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B: Exchange of information: issues, use and collaboration

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Summary and conclusions

The UK has been and continues to be a keen supporter of exchange of information (EOI) initiatives and has an extensive EOI network, covering over 150 jurisdictions. This is derived from a number of different sources, primarily the UK's 130 double tax treaties, 20 tax information and exchange agreements (TIEAs), the Multilateral Competent Authority Agreements (MCAAs) implementing the Common Reporting Standard (CRS) and the exchange of CbCR, the EU directive on mutual assistance (which has been amended in light of BEPS Actions 5 and 13 to provide for the EOI of tax rulings and CbCR respectively and subsequently also by "DAC 6" to provide for the mandatory disclosure and EOI of information on cross-border arrangements) and the UK's inter-governmental agreement with the United States in relation to FATCA, all of which have been implemented into UK domestic law. Although the EU legislation may no longer apply to the UK post-Brexit, the domestic provisions will remain and the UK has made clear its intention to maintain EOI relationships with other member states.

This network increasingly provides for automatic exchange of information, with most recent extensions to the network (notably CbCR and DAC 6) taking that format, with the necessary accompaniment of a mandatory disclosure regime. However, other kinds of information may be sought from or provided to its exchange partners by the UK upon request, subject generally to the caveat that the requested information must be foreseeably relevant to the administration or enforcement of the domestic tax laws of the requesting jurisdiction. The UK receives a large number of EOI requests and in 2018 was rated by the Global Forum's peer review process as largely compliant with its standards for EOI on request. The few areas identified by the Global Forum for possible improvement have prompted proposals for change, but not all of those have yet been implemented.

The UK's support for EOI, in particular with a view to tackling cross-border tax avoidance and evasion, can also be seen from its participation in a number of related initiatives, including the Joint International Taskforce on Shared Intelligence and Collaboration (JITSIC), the Joint Chiefs of Global Tax Enforcement and the OECD's International Compliance Assurance Program (ICAP). The UK has also ventured (perhaps a little more tentatively) into the area of simultaneous tax investigations by multiple tax administrations.

Although the UK does not publish statistics showing the impact of EOI on its tax revenues, it is clear from the annual reports published by the UK tax authority (HMRC) that the UK views its EOI network as an important part of its toolkit for tackling and deterring tax evasion and non-compliance more generally.

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One of the key challenges in achieving this objective is the efficient and effective use of the significant amounts of information available to HMRC. The UK is perhaps better placed than most in this respect due to its award-winning "Connect" data warehousing and analysis project, which brings together and analyses a wide range of data from different sources to build up an overall picture of entities and individuals against which HMRC can corroborate tax returns. This enables instances of potential tax avoidance and evasion to be identified more easily and it is claimed that more than 80% of all investigations undertaken by HMRC now follow potential leads generated by the system.

A further possible challenge to effective EOI comes from the increasing use of digital currencies and crypto-assets. While this has been recognised by the OECD, the focus in the UK on regulation around digital financial services has so far been on financial crime rather than tax avoidance and evasion. However, that may lead to additional information reporting in this area which in turn could prove useful to HMRC in identifying potential tax evasion or avoidance.

A related objective of the increased transparency fostered by enhanced information reporting and exchange is changing taxpayer behaviour so as to reduce non-compliance. Improvements here are of course hard to measure, especially in the short term. But the significant expansion of information reporting and exchange obligations in the UK in recent years, coupled with technological advances permitting that data to be more easily analysed, are likely to mean that going forward there will be limited places for tax avoiders to hide.

1. Instruments and processes of international application

1.1. Introduction

The UK has an extensive network of international exchange of information (EOI) instruments covering 166 jurisdictions.[3] This network provides for the automatic exchange of certain kinds of (primarily financial) information and also for the exchange of other kinds of information upon request (or spontaneously) so long as the information sought is foreseeably relevant to the administration or enforcement of the domestic tax laws of the requesting jurisdiction.

Although the UK does not publish statistics showing the impact of EOI on its tax revenues, it is clear from the annual reports published by the UK tax authority (HMRC) that the UK views this network as an important part of its toolkit for tackling and deterring tax evasion and non-compliance more generally, by virtue of enabling increased rates of detection and promoting a change in taxpayer behaviour due to increased levels of transparency. That is also apparent from the levels of UK activity in tax EOIs. For example, in 2018 the UK obtained through the CRS mechanism the details of 5.67 million accounts relating to around 3 million UK taxpayers with offshore financial interests.[4] In terms of EOI requests made by the UK, during the period 2014-2017 these numbered more than 1,700.[5] Many more records are exchanged by the UK:

[3] Global Forum Peer Review Report on EOIR: United Kingdom 2018 (Second Round) (Peer Review Report), para. 343.

[4] HMRC Annual Report 2018-2019.

[5] Peer Review Report, para. 7.

it is estimated that the total number of records exchanged per year, either upon request or spontaneously, exceeds 1 million.[6]

1.2. Treaties

Double taxation agreements

Article 26 of the OECD model tax convention on income and capital is the form of provision most commonly used in double tax treaties for the bilateral exchange of information.

The UK has over 130 double tax treaties in force. These treaties make provision for the exchange of information which is generally consistent with the version of article 26 OECD as it was at the time of conclusion of each treaty. Accordingly, some of the UK's older treaties do not reflect changes made to article 26 of the OECD model tax convention.

This is significant in practice as important changes were made to article 26 in 2005. The OECD amended article 26 to introduce the concept of "foreseeably relevant" to replace the previous wording of "necessary".[7] The OECD also added paragraphs 4 and 5. These provide that a state cannot refuse a request for information "solely because it has no domestic tax interest in such information"[8] or "solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person".[9]

The newer treaties concluded by the UK[10] reflect these changes, as do treaties which have been amended by protocol.[11] There are however older treaties which do not reflect these changes, such as that with Kuwait.[12]

Whilst the OECD Model Commentary on article 26 at 19.4 provides wording which contracting states can add in order to afford explicit protection to materials which would otherwise qualify for legal professional privilege, the UK has not adopted this wording. However, this does not lead to the conclusion that HMRC would ignore legal professional privilege. The commentary at 19.3 notes "A requested State may decline to disclose information relating to confidential communications between attorneys, solicitors or other admitted legal representatives in their role as such and their clients to the extent that the communications are protected from disclosure under domestic law". Further, under domestic law, a privileged document which has been disclosed to HMRC or which has otherwise come into its hands, may well have lost the privilege in any event. The privilege enables the withholding of disclosure, but once disclosed, the privilege is lost.

A recent version of the UK's exchange of information provision in a tax treaty can be found in the current UK-Bulgaria double taxation agreement of 15 December 2015. It reads:

6 Peer Review Report, para. 349.

7 Art. 26(1) of the OECD Model Tax Convention and see also para. 4 of the Commentary.

8 Art. 26(4) of the OECD Model Tax Convention.

9 Art. 26(5) of the OECD Model Tax Convention.

10 See for example the UK-Netherlands double taxation agreement was signed on 26 September 2008 and entered into force on 25 December 2010.

11 See for example the UK-Luxembourg double taxation agreement of 24 May 1967, amended by Protocols dated 18 July 1978, 28 January 1983 and 2 July 2009 and by the Multilateral Convention to implement Tax Treaty related measures to prevent Base Erosion and Profit Shifting on 2 June 2017.

12 Art. 28 of the UK-Kuwait double taxation agreement of 23 February 1999.

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by articles 1 and 2.
2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
   (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
   (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
   (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy.
4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic tax interest in such information.
5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person."

Bilateral and multilateral treaties based on the model exchange of information on tax matters of 2002

Bilateral

In 2002 the OECD published a model agreement on the exchange of tax information in tax matters. This followed the founding of the OECD's Global Forum on Transparency and

Exchange of Information for Tax Purposes (the Global Forum) formed in 2001 and comprising a group of around 90 countries including OECD members and non-OECD members such as Bermuda, the Cayman Islands, Cyprus and the Isle of Man. The UK was a founding member.

This led the UK to seek to negotiate tax information exchange agreements (TIEAs) with other countries which were members of the Global Forum. TIEAs are bilateral agreements under which territories agree to co-operate in tax matters through exchange of information. They enable governments to enforce their domestic tax laws by exchanging information relevant to a tax matter covered by the arrangements.

The UK currently has over 20 TIEAs in force. In the UK they are implemented into national law via statutory instruments. The UK currently has TIEAs with the following countries (the dates in brackets being the year of the UK statutory instrument):[13] Aruba (2005); Anguilla (2010); Antigua and Barbuda (2011); Bahamas (2010); Belize (2011); Bermuda (2008); Brazil (2012); British Virgin Islands (2005/2009); Curacao, Sint Maarten and Bonaire, Sint Eustatius, and Saba (BES Islands) (2011); Dominica (2011); Grenada (2011); Gibraltar (2006/2010); Guernsey (2006/2010); Isle of Man (2005/2009); Jersey (2005/2009); Liberia (2011); Liechtenstein (2010); Marshall Islands (2012); Monaco (2014); Montserrat (2005); Netherlands Antilles (2005); St Christopher (St Kitts) and Nevis (2011); St Lucia (2011); St Vincent and the Grenadines (2011); San Marino (2011) and Turks and Caicos Islands (2010); Uruguay (2014).

The UK also has double taxation agreements with some of the countries with which it has TIEAs. Where there is an overlap between EOI requirements under a double taxation agreement and under a TIEA, in so far as they differ, it is unlikely that the scope of one has been either narrowed or extended by the other. They are freestanding agreements to be applied according to their own terms.

Multilateral treaties

In 2007, the UK became signatory to the Multilateral Convention on Administrative Assistance in Tax Matters, which had been developed jointly by the Council of Europe and the OECD and which first opened for signature in 1995. This allows for the exchange of information with other countries under a number of EU directives and regulations. The UK is also a signatory to two Multilateral Competent Authority Agreements (MCAAs), one on Automatic Exchange of Financial Account Information (CRS MCAA) and one on the Exchange of Country-by-Country-Reporting (CbCR) (CbCR MCAA), each of which provide for EOI of certain information based on article 6 of the Multilateral Convention.

Implementation

The UK generally abides by its international obligations and was rated as largely compliant with respect to international EOI obligations by the Global Forum in 2018 (see further below).[14] The formalities for the negotiation and adoption of double tax treaties and EOI agreements are largely the same.

[13] See www.gov.uk "Tax Information Exchange Agreements – Statutory Instrument numbers September 2013".

[14] Peer Review Report, para. 2.

1.3. Regional regulatory framework

As the UK is (at the time of writing) a member of the EU, various EU directives imposing requirements in relation to EOI are applicable to it and (as discussed below) have been implemented into UK domestic law. It is anticipated that these domestic law requirements will remain post-Brexit, not least because they also permit the UK to comply with its broader international EOI obligations. It is also expected that, to the extent necessary, international instruments will be put in place or amended to ensure that the UK's ability to exchange information with members of the EU is maintained post-Brexit.

The EU regional regulatory framework is conceptually distinct from the UK's other international obligations with regard to EOI. As a matter of UK law, the primacy of EU law means that if there were a conflict between international obligations and EU obligations, the EU obligation would trump the international obligation. However, to a large extent, the obligations imposed by the EU directives mentioned below mirror the international obligations described above within the EU setting.

Council Directive 2011/16/EU on mutual assistance (commonly referred to as DAC) provides for close co-operation between member states so as to be able to apply their taxes correctly to their taxpayers and to combat tax fraud and tax evasion. The directive has evolved as a result of five amending directives, including Directives 2015/2376 and Directive 2016/881/EU which respectively introduced BEPS Action 5 (EOI of tax rulings) and BEPS Action 13 (CbCR) into EU legislation. The latest amendments have been made by Directive 2018/822/EU (referred to as DAC 6), which introduces mandatory reporting of cross-border arrangements affecting at least one EU member state with automatic EOI of the information reported, such information being available to the competent authorities of member states via a central directory. (This largely mirrors the recommendations of BEPS Action 12 on mandatory disclosure rules.)

The DAC regime applies to all taxes with the exception of VAT, customs duties, excise duties and compulsory social contributions, as these are already covered by other EU legislation on administrative co-operation. The directive provides for EOI in three forms:

(a) spontaneous, where a country discovers information of possible tax evasion relevant to another country which is either the country of the income source or the country of residence;
(b) automatic, where the taxpayer is active in a country other than the country of residence and includes: employment income, pension income, directors' fees, income and ownership of immovable property, life insurance products, financial account information, cross-border tax rulings, advance pricing arrangements, country-by-country reporting (CbCR) and tax planning schemes; and
(c) on request, where additional information for tax purposes is needed from another country.

The DAC regime also provides for other forms of administrative co-operation such as the presence of officials of a member state in the offices of the tax authorities of another member state or during administrative enquiries carried out therein.

1.4. BEPS related measures

The recommendations made by the OECD in relation to those actions forming part of the BEPS project which are relevant to EOI have (as noted above) largely been implemented

via EU legislation which the UK has incorporated into its domestic law. These include BEPS Action 5 (EOI of tax rulings), BEPS Action 12 (mandatory disclosure rules) and BEPS Action 13 (CbCR). The recommendations made in relation to BEPS Actions 8 to 10 (Transfer pricing), as incorporated into the revised version of the OECD Transfer Pricing Guidelines issued in 2017, have also been incorporated into UK domestic law (see further below).

On Action 13 (CbCR), as noted above the UK is a signatory to the CbCR MCAA which provides for the automatic exchange of CbCR between the signatory countries. The first exchanges of CbCR took place in June 2018. Implementation of the Action 13 standard is subject to the OECD's peer review programme, which assesses (a) the domestic legal and administrative framework for MNE groups to file CbCR, (b) the EOI framework for those CbCR to be shared by the tax administration of the ultimate parent entity with tax administrations in other jurisdictions where group members are resident, and (c) the appropriate use of CbCR. The second peer review report published in 2019 concluded that the UK's implementation met all applicable terms of reference.

The UK has also been involved with the pilot of the OECD's International Compliance Assurance Program (ICAP), under the aegis of the OECD Forum on Tax Administration (FTA), since its launch in 2018. The premise of this voluntary program is multilateral risk assessment: it allows MNE groups and tax administrations to engage in an open and transparent discussion on tax risks to create an international picture of their compliance. Outcome letters are shared with the participants after their reviews are complete. HMRC has reported that participation in ICAP has been positive and there has been evidence to show that it is effective in particular on addressing transfer pricing issues. The programme's pilot has also been reported to be resource saving for tax administrations and large businesses.[15]

As a member of the Global Forum, the UK is also subject to and assessed against the Global Forum's standards for EOI on request, which include elements relating to the availability of beneficial ownership information. The standards require that jurisdictions ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities. The definition of "beneficial ownership" used by the Global Forum for these purposes is the same as that used by the Financial Action Task Force (FATF), which assesses its members (including the UK) for compliance with various recommendations designed to combat financial crime, including transparency as to the beneficial ownership of legal persons. The measures in place in the UK to collect beneficial ownership information are described below. In 2018, the Global Forum's peer review report on the UK concluded that the UK was largely compliant with its standards except in relation to bearer shares, which can still be issued by open-ended investment companies and unauthorised unit trusts, and give rise to concerns because there is no mechanism to identify the owner of the shares (or units). The UK has indicated that it will complete the full abolition of all bearer shares in the UK despite the low risk associated with the few remaining entities.[16]

[15] Minutes of Business Tax Forum meeting on 10 January 2019.

[16] Peer Review Report, para. 49.

1.5. Global Forum related measures

As noted above, the standard for EOI adopted by the UK (e.g. automatic EOI or EOI on request) varies according to the type of information being exchanged.

Automatic EOI is generally reserved for certain types of financial information, such as that exchanged under the Common Reporting Standard (CRS) – see further below. Although the UK's performance in this area has not previously been tested, that is soon likely to change as the Global Forum has recently developed a methodology to peer review the implementation of automatic EOI.[17]

By contrast, in 2018, the UK was assessed by the Global Forum through a peer review process in relation to its implementation of the Global Forum's standards for EOI on request. The peer review covered the period from 2014 to 2017, during which time the UK received more than 5,200 EOI requests (principally from France, India, Poland, Spain and Germany). The requests received covered a broad spectrum of information, including ownership information, accounting information, banking information and other types of information such as in relation to aggressive tax planning / tax avoidance schemes, residency status, address of taxpayers for tax recovery purposes and asset holding / property ownership.[18] None of these were group requests.[19]

A little over 1% of the requests received by the UK during the review period were declined. Leaving aside requests made in error, the most common reasons for this were that the request was too wide and considered to be a fishing expedition, HMRC did not have the necessary powers to obtain the information requested (for example, information on a taxpayer's movements in and out of the UK) or there was no legal instrument to exchange information with the requesting jurisdiction.[20] In relation to the first of these, it is worth noting that the UK competent authority considers that it generally interprets the standard of foreseeable relevance widely and its policy is to assist peers wherever possible, including by seeking additional clarification if the foreseeable relevance standard has not been clearly established.[21] This is consistent with the approach laid down by the Court of Justice of the European Union in relation to requests made under the DAC regime, which permits the tax authority of which the request has been made to verify that the information sought is not "devoid of any foreseeable relevance" and ask for additional information in order to do so if the requesting tax authority has provided insufficient reasons.[22] Neither domestic bank secrecy provisions nor the fact that the relevant information is held by nominees or persons acting in an agency or fiduciary capacity should be a basis for the UK to decline a request for information.[23]

One issue identified by the peer review process was a delay in the UK providing requested information (preventing effective EOI) where it was necessary for the UK to access information from third parties, due to the formal tribunal procedure required in those circumstances. A related concern was the level of additional information that HMRC would seek from the requesting jurisdiction in these cases in order to assist with the tribunal process. Some steps

17 OECD Secretary-General Tax Report to G20 Finance Ministers – October 2019.
18 Peer Review Report, para. 410.
19 Peer Review Report, para. 345.
20 Peer Review Report, para. 418.
21 Peer Review Report, para. 355.
22 *Berlioz Investment Fund SA v Directeur de l'administration des contributions directes* (Case C-681/15).
23 Peer Review Report, para. 365.

were proposed to address these issues, although those have not to date been implemented – see further below. However, this serves to demonstrate the effectiveness of the peer review process in prompting improvements to the UK's EOI processes (another example can be seen in the restrictions that were placed on the issue and/or holding of bearer shares, prompted by the first round peer review of the UK – although as noted above, the Global Forum has suggested that some further work is needed in that area).

Looking beyond pure EOI, the UK has participated in simultaneous tax investigations (also described as joint audits or "multilateral control"). One public example is the simultaneous tax investigation into Credit Suisse conducted by the UK, France and the Netherlands in March 2017.[24] However this tends to be a fairly rare occurrence and seems generally to be reserved for issues where the relevant jurisdictions' enquiries are aligned and the relevant legal principles are recognised internationally (so transfer pricing and VAT enquiries are potential candidates, depending on the circumstances).

1.6. Financial information

In addition to the above, the UK is party to a number of international agreements for the automatic exchange of information about financial accounts and assets owned by individuals and corporate entities that are resident for tax purposes in jurisdiction X but which are held by financial institutions in jurisdiction Y.

The Common Reporting Standard (CRS) is a global standard (the Standard for Automatic Exchange of Financial Account Information in Tax Matters) under which participating jurisdictions agree to exchange the information described above. The framework for these exchanges is established by the CRS MCAA. There are currently over 100 signatories to the CRS MCAA, including the UK. (Within the EU, the DAC regime mentioned above also provides a framework for the exchange of financial information in accordance with the CRS.) In 2019, data relating to 2018 was sent by the UK to 68 partners.[25]

The FATCA regime is focused solely on the exchange of financial information with the United States. It requires foreign (i.e. non-US) financial institutions to report information about their US account holders to the US tax administration, with the penalty for failure to comply with these reporting requirements being the imposition of a 30% US withholding tax on certain US source income. The UK entered into a "model 1" inter-governmental agreement (IGA) with the US in 2012, which implements FATCA in the UK and requires the US to provide equivalent information to the UK in relation to accounts held by UK residents with US financial institutions. Under the IGA, reporting financial institutions are required to provide relevant information to HMRC in the first instance. This is then passed on to the US via the exchange of information provisions in the double tax treaty between the UK and the US.

Under both the CRS MCAA and the IGA, relevant information must be exchanged within nine months after the end of the calendar year to which it relates.

[24] As noted in an article in the Financial Times on 19 December 2017.

[25] Global Forum Automatic Exchange of Information: Implementation Report 2019.

1.7. Administrative co-operation

Aside from the initiatives described above, the UK is one of the (as at 2018) 40 members of the Joint International Taskforce on Shared Intelligence and Collaboration (JITSIC) and has been since its inception (as the Joint International Tax Shelter Information Centre)[26] in 2004. As its name suggests, the aim of JITSIC is to facilitate the sharing of intelligence between its members on cross-border tax avoidance and evasion with a view to collaboration in tackling operational risks in tax administration, including through coordinating work on specific taxpayers and developing common solutions to emerging tax risks, such as those posed by new technologies. A notable example of the multilateral action undertaken by JITSIC in relation to EOI was, in 2018, the consolidation and sharing amongst its members of the data leaked as part of the so-called Paradise Papers.[27] The UK has committed to continue to participate fully in JITSIC and its work to increase international co-operation and collaboration.[28]

The UK also participates in the Joint Ad Hoc Group on Accounts (JAHGA) which in 2005 published a report setting out detailed standards for the availability and reliability of accounting records in order to enable the effective EOI of such records. The standards set out in the JAHGA's report provide one of the sources for the Global Forum's standard for the transparency and effective EOI for tax purposes on request, used as part of the peer review assessment process discussed above.[29]

More recently, in 2018 the UK, alongside Canada, the Netherlands, the United States and Australia launched the Joint Chiefs of Global Tax Enforcement (or J5). The purpose of this alliance is to bring together the latest technology and analytical capabilities of the tax administrations involved to tackle enablers of international tax crime, cyber criminals and money launderers. Through this collaboration, the J5 has identified, and is actively pursuing, a number of enablers suspected of facilitating significant cross-border tax fraud and money laundering.[30]

The UK has also committed to supporting developing countries to improve tax transparency by sharing its expertise regarding international EOI. So far, the UK has run capacity-building programmes with nine developing jurisdictions and plans to expand this to more low and middle-income countries. In addition, embedded HMRC advisers have been deployed to work in six developing countries.[31]

1.8. Other issues

The UK, as a member of the EU, is a party to the EEA Agreement. The 28 EU member states, together with the three EFTA states Iceland, Liechtenstein and Norway, make up the EEA Contracting Parties (the 31 EEA states).

Protocol 11 of the EEA Agreement provides for mutual assistance in customs matters, where customs matters comprise provisions relating to the import, export, transit of goods

26 It was renamed in 2016, retaining the JITSIC acronym.
27 FTA Annual Report 2018-2019.
28 HMRC and HM Treasury No Safe Havens 2019 policy paper.
29 Global Forum Handbook 2016.
30 HMRC and HM Treasury No Safe Havens 2019 policy paper.
31 HMRC and HM Treasury No Safe Havens 2019 policy paper.

and their placing under any other customs procedures. Article 3 provides for assistance on request and article 4 for spontaneous assistance. The information to be furnished is that which is relevant to enable the correct application of customs legislation, including information regarding operations noted or planned which contravene or would contravene customs legislation. Article 6 sets out rules for the form and substance of requests for assistance. Article 10 provides that any information communicated pursuant to the protocol is of a confidential nature and is covered by the obligation of official secrecy and is to enjoy the protection extended to like information under the relevant laws applicable in the contracting party which received it and the corresponding provisions applying to the community authorities

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2. Incorporation of the instruments and processes into domestic legislation

2.1. Domestic adoption

For the purposes of international law, the UK is a dualist state. This means that international treaties signed by the UK do not have the force of law unless brought into force in the UK by domestic legislation. There is accordingly a draft of UK domestic legislation giving effect to the various international EOI obligations that the UK has signed up to. To assist HMRC with the interpretation and (in particular) the application of this legislation, a manual exclusively relating to the UK's EOI obligations, including CbCR (the International Exchange of Information Manual), is also available, including to the public.

- Double tax treaties concluded by the UK are given force in domestic law by section 6 Taxation (International and Other Provisions) Act 2010. It is a peculiarity of the drafting of section 6 that it does not simply give double tax treaties the force of law, rather it provides that "Double taxation arrangements have effect in relation to income and corporation tax so far as the arrangements provide" for a number of specified matters, such as relief from income or corporation tax, but there is no specific reference to EOI (although the predecessor section, section 788(2) Income and Corporation Taxes Act 1988 did make such provision). However, section 173 Finance Act 2006 makes provision for international arrangements for EOI that is "foreseeably relevant" to the administration, enforcement or recovery of any UK tax or foreign tax, or the recovery of debts relating to any UK or foreign tax, or the service of documents relating to any UK or foreign tax to have effect. This therefore gives effect to EOI provisions in double tax treaties and to TIEAs.
- With regard to European legislation, Council Directive 2011/16/EU on mutual assistance was implemented in UK law by the European Administrative Co-Operation (Taxation) Regulations 2012/3062. These Regulations are ambulatory and so can accommodate changes to the directive to the extent they are procedural or otherwise rely on action by HMRC. See also the discussion of the International Tax Compliance Regulations below.
- BEPS-related EOI measures have, as noted above, largely been legislated for by the EU and implemented in UK domestic legislation by the incorporation of the relevant EU law. Action 13 (CbCR) has however been dealt with slightly differently – see further below. The BEPS Actions 8-10 updates to the OECD Transfer Pricing Guidelines are another exception. The UK has incorporated the Transfer Pricing Guidelines into its domestic law by requiring taxpayers to take the approach for transfer pricing purposes which best secures consistency with the Transfer Pricing Guidelines (section 164 of the Taxation

(International and Other Provisions) Act 2010). Section 164 was updated in 2016 to make reference to the amendments made by the final BEPS 8-10 report published in December 2015, and in 2018 to designate the 2017 version of the Transfer Pricing Guidelines as the relevant version. HMRC takes the position that these later versions of the Transfer Pricing Guidelines contain clarifications of (rather than changes to) the existing guidelines.

– Global Forum requirements ensuring availability of beneficial ownership information are mainly contained in anti-money laundering (AML) legislation. However, with effect from 2016 companies, limited liability partnerships and Societates Europaeae incorporated in the UK have been required to maintain a register identifying persons of significant influence or control (PSCs) over them and provide that information to Companies House so that it is publicly accessible.[32] A modified version of these requirements was extended to Scottish limited partnerships and qualifying partnerships in 2017.[33] The UK plans to build on this by creating a new register for non-UK entities that own or plan to purchase UK property by 2021, to help HMRC assess the risk these companies pose.[34]
– The UK's international obligations in relation to the automatic EOI of financial information, under DAC, CRS and FATCA have been implemented domestically via the International Tax Compliance Regulations 2015[35] (the ITC Regulations). These require reporting financial institutions (which are defined differently for the purposes of DAC and CRS on the one hand and FATCA on the other, by reference to the applicable international legal framework) to collect and report relevant information to HMRC for onward exchange with other jurisdictions. While there is some sense in using a single set of regulations to implement these regimes into UK domestic law, given the similarities between them, the approach does serve to emphasise the complexity of the various tests that must be applied in order to establish whether a reporting obligation arises under them.

2.1.1. CbCR

The UK was an early adopter of CbCR, enacting primary legislation creating a regulation-making power in relation to CbCR in 2015[36] and, following consultation on a draft, making regulations (the CbCR Regulations) setting the framework for CbCR in 2016.[37] Accordingly, in the UK, CbCR requirements have been in place with effect for accounting periods beginning on or after 1 January 2016.

Consistent with the Directive 2016/881 legislating for CbCR at an EU level (see above), under the CbCR Regulations a report must be filed in the UK by any UK resident ultimate parent entity (UPE) of a multinational group for periods where the total consolidated revenue of the group exceeds €750 million. Since 2017, this reporting requirement has applied to UPEs

32 Companies Act 2006, as amended by the Small Business Enterprise and Employment Act 2015.

33 There are also various sets of related regulations: The Register of People with Significant Control Regulations 2016; The European Public Limited-Liability Company (Register of People with Significant Control) Regulations 2016; The Limited Liability Partnerships (Register of People with Significant Control) Regulations 2016; Information about People with Significant Control (Amendment) Regulations 2017; and The Scottish Partnerships (Register of People with Significant Control) Regulations 2017.

34 HMRC and HM Treasury No Safe Havens 2019 policy paper.

35 SI 2015/878.

36 S. 122 of the Finance Act 2015.

37 The Taxes (Base Erosion and Profit Shifting) (Country by Country Reporting) Regulations 2016 (SI 2016/237).

that are partnerships (specifically, to the partner that is required to submit corporation tax returns for the partnership) as well as to companies. The UK CbCR requirements extend to the top UK entity of a multinational group (and all entities within its sub-group) if the UPE is resident in a country that either does not require CbCR or does not exchange reports with the UK under the CbCR MCAA, in which case the top UK entity must request the necessary information from its non-UK UPE. CbCR may also be undertaken voluntarily by groups with UK resident member(s) in these circumstances.

In each case, the report must show the amount of revenue, profit before income tax, income tax paid and accrued, and total employment, capital, retained earnings and tangible assets, for each jurisdiction in which the group (or sub-group) carries on business. This includes jurisdictions that are not themselves compliant with CbCR.

Reports made to HMRC are shared automatically with the tax authorities in the jurisdictions covered by the report pursuant to the UK's obligations under the CbCR MCAA or (within Europe) Directive 2016/881, provided the relevant jurisdiction has signed up to the CbCR MCAA or is within the EU such that the UK has a CbCR exchange relationship with it.

Information received by HMRC from CbCR (both reported to it directly or exchanged with it by another tax jurisdiction) is used to build a picture of a group's global footprint and as part of the risk assessment process for cross-border transactions, principally between members of the multinational group. The data is also being used to feed into further work for the OECD on ICAP.[38] However, it is important to note that CbCR data received by HMRC under an international agreement from another tax authority is subject to the conditions of use set by that agreement (such as high level transfer pricing risk assessment and the assessment of other BEPS related risks). HMRC has made clear that it has agreed not to use CbCR data as a substitute for a detailed transfer pricing analysis.[39]

CbCR data is not currently made public in the UK, although the UK government does have the power to make regulations requiring the group tax strategy that certain UK groups are required to publish to include a country-by-country report[40] and there was some suggestion by HMRC in 2018 that further consideration would be given to the case for making CbCR information publicly available on a multilateral basis.[41] Public CbCR is also on the EU agenda.

In practical terms, CbCR imposes a significant compliance burden (and associated cost) on businesses, not just in terms of preparing the reports but in sourcing the relevant data to include. Feedback from large business in the UK has been that, although they are happy to provide the relevant information, they are keen for it to make a difference to processes in the UK and abroad.[42] That may perhaps be interpreted as a plea for increased transparency to sit alongside a cooperative compliance relationship so as to foster tax certainty and predictability for business.

HMRC's perspective is that the data available through CbCR is "helping HMRC unravel offshore arrangements and detect possible non-compliance", enabling HMRC to intervene (including via a civil enquiry or, if necessary, criminal investigation) to ensure the correct tax is paid.[43]

38 Minutes of HMRC Business Tax Forum meeting on 10 January 2019.
39 Para. IEIM300035 of HMRC's International Exchange of Information Manual.
40 Para. 17(6) Schedule 19 Finance Act 2016.
41 HMRC's single departmental plan published in June 2018.
42 Minutes of HMRC Business Tax Forum meeting on 10 January 2019.
43 HMRC and HM Treasury No Safe Havens 2019 policy paper.

2.2. Tax administration authority

The information that HMRC is able to request from taxpayers or third parties within the UK is broadly similar to that which can be requested from foreign tax authorities through the UK's EOI network. HMRC has a range of civil powers that allow it to obtain information and documents from taxpayers or third parties in order to check a person's tax position, provided such information is "reasonably required" for that purpose and is not within an excepted category (such as documents to which legal professional privilege applies).[44] This standard may be seen as akin to the standard of foreseeable relevance applied in relation to international requests for EOI. So far as taxpayers are concerned, information tends initially to be sought on an informal basis, relying on the taxpayer's co-operation to provide the requested information voluntarily, with the exercise of HMRC's formal powers generally reserved for situations of (perceived) non-cooperation or those where a legal requirement to disclose the requested information is necessary to override possible restrictions on disclosure (such as data protection or bank secrecy laws). While the breadth of informal requests for information should not go beyond HMRC's powers, this practice may nevertheless result in more information being provided to HMRC than would be the case if its formal powers were used in every case instead of a measure of last resort, simply because the penalties for non-compliance with a formal request tend to incentivise recipients of formal information notices to scrutinise them closely and appeal against requests that are considered too wide in their scope or unduly onerous to comply with. By contrast, the blessing of either the taxpayer to whose tax position the notice relates or the First-tier Tribunal (Tax Chamber) must be obtained before information notices can be issued to third parties – see further below.

One area in which HMRC's domestic information gathering powers extend beyond those available to it through the UK's international EOI network is with regard to bulk data. HMRC has broad powers to collect "relevant data" from third party "data-holders", usually employers and banks, that make payments on which the recipients may be required to pay tax, so as to assist with the efficient and effective discharge of HMRC's tax functions.[45] The definition of "tax" used for these purposes means that HMRC is permitted to exercise these powers for the purposes of complying with its EOI obligations under the DAC regime and its double tax treaties and TIEAs.[46] The type of relevant data that can be required from each category of data-holder is set out in the Data-gathering (Relevant Data) Regulations 2012.[47] Although HMRC is not required to seek tribunal approval before giving a data-holder notice, it can and in practice usually does, because that step removes the data-holder's right to appeal against the notice.[48]

Commentators have noted a change in how HMRC uses these powers to request information in light of the increasing levels of EOI as well as broader advances in the technological landscape. Whereas previous requests may have been made speculatively, HMRC is now more confident about its right to request information and may even have an expectation as to what it will receive.[49] In part this may be because of HMRC's award-winning "Connect" data warehousing and analysis project which brings together and analyses a wide

44 Schedule 36, Finance Act 2008.
45 Schedule 23, Finance Act 2011.
46 Finance Act 2011, Schedule 23, Part 5, paras. 45(1)(m) and 45(4).
47 SI 2012/847.
48 Paras. 5 and 28(3), Schedule 23, Finance Act 2011.
49 Practice Guide, HMRC's information powers, Tax Journal (published 19 May 2017).

range of data from different sources to build up an overall picture of entities and individuals against which HMRC can corroborate tax returns. This enables instances of potential tax avoidance and evasion to be identified more easily and investigations to be better targeted. It is claimed that more than 80% of all investigations undertaken by HMRC now follow potential leads generated by the system.[50] One notable example of the use to which this analysis has been put is in identifying taxpayers that are considered to be high risk in terms of potential profit diversion, to whom HMRC has sent "nudge" letters encouraging disclosure through its new profit diversion and compliance facility. In 2019, HMRC reported that Connect led to the collection of more than £3 billion in additional tax and prevented the loss of over £4 billion through enabling a marked increase in criminal investigations and convictions.

HMRC has also faced some criticism though for not having made better use of the data available to it. A report of the House of Commons Treasury Committee in 2019 stated that: "Given the extent of information now available to HMRC, and the international effort that has gone into reaching the current level of transparency, and the cost to businesses in complying, it is reasonable to expect HMRC to be able to exploit and explain the use they make of bulk data such as the [CRS]" and "We are yet to be reassured that HMRC knows what its baseline is – i.e. what stock of enquiries it already has on hand and what the data is already telling it about the tax at risk from offshore evasion". The committee recommended that HMRC produce an annual report on what the data reveals about the scope and scale of offshore non-compliance, including any particular areas of risk identified and how it is addressing those risks.[51]

However, the limitations of these powers when it comes to complying with EOI requests received from other jurisdictions have also been noted. The Global Forum's peer review of the UK in 2018 found that responses to EOI requests were delayed when the relevant information had to be sought from third parties as a result of the need to obtain prior tribunal approval, taking an average of 14 months for the information to be provided to the requesting jurisdiction as compared with the target 90 days.[52] The Global Forum also observed that the UK's formal information gathering powers did not permit access to information in relation to the enforcement of tax (as opposed to the determination or assessment of tax due) by EOI partners.[53] A further issue preventing effective EOI was that the UK did not exercise its formal information powers to pursue information requested in relation to UK legal entities where the relevant information was kept outside the UK and there were no UK resident directors or partners.[54]

On this latter point, the UK advised that it "would check if any third party in the UK (e.g. a service provider) held relevant information to reply to EOI requests in such instances, and where that is the case, the UK would not hesitate to use its third party information gathering powers".[55] Recent case law developments suggest that HMRC is attempting to address this by exercising its information gathering powers beyond the confines of the UK's borders. The outcome in these cases (at least to date – one of them is under appeal to the Supreme Court) was that HMRC were permitted to issue information notices to taxpayers and third parties

50 "The all-seeing eye – an HMRC success story?" by Paul Rigney, November / December 2016.

51 Disputing Tax, House of Commons Treasury Committee, Thirty-Fourth Report of Session 2017-2019 (printed 23 July 2019), para. 38.

52 Para. 276, Peer Review Report.

53 Para. 279, Peer Review Report.

54 Para. 278, Peer Review Report.

55 Para. 278, Peer Review Report.

situated outside the UK where the recipients were British nationals or there was a sufficient connection between the recipients and the information sought (in the case in question, where the information sought related to a UK resident company and the recipients of the notices were that company's sole shareholder and directors).[56]

Going back to third party notices, in light of the peer review exercise HMRC published a consultation in July 2018 "Amending HMRC's civil information powers", proposing the expansion of these powers to allow access to information for the purpose of enforcing a tax claim and to remove the requirement for prior tribunal (or taxpayer) approval for the issue of information notices to third parties. One of the justifications given for these proposals was that HMRC anticipated a rise in EOI requests and it would become more difficult for the UK to comply with its EOI obligations unless changes were made to reduce the burden on its resources and those of the tribunal service. However, the proposal to remove tribunal oversight of the issue of third party information notices was subject to parliamentary criticism as trying to remedy some of the problems identified by the peer review process "without exploring the perceived problem or how it could be best addressed"[57] and an attempt to remove an important taxpayer safeguard without any convincing rationale.[58] The government reacted to this criticism by announcing that HMRC had been asked to "evaluate the implementation of powers introduced since 2012 in relation to the powers and safeguards principles, engaging with stakeholders, including taxpayers and their representatives".[59] It was also announced that a report on this would be published in early 2020. The proposal itself though appears to have been dropped (or at least de-prioritised in light of continuing political uncertainty in the UK and/or insufficient time for further parliamentary scrutiny).

2.3. Institutional framework

In practice, the UK competent authority (HMRC) delegates its responsibilities to respond to EOI requests to particular teams. Most requests for information received by the UK from overseas tax authorities are dealt with by the Centre for Exchange of Intelligence (CEI), part of HMRC intelligence. As at 2018, the EOI team comprised 23 full-time staff, three of which had delegated competent authority status. However, there are some exceptions, notably EOI requests (whether received or made by the UK) relating to aggressive or abusive tax avoidance schemes, which are dealt with through JITSIC. That may perhaps be explained by the fact that UK delegates to JITSIC are part of HMRC's Anti-Avoidance Group. Looking again at the position in 2018, the JITSIC team consisted of 12 members, nine of which had delegated competent authority status. There are also specialist HMRC teams to deal with EOI requests relating to, for example, transfer pricing and inheritance tax.[60]

It would appear from these numbers that the workforce within HMRC for dealing with EOI requests is fairly limited, although HMRC has more than doubled the resources it employs to

56 *R (on the application of Jimenez and another) v the FTT and HMRC* [2019] EWCA Civ 51; *HMRC ex parte Mr and Mrs PQ* [2019] UKFTT 371 (TC).

57 House of Lords Economic Affairs Committee, "The Powers of HMRC: Treating Taxpayers Fairly", 4th Report of Session 2017-2019 (published 4 December 2018) (EAC Report), para. 47.

58 EAC Report, para. 9.

59 Statement made by the Financial Secretary to the Treasury, Jesse Norman, on 22 July 2019.

60 Peer Review Report, paras. 422 to 424.

handle EOI requests in recent years.[61] In a lot of cases, however, the teams involved will be able to call upon HMRC's sophisticated information database (Connect) to assist with responding to EOI requests quickly and efficiently. While HMRC does not publicise all of the sources of information available to it, those are understood to include information exchanged with the UK under the EOI frameworks discussed above and the information required to be reported to HMRC (including financial and CbCR information) for it to exchange with other jurisdictions, as well as Land Registry reports and Companies House records.

EOI requests are also managed digitally, in the sense that all requests are logged onto an EOI database when received and all related actions are required to be logged. This enables open requests to be monitored against the 90-day deadline for responses.[62] However, responses are typically provided via encrypted email, or post if exchange partners are unable to accept encrypted email.[63]

Automatic EOI is by contrast fully digital. An XML schema (a data structure for electronically holding and transmitting information) is used for both the reporting and sharing of CbCR and financial information required to be provided under FATCA and the CRS.

2.4. Confidentiality and data protection

HMRC is a statutory body with statutory functions and a statutory duty of confidentiality. These functions and duties are set out in the Commissioners for Revenue and Customs Act (CRCA) 2005. HMRC's functions include the collection and management of the revenue and anything necessary, expedient, incidental or conducive to those functions.[64] The duty of confidentiality prohibits HMRC officials from disclosing information held by HMRC in connection with its functions.[65] However, the CRCA specifically permits HMRC to make disclosure for the purpose of a function of HMRC where it does not contravene any restriction imposed on HMRC.[66] HMRC can also share information with third parties if it is legally allowed to do so by another statutory provision.[67] The circumstances in which this is permitted are commonly referred to as "gateways" and there are over 250 of them. The terms of each statutory gateway are specific to the type of information that can be disclosed and the purpose for which the information will be used.

Whilst a disclosure by HMRC in compliance with the Freedom of Information Act 2000 is a lawful disclosure under the CRCA, information relating to identifiable individuals or legal entities is exempt from disclosure.

HMRC is a data controller for the purposes of GDPR and is subject to data protection principles. This does not prevent HMRC from disclosing information about a taxpayer where HMRC is legally entitled to do so. A privacy notice describing how HMRC collects and uses personal information in accordance with data protection law is published on its website. This sits alongside a further privacy notice explaining how HMRC collects and uses

61 House of Lords Economic Affairs Committee, "The Powers of HMRC: Treating Taxpayers Fairly", 4th Report of Session 2017-2019 (published 4 December 2018), para. 46.

62 Peer Review Report, para. 426-428.

63 Peer Review Report, para. 387.

64 Ss. 5 and 9 CRCA 2005.

65 S. 18 CRCA 2005.

66 S. 18(2)(a) CRCA 2005.

67 S. 18(3) CRCA 2005.

the personal data it receives from UK financial institutions and overseas tax authorities through AEOI agreements. HMRC's internal guidance manuals (which are published online, occasionally subject to redactions) include an Information Disclosure Guide which contains HMRC's detailed guidance to its own staff as to their data handling responsibilities and the circumstances in which information can be disclosed to a third party via a statutory gateway.[68]

There is in principle no difference in the protection afforded to taxpayer data and the standard of confidentiality between wholly domestic situations and cross-border EOI requests. If the information is confidential as between HMRC and the taxpayer, then HMRC will only be able to disclose if there is a statutory gateway.

The Model Double Tax Convention allows a receiving state to use the information for other than tax purposes provided two conditions are met: first, the information may be used for other purposes under the laws of both states; and second, the competent authority of the supplying state authorises such use.[69] HMRC will therefore be allowed to use information obtained from another state for purposes other than tax provided the relevant international agreement makes provision for that, any conditions imposed are met and there is a domestic UK statutory gateway permitting HMRC to disclose the information to another government department.

However, TIEAs concluded by the UK typically have a confidentiality clause which restricts the disclosure of information supplied by one party to the other to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested party.[70]

The vast majority of tax disputes are heard before the First-tier Tribunal (Tax Chamber). The strict laws of evidence and admissibility which apply in a civil trial in the UK do not apply to proceedings before this tribunal. Specific provision is made that: the tribunal may admit evidence whether or not the evidence would be admissible in a civil trial in the UK; and the tribunal may exclude evidence that would otherwise be admissible where it would be unfair to admit the evidence.[71] This means that there is no automatic exclusion in tax proceedings of illegally obtained information (the "fruit of the poisoned tree"), but the tribunal does have a discretion if it considers it would be unfair to admit the evidence. There is no specific ban on the use of information provided by whistle-blowers subject to the discretionary power to exclude where its use would be unfair.

There is some statutory protection in the tax field for whistle-blowers in certain circumstances. For example, the disclosure of tax avoidance schemes regimes for direct and indirect taxes[72] (which impose obligations on various persons to disclose such schemes to HMRC) provide that no duty of confidentiality or other restriction on disclosure (however imposed) prevents the voluntary disclosure by any person to HMRC of information or documents which the person has reasonable grounds for suspecting will assist HMRC in determining whether there has been a breach of any requirement imposed by the regime.[73]

68 https://www.gov.uk/hmrc-internal-manuals/information-disclosure-guide.

69 Art. 26.2 OECD Model Double Tax Treaty.

70 See for example art. 8 of the Agreement between the United Kingdom of Great Britain and Northern Ireland and Saint Lucia for the Exchange of Information relating to Tax Matters 2011/1076.

71 Regulation 15(2) Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (SI 2009/273).

72 Contained in Part 7 Finance Act 2004 and Schedule 17 of the Finance (No. 2) Act respectively.

73 S. 316B Finance Act 2004 and para. 35 Schedule 17 Finance (No. 2) Act 2017.

Whether an organisation offers protection to whistle-blowers is also a factor in deciding whether a person has facilitated tax evasion.[74]

3. Impacts of digitalisation on the established frameworks

The UK regards itself as a global hub for technological innovation in the financial services sector (FinTech) – in 2018, investors put more money into FinTech in the UK than any other European country –[75] and that status is something the government is keen to retain. Less information is available about the use in the UK of digital currencies. For example, the report of the House of Commons Treasury Committee following its inquiry into digital currencies[76] provides only global statistics and does not comment on the use of digital currencies in the UK specifically. No data appears to have been compiled as yet in relation to how much revenue may have been channelled out of the UK or otherwise gone untaxed through the use of digital currencies or trading in coins / tokens.

While the global crypto-asset market is of a significant size, the Treasury Committee report emphasises its restrictions – in particular, its volatility, maximum capacity for simultaneous transactions, potential charges and the length of time before transactions are registered.[77] These combined factors suggest that a large-scale shift from the use of conventional financial markets to crypto-assets is unlikely, at least in the near future. It may also be deduced from this that the UK government currently has no significant concerns regarding the impact of crypto-assets on established EOI networks relating to financial information.

By contrast, the OECD has recognised the potential challenges to tax transparency arising from new technologies such as crypto-assets, e-money and other new financial products and various measures are being undertaken as a result. For instance, the CRS is being reviewed to ensure that "it continues to provide an effective global firewall against international tax evasion in an increasingly digital financial age". The OECD is also working with tax authorities to build strategies for ensuring compliance with tax obligations in respect of crypto-assets, and to ensure they have the tools to address the risks of financial crime posed by such assets, including (for example) through practical training and speedy access to data.[78]

As the UK has historically been a keen proponent of OECD initiatives in relation to EOI, it seems likely that any revision to the CRS to address risks arising from new technologies will be swiftly implemented into UK law. The focus in the UK to date though, in terms of regulation around digital financial services, has been on financial crime rather than tax avoidance and evasion. For instance, a Cryptoassets Taskforce set up jointly by HM Treasury, the Financial Conduct Authority and the Bank of England has identified the risk of financial crime as one of the major potential harms in this area. However, there may in practice be some overlap, with AML regulation being extended to cover entities which provide services that are in charge of holding, storing and transferring virtual currencies, such that those entities will be required

74 See "Tackling tax evasion: Government guidance for the corporate offences of failure to prevent the criminal facilitation of tax evasion" (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/672231/Tackling-tax-evasion-corporate-offences.pdf).

75 UK FinTech – State of the Nation report April 2019.

76 Published on 19 September 2018.

77 See pp. 14 and 15 in particular.

78 OECD Secretary-General Tax Report to G20 Finance Ministers – October 2019.

to identify their customers and report any suspicious activity to relevant regulators and authorities.[79] This information is likely to prove useful to HMRC in identifying potential tax evasion or avoidance, especially when analysed against the other data to which it has access through its Connect system.

[79] By the Fifth AML Directive adopted by the European Parliament, which EU member states must implement in national law by 10 January 2020.

International Fiscal Association