

In the recent years, tackling global tax evasion and avoidance, facilitated through offshore legal entities and structures, has become a priority for Governments around the Globe. The political support for addressing this menace has resulted in development of standards on transparency and exchange of information and almost every jurisdiction in the world has now committed to implement these standards. This book provides guidance to tax authorities, taxpayers, tax professionals and public at large in understanding how global transparency and the commitment of jurisdictions to exchange information, would facilitate investigation of cross-border transactions for effective protection of domestic tax revenue.

Key highlights

- Explains role of tax havens and offshore financial centres in global tax evasion and avoidance
- Discusses how tax havens and offshore financial centres have been "identified" and listed over the years
- Discusses offshore leaks in brief like "Panama Papers" and their role in creating deterrence against offshore tax evasion and avoidance
- Discusses the development of global standards on transparency and exchange of information and the role of OECD, G20 and Global Forum in developing these standards
- Provides the details of assessments undertaken by the Global Forum regarding actual implementation of exchange of information and results of these assessments alongwith "Ratings"
- Discusses the legal provisions and relevant case law around the world for exchange of information including Article 26 of the OECD and UN Model DTAA, TIEAs and Multilateral Convention on Mutual Administrative Assistance in Tax Matters, including their historical development over the years
- Explains the key concepts of the exchange of information in detail including its legal basis, standard of foreseeable relevance, exchange of past period information, stolen data issue, confidentiality of information exchanged, disclosure before the courts, limitation on exchange of information, rights and safeguards etc.
- Explains other forms of administrative assistance under the tax treaties including automatic exchange of information, spontaneous exchange of information, simultaneous tax examination and joint audits
- Discusses in detail the provisions for assistance in collection of taxes under the provisions of tax treaties including its historical development and relevant case law
- Explains in detail the provisions Common Reporting Standards (CRS) on Automatic Exchange of Information (AEOI)
- Discusses in detail how the FATCA and CRS on AEOI are being implemented in India and abroad and how the information received on an automatic basis would be used for improving tax compliance
- Briefly discusses the recommendations made under G20/OECD BEPS Project for improving transparency including automatic exchange of Country-by-Country (CbC) reports
- Explains the provisions for disclosure of foreign income and assets under the Black Money Act and the Income-tax Act, 1961



Rahul Navin is presently Commissioner of Income Tax (Transfer Pricing-I), posted in New Delhi. An IRS officer of 1993 batch, he has served in many capacities in his career of 23 years. He was part of the assessment and investigation wings, as Under Secretary in the Tax Policy and Legislation Division and Additional Director in the National Academy of Direct Taxes in-charge of training. From April 2011 to October 2015, he worked as Director in the FT&TR Division of the Central Board of Direct Taxes and during this period negotiated bilateral and multilateral agreements on Exchange of Information, and also coordinated the requests made/received under these agreements by the Income Tax Department. He also regularly attended the meetings of OECD, Global Forum on Transparency and Exchange of Information, and G20 as an Indian delegate and has made a significant contribution in improving global transparency in tax matters.

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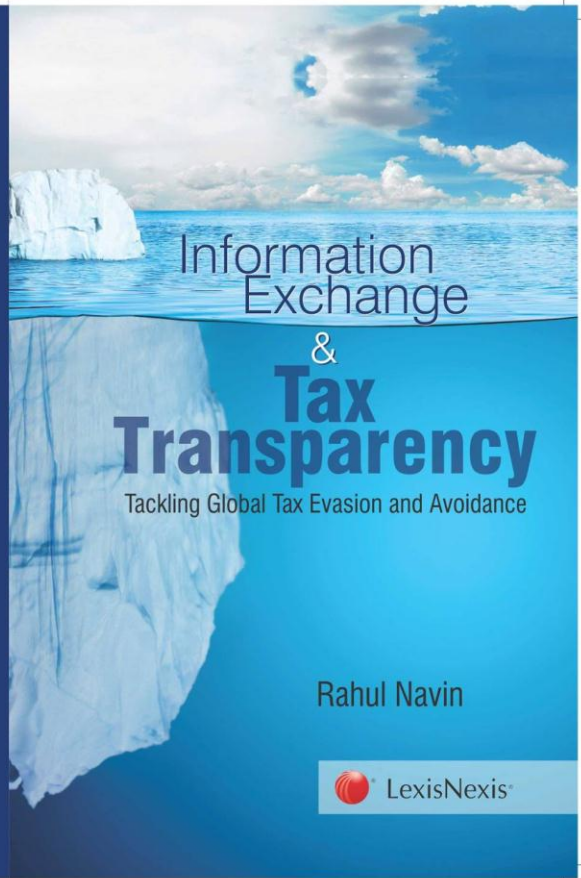


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Information Exchange & Tax Transparency
Tackling Global Tax Evasion and Avoidance

Rahul Navin

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A book authored by **Mr. Rahul Navin, CIT - TP & former Under Secretary, Finance Ministry**. The book is an eye opener on a subject few are familiar with and a must read for all serious practitioners.

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PREFACE

Tax authorities around the world have tremendous powers under the statute for ensuring that taxpayers pay their due taxes and do not indulge in tax evasion or impermissible tax avoidance schemes. These powers, however, end at the borders of their jurisdiction, seriously limiting their ability to enforce the tax laws in a globalized world where substantial number of taxpayers, both individuals and corporate, have global assets and operations. The result is stashing of unaccounted money and assets in offshore jurisdictions, shifting of profits outside the country and aggressive tax planning through offshore legal structures and arrangements, highlighted recently by offshore leaks including the “Panama Papers”. The taxes saved by the individuals and multinational corporations through these techniques and arrangement result in disproportionate higher tax burden on the compliant taxpayers and/or lesser amount available for developmental activities by the State, adversely affecting the integrity of the tax system. Moreover, some of the unaccounted money stashed abroad is used for criminal activities such as money laundering and terror financing.

Although it was recognized for long that the global tax evasion and avoidance can only be addressed through active cooperation amongst the tax authorities, including of tax havens and offshore financial centres, it required a crisis to happen for development of a consensus for global tax transparency. The financial crisis of 2008 and the highly publicized tax scandals unearthed around the same time convinced the leaders of the major economics, including of G 20 countries, that there is a need for coordinated action to tackle global tax evasion and avoidance. In April, 2009, the G20 Leaders famously announced in their London declaration that the era of bank secrecy is over. The G20 since then has steered the transparency agenda by overseeing the development of standards and their implementation at a global level through the Global Forum on Transparency and Exchange of Information or the Global Forum in which 137 jurisdictions participate on an equal footing. The standards of transparency on request basis, in brief requires availability in a jurisdiction substantial information including ownership (legal and beneficial), accounting and banking information, access of this information to the tax authorities and their exchange in accordance with legally binding tax treaties if the same is requested by a jurisdiction for administration or enforcement of its tax laws.

The standards on request basis are now globally implemented and almost every jurisdiction in the world is committed to provide the information requested from them. A number of legislative and administrative changes have been made by the jurisdictions to meet this commitment and in most cases the jurisdictions are exchanging the information requested. The number of requests made, however, are still at abysmally low level primarily because of low awareness of the tax authorities to the immense potential of global transparency in improving compliance although the Global Forum and the tax administration of many countries, including India, have taken a number of steps to improve the situation such as organizing the Last Mile Seminars, to demonstrate to the tax auditors how the exchange of information mechanisms can facilitate the investigation of cross-border transactions for effective protection of domestic tax revenue.

The exchange of information on request basis does have its limitations as the commencement of an investigation is a pre-requisite for making the request and receipt of assistance. This is sought to be overcome by the next level of transparency i.e. by automatic exchange of financial account information as per a uniform global standard without a request being made by the tax authorities

of the jurisdictions requiring the same for its domestic tax compliance purposes. A commitment has already been made by 101 jurisdictions to implement this uniform global standards by 2017 or 2018. The development of the standards on automatic exchange of financial account information was to a large extent triggered by unilateral legislation by way of FATCA by the United States of America for tackling global tax evasion as major economies of the world found the model useful. The standards, however, were modified to some extent for ensuring their implementation in a multilateral global environment.

The standards requires a wide range of financial institutions of the 'source' jurisdictions to collect and provide to their tax authorities a wide range of financial account information about taxpayers resident in other jurisdictions. The standards also require the financial institutions to carry out due diligence procedures to identify the accounts that have a non-resident account holder and look through passive entities, such as shell companies and trusts, to report on the individuals that ultimately control there entities. This information received by the 'source' jurisdiction would then be transmitted to the 'resident' jurisdiction on a bulk basis and will be matched by the receiving jurisdiction with the information available in their domestic tax data for identifying the non-compliance, if any. The global implementation of these standards on automatic exchange of financial account information, expected by the end of the decade, would have a major deterrent effect on stashing of unaccounted money in tax havens and offshore financial centres and would be the key to prevent global tax evasion and avoidance.

The G20/OECD BEPS Project, through its 15 Point Action Plan, seeks to make fundamental charges in domestic and treaty laws to prevent double non-taxation and/or no or low taxation associated with practices that artificially segregate taxable income from the activities that generate it. The BEPS Action Plans, being implemented through an inclusive framework in which more than 100 jurisdictions participate, also has key goals for improving transparency in the form of compulsory spontaneous exchange of taxpayer specific rulings (Action 5), sharing of information received under mandatory disclosure rules (Action 12) and automatic exchange of Country-by-Country (CbC) reports (Action13). The BEPS Project, therefore, complement and strengthen the transparency agenda.

The deterrence against offshore tax evasion and avoidance can be created only if domestic measures are taken to supplement the flow of information from foreign jurisdiction on request or automatic basis. The Government of India has taken a lead role in this regard by enacting a strong law in the form of Black Money Act with criminal liability and enhanced punishments. Further, the Indian resident taxpayers are now required to furnish the details of foreign assets, including financial interests in any entity, located outside India in their Income Tax returns with provisions of penalty of INR 1 million and criminal liability in cases of default. These domestic measures and the Government's strong resolve to identify and punish the wrongdoers, combined with increased flow of information from abroad, would be instrumental in tackling the menace of offshore tax evasion and avoidance.

This book discusses the above concepts in a comprehensive manner. Chapter 1 of the Book summarizes the key concepts which have been developed and elaborated in subsequent Chapters of the Book. Chapter 2 explains the characteristics of tax havens and offshore financial centers and their role in offshore tax evasion and avoidance alongwith their listings over the years. Chapter 3 provides some statistics on unaccounted money in offshore jurisdiction and explains how some of the estimation in the public domain, particularly related to India, may be gross over estimation. Chapter 4 summarizes the historical developments of a uniform global standard on transparency and

exchange of information and the role of OECD, Global Forum and G20 in developing these standards. Chapter 5 discusses the assessment undertaken by Global Forum regarding actual implementation of exchange of information on request basis and summarizes the result of the assessment alongwith the ratings.

Chapter 6 explains the provisions of Article 26 of the OECD and UN Model DTAA's, TIEAs and Multilateral Convention on Mutual Administrative Assistance in Tax Matters, including their historical development over the years. Chapter 7 explains the key concepts of the exchange of information on request in great detail including the legal basis, standard of foreseeable relevance, exchange of past period information, stolen data issue, confidentiality of information exchanged, disclosure before the Courts, limitation on exchange of information, rights and safeguards etc.

Chapter 8 discusses other forms of administrative assistance under the tax treaties including automatic exchange of information, spontaneous exchange of information, simultaneous tax examination and joint audits. Chapter 9 relates to assistance in collection of taxes under the provisions of tax treaties.

In Chapter 10, FATCA and the Inter-Governmental Agreements entered into by USA and in Chapter 11, the new global standards on automatic exchange of financial account information have been discussed. In both the Chapters, the information which will be received on an automatic basis has been enumerated with a discussion on how the same would be used for improving tax compliance. Chapter 12 explains the provisions for disclosure of foreign income and assets under the Black Money Act and the Income-tax Act, 1961. Chapter 13 discusses case laws around the world on exchange of information and other forms of administrative assistance including assistance in collection of taxes.

This Book will serve the purpose of assisting the tax authorities in making the effective use of the instruments for exchange of information for enforcing tax compliance. The book will also assist the taxpayers and the tax professionals in discharging their duties in a fair and efficient manner. With a network of legal instruments for receiving information from foreign countries and jurisdictions, both on request and on automatic basis, it would be increasingly difficult to hide the undisclosed assets stashed abroad including through use of legal entities and arrangements with non-transparent ownership. However, increasing globalization and need to conduct businesses abroad will necessitate opening of bank accounts and creation of legal entities and arrangements abroad. The taxpayers should, therefore, be aware of the risks of creating these structures including receiving of information about the same by the tax authorities of the country in which they are residents and the consequences thereof. Further, the taxpayers should take the best possible method to regularize the non-compliance of the past by dismantling the old structures in a manner which does not result in significant tax burden and penalties. This book will provide assistance to these taxpayers in this endeavor.

Continuous changes are taking place in the area of exchange of information and tax transparency. The ratings of jurisdictions in their compliance with the standards on request are being modified based on the legislative and administrative changes made by them, challenges in implementing the global standards on automatic exchange of information are being identified and addressed, discussions are taking place for a fair and uniform process of monitoring and review and the issues are examined by the Courts in various jurisdictions. This Book builds up the base by discussing these issues from a historical perspective and captures the developments till November, 2016 and it is hoped that the tax authorities, tax professionals, taxpayers and public at large would find the contents useful and practical.

FOREWORD

Over the last seven years or so, countries across the globe have been diligently pursuing the agenda of transparency, not merely for the purposes of good governance, but largely as an essential ingredient of collective and individual efforts to mobilise the resources required for continued growth. What began in 2009 as a determined push towards tackling offshore tax evasion has now taken the shape of a global movement, in which countries strive to establish and maintain their credibility by demonstrating compliance with increasingly demanding standards of transparency.

The ability to obtain relevant information from overseas jurisdictions is a vital component of any country's efforts to locate undisclosed assets stashed abroad and to tax the untaxed income associated with those assets. Information is also needed by tax administrations to understand and deal with the complex business structures set up by multinational enterprises (MNEs) and the ways in which these structures, spanning several countries and continents, seek to minimise the tax outgo of the MNE at the global level. The G20/OECD project on Base Erosion and Profit Shifting (BEPS) has highlighted the phenomenon of double non-taxation and the ability of MNEs to shift profits among jurisdictions in a manner that allows them to pay insignificant amounts of tax in these jurisdictions. BEPS has evolved a wide-ranging consensus on requiring MNEs to report country-wise data together with information on global structures that will enable jurisdictions to identify and evaluate the BEPS risks that they need to address.

At the same time, tax administrations are faced with the task of implementing tax reforms (such as the BEPS recommendations) in a consistent and transparent manner. They must also ensure a level-playing field globally that eliminates harmful tax competition on the one hand and addresses the genuine concerns of business, on the other.

This book provides a comprehensive review of all the historical, legal, technical and political aspects of exchange of information that need to be known and understood by tax administrations, businesses, tax professionals as well as the general public. It elaborates on the different mechanisms of information exchange and the various tax treaties and agreements that codify these arrangements between jurisdictions of the world. It provides an inside view of India's approach to exchange of information and the legislative and administrative actions it is taking in order to be able to receive information and utilise it in an optimal manner.

Rahul Navin has held important positions in Government from where he has played a leading role in India's participation in the global effort to enhance tax transparency and implement information exchange mechanisms. This book by him represents an excellent distillation of his special experience and knowledge and therefore constitutes a reference work of immense utility and importance.

I commend this work to tax administrators, taxpayers and all those who are intrigued by the world of tax transparency! My best wishes to Rahul in his future endeavours, both written and otherwise.

8 December 2016

Akhilesh Ranjan
Principal Chief Commissioner of Income Tax (International Taxation)

About the Book

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