they may have on the functions of tax administrations, it is necessary to understand the characteristics of AEOI and to identify what it involves for both taxpayers and tax administrations.

3.2.1 *Characteristics of AEOI*

Based on AEOI standards and the objectives they pursue, a number of characteristics of AEOI can be identified, including: (1) standardisation; (2) size and type of data; (3) scope of data, and (4) use of technology. These characteristics are discussed below.

1. *Standardisation*: the first, and probably most important, characteristic of AEOI, effective AEOI is subject to adhering to standard processes, procedures, forms, etc in gathering, reviewing, processing or reporting the information. Without such standardisation, both collection and exploitation of the data will be extremely difficult and costly. Hence the need for standard due diligence and reporting procedures and for a schema to put the information in the correct format in the case of CRS and FATCA, and the need for a common template in the case of CbC reports.
2. *Size of data*: the second characteristic of AEOI is that it generally involves exchange of large volumes of data. The exchange is not made on an individual basis as in the case of EoIR but rather on a collective basis involving thousands of records and sometimes more.⁴²
3. *Scope of exchange*: linked to the previous characteristic, it is related to the overarching nature of the exchange as shown by the wide scope of the obligations. In the case of CRS and FATCA, for instance, the obligation concerns all FIs (including those that are not necessarily under the supervision of financial sector regulators) in respect of all types of financial accounts including those held through entities or arrangements and covers all relevant information.⁴³
4. *Use of technology*: because of the size of data exchanged, AEOI would generally require intensive use of technology to allow the collection of reportable information and, more importantly, its processing and exploitation.

3.2.2 *Challenges raised by AEOI and impact on tax administrations' functions: taxpayer's perspective*

The key challenge for tax administrations in relation to any tax obligation is how to ensure a satisfactory level of compliance by taxpayers. AEOI requires taxpayers (FIs in the case of CRS and FATCA) to collect a set of information and report it in a particular format. To do so, taxpayers must review and adapt their procedures, processes and

⁴¹ Michael Dirkis and Brett Bondfield, 'The Developing International Framework and Practice for the Exchange of Tax Related Information: Evolution or Change?' (2013) 11(2) *eJournal of Tax Research* 115.

⁴² A request for exchange of information for a group can be made through EoIR, but the size will remain generally small compared to AEOI. See OECD, *Exchange of Information on Request: Handbook for Peer Reviews 2016-2020*, above n 1.

⁴³ *Ibid* 146.

information technology (IT) systems, which generally translates into high costs and significant changes in the organisation, processes and systems.⁴⁴

The role of the tax administration in this respect should be to assist taxpayers in understanding the obligations and implementing the required changes smoothly and at the lowest possible cost. In terms of functions, this should translate into the following activities:⁴⁵

- Liaising with other relevant authorities to design a compliance framework that strikes the right balance between the need to ensure a high level of compliance and a reasonable cost of such compliance. In the case of CRS and FATCA, the most relevant stakeholders are financial sector regulators in addition to FIs;
- Drafting clear legislation and regulations to implement the new rules;
- Drafting guidance notes and preparing reporting forms;
- Organising events to present and explain the new rules, answering taxpayers' questions, etc.
- Providing assistance (including training, etc) with the use of the reporting IT tool.

Further, tax administrations need also to monitor the level of voluntary compliance and intervene as and when required to enforce the obligations on recalcitrant taxpayers and improve the overall level of compliance.⁴⁶

In most developing countries, fulfilling the function of fostering compliance, as described above, will be a major challenge considering the level of technical skills required and the generally limited resources available in tax administrations. Knobel and Meinzer reported that the capacity to comply with the requirements of AEOI was the greatest concern for developing countries.⁴⁷

3.2.3 *Challenges raised by AEOI and impact on tax administrations' functions: tax administration's perspective*

AEOI generally involves tax administrations receiving automatically generated data in high volumes that is very useful in verifying the compliance level of taxpayers in relation to their tax liability. The key challenge here is the ability of the tax administration to effectively use the received information. Knobel and Meinzer confirmed this in their report to Tax Justice Network.⁴⁸ Tax administrations need to

⁴⁴ Dirkis and Bondfield, above n 41.

⁴⁵ Kerrie Sadiq and Adrian Sawyer, 'Developing Countries and the Automatic Exchange of Information Standard – A "One-Size-Fits-All" Solution?' (2016) 31(1) *Australian Tax Forum* 99.

⁴⁶ OECD, *The Changing Tax Compliance Environment and the Role of Audit*, (OECD, 2017), <http://www.oecd.org/ctp/the-changing-tax-compliance-environment-and-the-role-of-audit-9789264282186-en.htm>.

⁴⁷ Andres Knobel and Markus Meinzer, 'The End of Bank Secrecy'? Bridging the Gap to Effective Automatic Information Exchange: An Evaluation of OECD's Common Reporting Standard (CRS) and Its Alternatives, Final Report (Tax Justice Network, November 2014), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2943979.

⁴⁸ Ibid.

rethink their functions and operations to cope with the volume of data received and be able to effectively use it. In this context, the following functions will be affected:

Risk assessment and audit

The key area where the received data can be used is the determination of risk profiles. The data will identify high risk taxpayers, transactions, arrangements, etc, which would allow a better allocation of resources. This is specifically mentioned in the BEPS Action 13 final report on CbCR. It clearly states that CbC reports will be used to assess transfer pricing risks and help tax administrations to determine the most effective way audit resources can be deployed.⁴⁹ Since only around one-third of the work force of tax administrations work in audit, as revealed by the OECD 2017 Tax Administration report,⁵⁰ tax administrations are very interested in using their audit capacity effectively. This could explain the recently observed trend that audit function has become more based on risk analysis and advanced analytics.⁵¹

Better allocation of audit resources leads to better performance of the audit function. This is one of the main impacts of exchange of information, including AEOI, on the functions of tax administrations. Because of the data received, the information asymmetry between the taxpayer and the tax administration tends to be mitigated or even neutralised. The information on financial accounts under CRS and FATCA IGAs, on group structure and related parties' transactions received under CbC Reports, on aggressive tax planning received under Action 12 on Mandatory Disclosure Rules (when implemented), and on advance rulings under Action 5 of the BEPS project, provides detailed knowledge of a taxpayer's business and tax affairs.

Mitigating or neutralising the information asymmetry justifies a more balanced relationship between the taxpayer and the tax administration. Information asymmetry has been often presented as one of the main reasons why tax administrations should be vested with inquisitorial powers in investigating tax matters.⁵² Should this information asymmetry reduce or disappear, arguably the investigative powers of tax administrations should also be reduced.

Because of its bilateral or multilateral nature, AEOI makes available information to more than one jurisdiction. This facilitates international cooperation through multilateral risk assessment and joint audits. This trend was also identified in the OECD 2017 Tax Administration report.⁵³

Furthermore, the scope of the audit function is expected to widen with AEOI. Checking the accuracy of high volume data is generally very difficult. An easier method is to check that the systems that generated those data are accurate. Accordingly, in addition to checking accounting records, contracts, invoices, etc,

⁴⁹ OECD, *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report*, above n 34, 29, 37.

⁵⁰ OECD, *Tax Administration 2017*, above n 3.

⁵¹ *Ibid* 46.

⁵² Michael Lang et al (eds), *Procedural Rules in Tax Law in the Context of European Union and Domestic Law* (Kluwer Law International, 2010).

⁵³ OECD, *Tax Administration 2017*, above n 3.

the audit function is required in the context of AEOI to check that the systems that generated the data to be sent to exchange partners are accurate.

Achieving all the above in a developing country context is not easy. Finding and mobilising the required technical expertise and resources (both on the tax and IT fronts) to make the best use of the received data is extremely challenging, as it presupposes the existence of a fairly sophisticated information system within the tax administration allowing the integration of the received data within the system and its use to detect cases of non-compliance, including defining trends and patterns.⁵⁴ This is not the case for most developing countries, which explains why a number of them that committed to implement the CRS have opted for the non-reciprocal version of AEOI (ie, they will transmit without receiving reportable information), focusing their resources instead on compliance with their obligations toward exchange partners rather than on how to benefit from the data received to combat tax evasion.⁵⁵

Data management

Exploitation of high volume data requires intensive use of technology, particularly data analytics tools, to identify trends, patterns, etc. This is generally done under the risk assessment function. Policy design, impact assessment of certain measures and performance management are also areas where data analytics tools can be used. AEOI emphasises the importance of data management in tax administrations.

In developing countries, Knobel and Meinzer note this as a critical challenge for tax administration.⁵⁶

Collection

With the information received under CRS and FATCA, tax administrations will be able not only to discover cases of tax evasion (hiding income) more easily but also to improve the effectiveness of tax collection actions. The ability of tax administrations in developing countries to achieve this result will depend on their ability to address the challenges identified above in the areas of risk assessment, audit and data management.⁵⁷

To conclude this section of the article, from the perspective of taxpayers, AEOI raises challenges concerning the ability of tax administrations to fulfil their functions of assistance, providing services, lowering the compliance burden and enforcement. From the perspective of a tax administration, AEOI creates pressure on the ability of the tax administrations to perform their functions of risk assessment, audit, data management and tax collection. More specifically, the audit function gains in information available and in scope (both in terms of activities involved and cooperation with other

⁵⁴ Bird and Zolt, above n 12.

⁵⁵ A number of countries are non-reciprocal jurisdictions, including Albania, Bahrain, Ghana, Kuwait, Nigeria and Qatar. For more details, see OECD, 'Activated Exchange Relationships for CRS Information', <http://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/exchange-relationships/#d.en.345426>.

⁵⁶ Knobel and Meinzer, above n 47.

⁵⁷ Satoru Araki, 'Regional Cooperation and Tax Information Exchange among Asia-Pacific Tax Authorities' (2015) 21(4) *Asia-Pacific Tax Bulletin*, IBFD online, https://www.ibfd.org/sites/ibfd.org/files/content/pdf/aptb_2015_04_int_1.pdf.

jurisdictions) and changes in the way it is performed. It becomes more risk based, more targeted and more dependent on analytics tools and systems.⁵⁸

Overall, AEOI will not create new functions for the tax administrations. It only puts more focus on certain existing functions and affects the way they are performed. How this will translate in terms of activity mix will depend on the level of development of the tax administration.

Developing countries tend to focus on compliance to ensure that taxpayers comply with the reporting obligations under AEOI. Once this objective is achieved, it is expected that the focus shifts to making the best use of the information received and improving the effectiveness of the tax administrations' interventions in tackling tax evasion more effectively.

4. QATAR'S TAX ADMINISTRATION – AEOI PRACTICE

4.1 General

Even though Qatar is one of the wealthiest nations in the world,⁵⁹ and its classification as a developing country may be questioned, in relation to tax matters Qatar is in a very similar position to many developing countries. Qatar has a small tax authority which is still striving to improve its resources and the technical expertise of its staff. The challenges that are faced by Qatar's tax department in relation to AEOI are very similar to those faced by developing countries.

Qatar has a territorial tax system whereby only locally sourced income (as defined) is subject to a flat tax rate 10 per cent. Non-residents with no permanent establishments in Qatar are subject to withholding tax rates at 5 per cent or 7 per cent depending on the type of income.⁶⁰ The main obligation for taxpayers (in addition to withholding tax) is the submission of an annual tax return within four months of the end of the financial year and the payment of the tax due. A special tax regime applies within the Qatar Financial Center (QFC),⁶¹ which is to some extent similar to the national tax system.

The tax department in the Ministry of Finance, recently transformed to an independent tax authority,⁶² is small (around 100 employees). It relies on a computer application, which is called 'Tax Administration System' (TAS) which captures and allows

⁵⁸ Ibid 7-9.

⁵⁹ According to World Bank data, the GDP per capita of Qatar was USD 63,505 in 2017. See <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=QA>.

⁶⁰ The Income Tax Law of 2009 imposes income tax on business activities and withholding tax on royalties and technical services at 5 per cent and certain interest and other services at 7 per cent. A new Income Tax Law, issued by way of law 24 of 2018 dated 13 December 2018, repeals and replaces the Income Tax Law of 2009. The new law unifies the withholding tax rates on all payments at 5 per cent.

⁶¹ QFC, founded in 2005 by Law Number 7 of 2005, is a thriving onshore business centre offering a business friendly environment to companies and other legal entities seeking to expand their activities in Qatar and the region. QFC is one of the key pillars of Qatar's strategy to diversify its economy. Key characteristics of doing business in the QFC include 100 per cent foreign ownership, possibility to do business onshore, common law based legal environment, free repatriation of capital and profits, moderate taxation with a 10 per cent tax rate on locally sourced income, possibility to obtain advance rulings, etc. More detail is available at <http://www.qfc.qa/en/Pages/default.aspx>.

⁶² The new tax authority, which has legal and financial autonomy, was established by way of an Emiri Decree dated 13 December 2018.

automation of most of its activities. The authority is currently undergoing a major transformation aiming at increasing its resources and enhancing its effectiveness.

4.2 Assessment of Qatar's practice in AEOI

Qatar signed a FATCA IGA with the US and is amongst the jurisdictions that committed to implement (and implemented) CRS in 2018. First reports by Qatar were sent to exchange partners on 30 September 2018. In this context, Qatar joined the MCMAA and the MCAA on 10 November 2017 and issued a CRS Circular in May 2018.

Qatar also joined the Multilateral Competent Authority Agreement on automatic exchange of country-by-country reports on 19 December 2017 and issued a CbCR Ministerial decision in September 2018.

4.2.1 FATCA IGA

Qatar was the first Arab and Middle East and North Africa (MENA) country that signed an IGA with the US on 7 January 2015. Under the agreement, which was a model 1 IGA, the information is sent to the US on a non-reciprocal basis through the competent authority (Qatar Tax Department (QTD) at the Ministry of Finance at the time⁶³).

There were many challenges that QTD had to address as a result of implementing the FATCA IGA. A key challenge was how to ensure compliance with the reporting obligations under the IGA.⁶⁴ Being the competent authority, QTD was required to explain FATCA obligations to FIs, bearing in mind that this is the first time both QTD and FIs had to deal with AEOI. This requires activities including: (1) drafting clear guidance on the implementation of FATCA; (2) putting in place a sound reporting system; (3) monitoring compliance, and (4) ensuring enforcement on recalcitrant FIs.

It was obvious that QTD did not have the required resources and skills to deal with these tasks. It was also obvious that bringing these resources and skills to QTD will take too long, which would expose Qatari FIs and the entire Qatari financial sector to the consequences of being non-FATCA compliant.⁶⁵

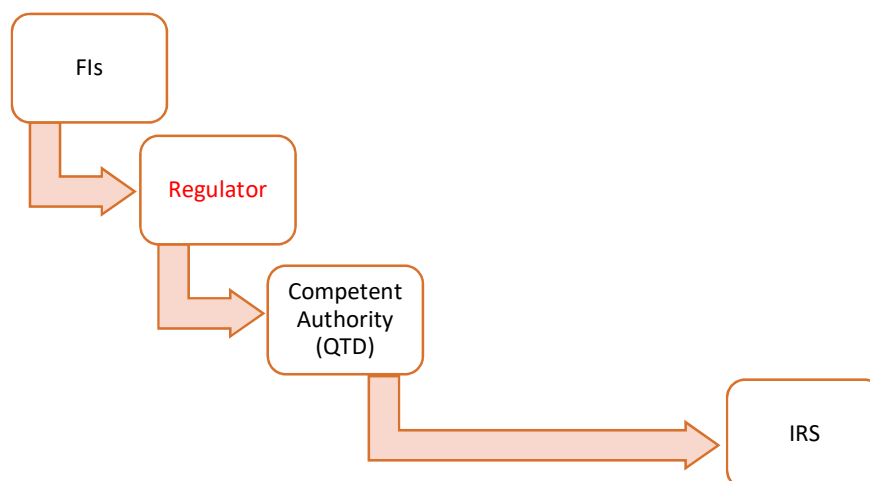
On the other hand, financial sector regulators⁶⁶ have extensive resources, particularly in the area of supervision of FIs. They are also acquainted with the type of checks and information required for the purposes of the IGA under the Anti-Money Laundering and Counter-Terrorism Financing legislation. That is why the QTD opted for a two-tier approach in implementing IGA obligations, whereby reportable information flows from FIs to the regulators, from the regulators to the competent authority (QTD) and from the latter to the US competent authority (see Figure 1).

⁶³ Now QTD has become the General Tax Authority (GTA).

⁶⁴ See section 3.2.2.

⁶⁵ The consequences include reputation damage, but more importantly losing the revenue of withholding tax on payments to Qatari FIs.

⁶⁶ These are the Central Bank, Financial Market Authority and QFC.

Fig. 1: Two-Tier Approach

This approach allowed a clear and efficient split of functions. Regulators take care of the collection and validation of the data, whereas the competent authority (QTD) ensures that the data is effectively and safely transmitted to the US. However, it is important to note that the competent authority remains ultimately responsible for the accuracy of the data exchanged. This model has proven effective, as FATCA reports were sent to the US with no major issues identified.

Hence, even though the QTD did not have sufficient resources to implement the obligations under the IGA and was not able to upgrade its functions in time, it put in place a compliance framework that allowed compliance at a lower cost leveraging on resources available with the regulators.

This option addressed the issues related to compliance⁶⁷ but confirms Qatar's similarity to other developing countries, since compliance with the obligations remains the key challenge when it comes to AEOI.⁶⁸ However, no attention has been paid to upgrading the functions of QTD in relation to audit, data management or collection to effectively use the data that should have been received under the IGA, as the exchange was not reciprocal.

4.2.2 The Common Reporting Standard (CRS)

The QTD faced the same challenges to implement CRS as those faced in relation to the FATCA IGA. That is why the QTD opted for a non-reciprocal exchange of information with CRS partners under the two-tier approach mentioned above.

Qatar faced a new challenge with the CRS legal framework. As mentioned in section 3.1.1 above, participating jurisdictions have to incorporate the CRS obligations into the domestic law in order to enforce them on FIs. In the case of the FATCA IGA, Qatar did not have to enact a domestic law, as the IGA has a force of law, as an international

⁶⁷ See section 3.2.1.

⁶⁸ Sadiq and Sawyer, above n 45.

agreement.⁶⁹ Therefore, Qatar did not have to issue a domestic law to enforce the obligations on FIs under the CRS. As the CRS MCAA is treated as an international agreement in Qatar, which means that it has to be: (i) ratified, and (ii) enacted and gazetted by way of an Emiri Decree, it automatically has the force of law.⁷⁰

However, the MCAA does not cover enforcement, which means that if an FI fails to meet its obligations, no sanctions would apply under the MCAA. Therefore, the enforcement powers that the regulators have over FIs under the laws governing their activities are used. Those powers are so broad that they can capture the obligations under the CRS.⁷¹ Hence, banks that do not comply with CRS obligations will be subject to the penalties provided for in the law governing the activities of the Central Bank.⁷² The same applies to FIs under the jurisdiction of the Capital Market Authority or the QFC.

In addition, to address the different options available to FIs under the CRS, a circular was issued to determine the position of the State of Qatar in respect of each of these options.⁷³

The new Income Tax Law allows the competent authority (now the General Tax Authority) to impose financial sanctions on FIs that breach their obligations under the CRS.⁷⁴

From an IT perspective, a reporting tool has been put in place to allow reporting and generation of the reports in the desired format (as per the OECD CRS schema) following the two-tier approach.

4.3 Impact of AEOI on the functions of Qatar's tax administration

As discussed in section 3, it is not expected that the implementation of AEOI will result in the creation of new functions in the QTD. Nevertheless, it will impact the way the current operations/functions are carried out depending on their implications for taxpayers and for QTD.

From a taxpayer perspective (see section 3.2.2), QTD has focused its efforts on ensuring that FIs are able to comply with their obligations. To this end, it developed a particular legal framework for compliance based on existing laws in order to avoid the uncertainty that inevitably accompanies the enactment of new laws. It has also partnered with financial sector regulators to mobilise the necessary resources needed to provide guidance and assistance to FIs on compliance and ensure enforcement.

⁶⁹ Article 68 of the Constitution of the State of Qatar provides that treaties 'shall have the power of law after ratification and publication in the official Gazette'.

⁷⁰ *Ibid.*

⁷¹ For instance, Article 135 of the Law on Qatar Central Bank and the Regulation of Financial Institutions (QCB Law), issued by way of Law No13 of 2012, provides that FIs are required to provide the Central Bank with the data that it considers necessary to enable it to perform its functions, at the time and in the manner that the Central Bank considers fit. Based on this provision, Qatar Central Bank can use its enforcement powers, should a FI fail to provide CRS data.

⁷² Article 216 of the QCB Law provides for a financial sanction for failure to provide required information of up to QAR 2 million (USD 546,000). Further, Article 217 provides for a financial sanction of up to QAR 10 million (USD 2.7 million) for failure to comply with any obligation under the law.

⁷³ Circular of the Minister of Finance No 1 of 2018, 9 May 2018.

⁷⁴ See n 60, above.

From the QTD perspective (see section 3.2.3), and because the exchange of information for the purposes of both FATCA IGA and CRS is taking place on a non-reciprocal basis, the implementation of AEOI in these two areas did not (and will not, at least in the short term) have a major impact on the way the QTD conducts its risk assessment, audit, data management or collection functions. Not receiving any data reduces the pressure to adapt and upgrade these functions.

For CbC reporting, however, in the absence of indication to the contrary, it seems that the exchange of reports will be reciprocal. Hence, multinational enterprises with subsidiaries in Qatar will see their CbC reports containing data on these subsidiaries sent to QTD by the competent authority of the State of residence of the group's ultimate parent company (or its surrogate). However, the impact these reports would have on the functions of the tax department would be limited, considering the territoriality of the Qatari tax regime and the absence of clear transfer pricing reporting requirements in this regime.⁷⁵

In fact, facilitating compliance with AEOI reporting requirements was one of the two key drivers of the Qatari tax department transformation.⁷⁶ The organisation, processes, IT system and human resources of the tax department are under review to, among other things, adapt them to the requirements of international AEOI.

Because the policy objectives driving the adherence of the QTD to international standards on AEOI did not include, at least in the short term, increasing revenues,⁷⁷ all the implications of AEOI on tax administrations' functions related to the effective exploitation of the data received did not apply. The key policy objective of adhering to the standards was to avoid the consequences of being non-compliant with international standards (adverse rating, blacklisting, etc).⁷⁸

The functions that will be impacted are those that relate to the provision of services, facilitating compliance, etc. The relevant activity mix will revolve around explaining the obligations, making compliance easier and less costly, providing assistance in using the IT reporting tool and enforcement of penalties in cases of non-compliance.

5. RECOMMENDATIONS

The QTD is undergoing a major transformation and has recently become a (semi-) independent tax authority with more resources. This offers a unique opportunity to

⁷⁵ The Qatari Income Tax Law and its executive regulations specifically refer to OECD Transfer Pricing (TP) guidelines to determine the arm's length price in related parties' transactions but do not require companies to file TP documentation. In the QFC, the situation is similar in the sense that there is no obligation to periodically file TP documentation. However, the QFC Tax Manual does contain more details on the TP rules, and TP documentation may be required in the course of an enquiry.

⁷⁶ The other key driver of the change is the potential introduction of a value-added tax (VAT) in Qatar in 2019. It is expected that VAT will be introduced in 2020.

⁷⁷ This is confirmed by opting for non-reciprocal exchange of information.

⁷⁸ The EU Commission published a list of 17 uncooperative tax jurisdictions on 5 December 2017. Screening criteria included transparency (which covers, *inter alia*, implementation of CRS), tax fairness and adoption of anti-BEPS measures. While Qatar was not listed (unlike Bahrain and the UAE, which were removed thereafter), there was a recommendation that steps should be taken to implement the CRS in 2018. See Council of the European Union, 'Outcome of Proceedings, 5 December 2017, on EU List of Non-Cooperative Jurisdictions for Tax Purposes' (5 December 2017), <http://www.consilium.europa.eu/media/31945/st15429en17.pdf>.

reconsider reforming the way it operates and benefit from the lessons learnt from other jurisdictions that have undergone the same or a similar transformation.

What this means in relation to AEOI is that the driver of the transformation should not be only to comply with international standards and avoid any adverse classification or blacklisting. The QTD should embrace the policy objectives that led to the development of these standards and to consider them while operating the tax regime.

The review and analysis of the impact of AEOI on Qatar's tax administration functions leads to some general recommendations potentially applicable to other developing countries. These recommendations are:

- The tax administration's focus on explaining the obligations and ensuring an easy and less costly compliance is commendable and should continue. However, this should be embedded within a comprehensive strategy enabling the full benefit from the opportunities offered by AEOI. In terms of concrete actions, this should be translated, firstly and most importantly, into avoiding the non-reciprocal form of AEOI. Developing countries should opt for the reciprocal variant of the exchange even if, currently, they do not have the capacity to effectively process and use the received data. They need to put in place plans and mobilise resources in order to upgrade tax administration processes, procedures, IT systems and operations.
- Tax administrations in developing countries should maximise the benefits from AEOI through using exchanged information to improve the effectiveness of their enforcement actions and to facilitate taxpayers' compliance. The aim should be to move from a position where activation of AEOI relationships will not raise any issues in relation to confidentiality safeguards⁷⁹ to a position where the tax administration is fully capable of processing and using the information received to efficiently combat tax evasion and tax avoidance, improve tax collection and better serve the taxpayer.
- Focus should be put on upgrading the IT system, particularly for countries embarking on a major transformation of their tax administration (such as Qatar), as transformation projects generally provide the opportunity to take advantage of the latest technologies.
- IT systems should be redesigned around two major axes: (i) better services to taxpayers, including easier use of the system and a lower compliance burden, and (ii) efficient operation of the regime through enhanced processes (registration, risk assessment, enquiries, assessments, appeals, etc) and better access to, and use of, information, etc. Focusing on these two axes allows improvement of the efficiency of tax administration intervention in parallel with improving the quality of taxpayer service provision.
- There is, however, a key prerequisite that tax administrations in developing countries need to meet in order to be able to benefit from the opportunities that AEOI offers. This prerequisite relates to the capacity of the tax administration

⁷⁹ Opting for non-reciprocal AEOI would result in less stringent confidentiality requirements. This seems to be one of the reasons why non-reciprocal exchange was preferred.

staff to understand the relevant technical issues and upgrade their skills. Without a full understanding of the challenges faced and the stakes involved, the capacity of tax administrations to develop and execute plans to address those challenges (or at least mitigate their adverse impact) will be severely affected. Thus, understanding the challenges presented by international tax avoidance and evasion and their impact on tax collection is extremely important. This requires understanding of such tax technical issues as transfer pricing, thin capitalisation, controlled foreign company rules, etc. Transfer pricing in particular is often identified as the most challenging tax planning tool used by multinational enterprises that developing countries face.⁸⁰

- On the same note, it is also important to understand the policy reasons and the operation of the BEPS action items, including action 2 on hybrid mismatches, action 3 on CFC rules, action 4 on interest and other financial payments deduction, action 5 on harmful tax practices, action 7 on permanent establishments, actions 8 to 10 on transfer pricing, etc. Understanding these actions allows a proper assessment of the domestic legislation and the identification of the areas that need improvement.
- This assessment should not be limited to the areas identified in the BEPS action plan. It should extend to the broader tax policy of developing countries. Hence, the relevance of the recommendations above on the effective use of the data received under the AEOI would be limited if the country concerned operates a purely territorial regime. In the current context of a post-BEPS post-implementation of AEOI era, consideration of whether or not the regime needs to move to something closer to a worldwide system becomes justified, if not necessary.⁸¹ The opportunity of efficiently using the information received under AEOI mechanisms to improve tax collection will remain limited if most foreign sourced income is not taxable.

⁸⁰ Joel Cooper et al, *Transfer Pricing and Developing Economies: A Handbook for Policy Makers and Practitioners* (World Bank, 2016), <https://openknowledge.worldbank.org/handle/10986/25095>.

⁸¹ This consideration becomes even more relevant in the context of the reviews made for the purposes of BEPS Action 5 on harmful tax practices. The first step of the review is to determine whether or not the regime is preferential.