

Exchange of information for tax purposes: A way of dealing with tax evasion and avoidance.

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Outline

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Introduction

- Globalization has led to significant loss of tax revenue not only in Kenya, but the world over due to lack of transparency and means to obtain information on transactions by multinationals thus leading to tax evasion and harmful tax practices.
- It is estimates that Kenya loses Kshs about 100 billion every year due to trade miss-invoicing.
- To deal with these challenges Kenya has joined other jurisdictions to make it possible for the country to access information necessary in tracing these financial transactions globally.

Exchange of information (EOI)

- EOI is aimed at achieving global tax co-operation through the implementation of international tax standards and other instruments to put an end to bank secrecy and tackle tax evasion.
- Kenya joined the Global Forum on Transparency and Exchange of Information for Tax Purposes in 2010.
- Currently the Global Forum has 161 members globally.
- The Global Forum has helped countries implement robust standards that have led to unprecedented level of transparency in tax matters.
- This has achieved great success in the fight against offshore tax evasion.

EOI instruments and guides in Kenya



Double Tax Treaties (DTAs)

- Kenya has fifteen (15) Double Tax Treaties (DTAs) in force
- UK, Canada, Zambia, Iran, India, Korea, Denmark, France, Germany, Seychelles, Qatar, UAE, Sweden, Norway and South Africa.
- These DTAs have an exchange of information clause that allows competent authorities to share information to help curb tax evasion.

The Yaoundé Declaration

- Kenya signed the Yaoundé Declaration on 25th November 2019
- Under the Yaoundé Declaration, African Ministers of Finance committed;
 - “to lead in the tax transparency and information exchange agenda for Africa, and foster stronger collaboration among countries and regions to stem illicit flows and enhance domestic resource mobilization on the continent”
- This is a big step and indication of the government’s commitment to support EOI as a tool to curb illicit financial flows in the country.

Convention on Mutual Administrative Assistance in Tax Matters (MAAC).

- The Convention is a multilateral agreement designed to facilitate international co-operation among tax jurisdictions to improve their ability to tackle tax evasion and avoidance and ensure full implementation of their national tax laws, while respecting the fundamental rights of taxpayers.
- It is the most comprehensive multilateral instrument available for tax cooperation and exchange of information.
- The instrument provides for , automatic exchange of information, exchange of information on request simultaneous tax examinations and international assistance in the collection of tax debts.
- So far over 130 countries are participating in the convention including major financial centers and an increasing number of African countries including South Africa, Mauritius, Seychelles and Uganda.

Status of MAAC in Kenya

February 2014

- Kenya signed the MAAC

December 2019

- Parliament approves MAAC for ratification.

22nd July 2020

- The instrument to ratify MAC deposited at the OECD headquarters in France by the Kenyan Ambassador to France

November 2020

- MAAC comes into force

January 2021

- Implementation of MAAC

Operationalization of Automatic EOI from 2022

Effect of Ratification of MAC by Kenya

1. Provides a wider network for information exchange as more countries are covered compared to the DTAs.
 - The exchange could be through:
 - Exchange of information on Request.
 - Spontaneous exchange of Information
 - Automatic exchange of information.
2. Law enforcement: fighting corruption, money laundering and financing of terrorism.
3. MAC is a flexible instrument: it allows reservations which can be withdrawn later.
4. It can be used for Regional Co-operation: joint audits, simultaneous tax examinations.
5. Assistance in the recovery of Tax claims
6. To combat VAT evasion and Avoidance

Thank you