

Enhancing International Tax Cooperation: Kenya's Experience at OECD Global Forum

Policy Brief



Introduction

The Kenya Revenue Authority (KRA) has been working with multi-lateral tax bodies around the world to share and adopt global best tax practices in tax administration. KRA has, through these networks, strengthened its capacity and improved its global standing in international tax practice. One of the key priority partnerships in this respect is collaboration with the Organization for Economic Cooperation & Development (OECD), via the Global Forum on Transparency and Exchange of Information for Tax Purposes, of which Kenya is a member.

Kenya's legislature ratified one of the most important instruments in so far as matters taxation is concerned - The Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC). Kenya signed the instrument in 2016 after joining the Global Forum (GF) on Transparency and Exchange of Information (EoI) for Tax Purposes in 2009 setting the stage for depositing of the instruments at the OECD on 22nd July 2020, enabling Kenya to exchange tax information with 130 jurisdictions. The objective of the convention is to provide assistance to parties in tax matters by promoting international cooperation on exchange of information between state parties to enable countries combat international tax evasion and avoidance while respecting fundamental rights of taxpayers.

On the continental front, Kenya is a member of the Africa Initiative (AI), a 31 African countries membership body launched in 2014 in Berlin by the GF, in conjunction with other international organizations such as the African Tax Administration Forum (ATAF) to ensure that African countries benefit from the improvements in tax cooperation in the fight against tax evasion and illicit financial flows. The AI was initially launched for a three-year term, which has since been extended for a further three years (2018-2020) during the GF plenary meeting in Yaoundé, Cameroon in 2017. The aim of the extension is to expand it to all the GF African members and deepen their participation in enhancing domestic revenue mobilization, through improved transparency and exchange of information. At any rate, all eyes will be set on Kenya, **the latest GF member to have ratified MAC**, and the country's plans around utility of the instrument to enhance tax cooperation. These treatise assesses what adoption of MAC means for Kenya's resource mobilization and revenue administration agenda, and the role of the instrument in asserting Kenya's position as a credible actor in global tax diplomacy.

The MAC: What is in it for Kenya?

MAC was developed in 1988 by the OECD and the Council of Europe and further amended in 2010 by the G20 summit allowing non OECD members to sign the convention. Following this, the OECD mandated the Global Forum on Transparency and Exchange of Information for tax purposes to implement the convention through monitoring international standards on exchange of information and conducting peer review on the same. MAC is designed as an instrument used by tax jurisdictions to fight tax evasion and avoidance. MAC facilitates international cooperation

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The Global Forum on Transparency and EoI for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 150 jurisdictions. It is responsible for monitoring and peer review of implementation of the international standards for transparency and EoI for tax purposes. Kenya, normally represented by KRA as the competent authority - is a member of the GF steering group, the top decision-making organ of the tax transparency body, and one of only two African countries (Ghana is also a member) deliberating critical tax transparency matters at the organ. This places Kenya at a prime position of influence in decision making at the forum.

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between countries in assessment and collection of taxes. The cooperation involves exchange of information, automatic exchanges and recovery of foreign tax claims. 10 African countries have ratified the convention. These are Cameroon, Ghana, Mauritius, Senegal, South Africa, Tunisia, Seychelles, Uganda, Nigeria and most recently Kenya. After the instruments are deposited with the Global Forum and countries benefit from EOI.

For Kenya, there is substantial benefit from ratification of the convention. First, the convention provides for EOI to combat tax evasion, avoidance and assistance in tax recovery. For example, according to statistics from the OECD, there is 10 trillion USD in offshore accounts globally. Out of this, 2 Trillion USD is in Africa and the Middle East. Second, the ratification helps KRA acquire information that is usually not disclosed to taxpayers, hence facilitating cross border investigation and audits required for enhancing compliance. Finally, it aids fight against corruption, money laundering and fight against terror.



According to Tax Transparency in Africa 2020 Report, Tax crime is a major obstacle to tax collection globally. For example, it is estimated that Kenya lost 530 Million USD in tax evasion in the first 3 months of the financial year 2019/2020 (KRA press release October 3rd, 2019). Globally Kenya is among countries with highest off shore wealth in relation to total wealth produced in the country with 10.6 billion USD from Kenya having been Kenya stashed in offshore accounts since 1970. In leaked 2016 Panama papers, for example, 191 individuals and 25 companies from Kenya were fingered for using tax havens to evade payment of taxes. It points to how companies and individuals exploit legal lacunas to perpetuate tax fraud, tax evasion, and aggressive tax avoidance to aid Illicit flows and denying the country revenue required. These entities rely on different tax rates in different countries to transfer their wealth to countries with low tax rates undermining domestic revenue mobilisation and letter and spirit of Kenya's commitment to the Addis Ababa Action Agenda of financing development through domestic revenue (Tax Justice Network, 2016).

The convention covers administrative cooperation between parties which are signatories including assisting each other with regards to exchange of information, unpaid tax recovery and service of documents. The convention also covers mutual assistance, exchange on request, spontaneous exchange, tax examinations abroad, simultaneous tax examinations and assistance in tax collection.

The treaty allows for the sharing of tax information without Kenya having to enter into other bilateral agreements thereby reducing costs and resources required for negotiating bilateral agreements with several countries. This promotes international relations efficiency. The convention obligates parties to provide administrative assistance to each other in tax matters, including through judicial intervention.

Global Reviews and Kenya's Experience

Kenya underwent the first round of Global Forum reviews in 2012 and 2016 in which the country was rated as being “**Largely Compliant**” - Second best score after “**Compliant**”. Between October – December 2020, Kenya is due for the second round of reviews on EOI on request. The downside of low rating affects the flow of foreign direct investments and affects a country's ability to fight tax evasion, illicit financial flows, money laundering and terror financing. The Global Forum will also assess the implementation of actions recommended during the first reviews. Ratification of the convention is a major factor which influences the rating during review and will predictably improve Kenya's score.

Some of the African countries which ratified the convention have made positive results in revenue from the EOI. According to KPMG Report, 2018, **South Africa**, which initiated the Special Development Disclosure Programme (SVDP) and through this initiative was able to collect 1.5 billion dollars. Other jurisdictions which reaped the benefits of EOI are **Nigeria**, which launched Voluntary Assets & Income Declaration in 2017 which raked in 82.6 Million dollars in revenue and grew its taxpayer database simultaneously from 14 million in 2016 to 19 million in 2019. **Uganda** recovered 25 million dollars from EOI between 2015-2019 (Transparency and EOI for Tax Purposes 10th Anniversary report Report).

The challenges posed by tax evasion to the economies of economies and African continents in particular cannot be overemphasized. In African countries tax revenues account for 18% of the Gross Domestic Product (GDP) on average. In the OECD countries average tax to GDP ratio is at 34%.

Developed countries have made significant progress as compared to developing nations in tax transparency and cooperation. This has been due to inter-governmental cooperation on cross border cooperation and implementation of international standards for transparency and exchange of tax information.

The Global Forum is a unique source of expertise supporting such initiatives. The peer review process provides an opportunity for member countries to review and enhance their legal framework and practical implementation in order to assist in effective EOI. The GF also offers technical assistance in the form of training (e.g. Last Mile Training for auditors), assistance in preparing for country peer review (Mock-On Site visits), technical assistance for countries preparing to commit to AEOI, and Pilot project support.

Conclusion

KRA has taken administrative effort to streamline EOI since 2016. This include appointment othe Commissioner for Intelligence & Strategic Operations (I&SO) as the delegated Competent Authority on Exchange of Information. The ratification of the convention is therefore a major step in combating tax cheats and neutralizing tax evasion by enabling Kenya to receive information from over 120 jurisdictions. This will play a central role in enhancing tax compliance and revenue growth for the country.

Currently, Kenya relies on 15 Double Taxation Agreements (DTAs) for EOI thereby limiting information sharing with important jurisdiction who have ratified the convention. To throughput effective EOI, KRA is also currently automating its EOI processes to enhance efficiency and effectiveness in this area.



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