

# TAX INFORMATION EXCHANGE AND CAPACITY BUILDING

Presented by  
Beth Mwobobia  
KRA

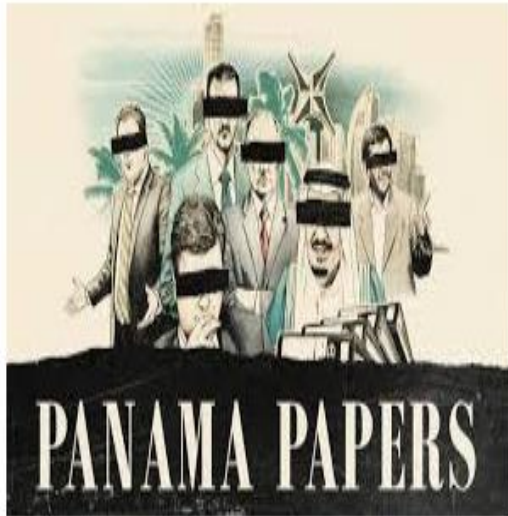
**8<sup>TH</sup> ICPAK ANNUAL TAX CONVENTION**

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*Sarova Whitesands Hotel and Spa*

# Outline

1. Introduction to Tax Information Exchange
2. EOI Framework in Kenya
3. Mutual Administrative Assistance in Tax Matters (MAC):  
Progress in the implementation of the MAC in Kenya
4. Opportunity for a continental cooperative framework to address tax challenges in the continent
5. Pursue more taxing rights for African countries, including on taxing the digital economy and BEPS.
6. Role of taxation in preservation Africa Resources heritage
7. Tax information exchange at continental level
8. Conclusion

# Are you aware of?



# An increasingly globalised world

## Globalisation's effects

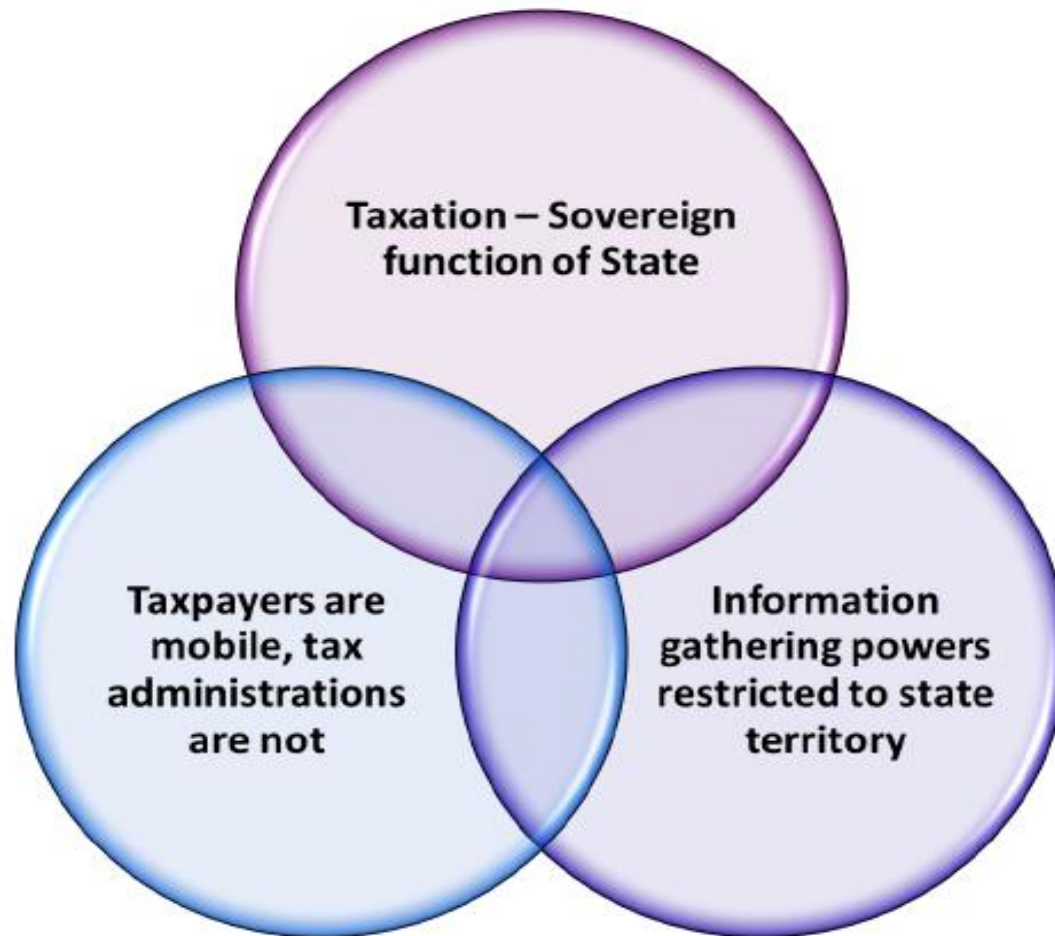
- Wealth creation;
- Easy and fast movement of persons, capitals and other financial flows;
- Increase of international and cross-border transactions;
- Competition, including in taxation.

## Globalisation's adverse consequences

- Easy for income and assets to be hidden in other jurisdictions and behind layers of corporate entities
- Difficult for tax authorities to investigate and audit cases of cross-border tax evasion

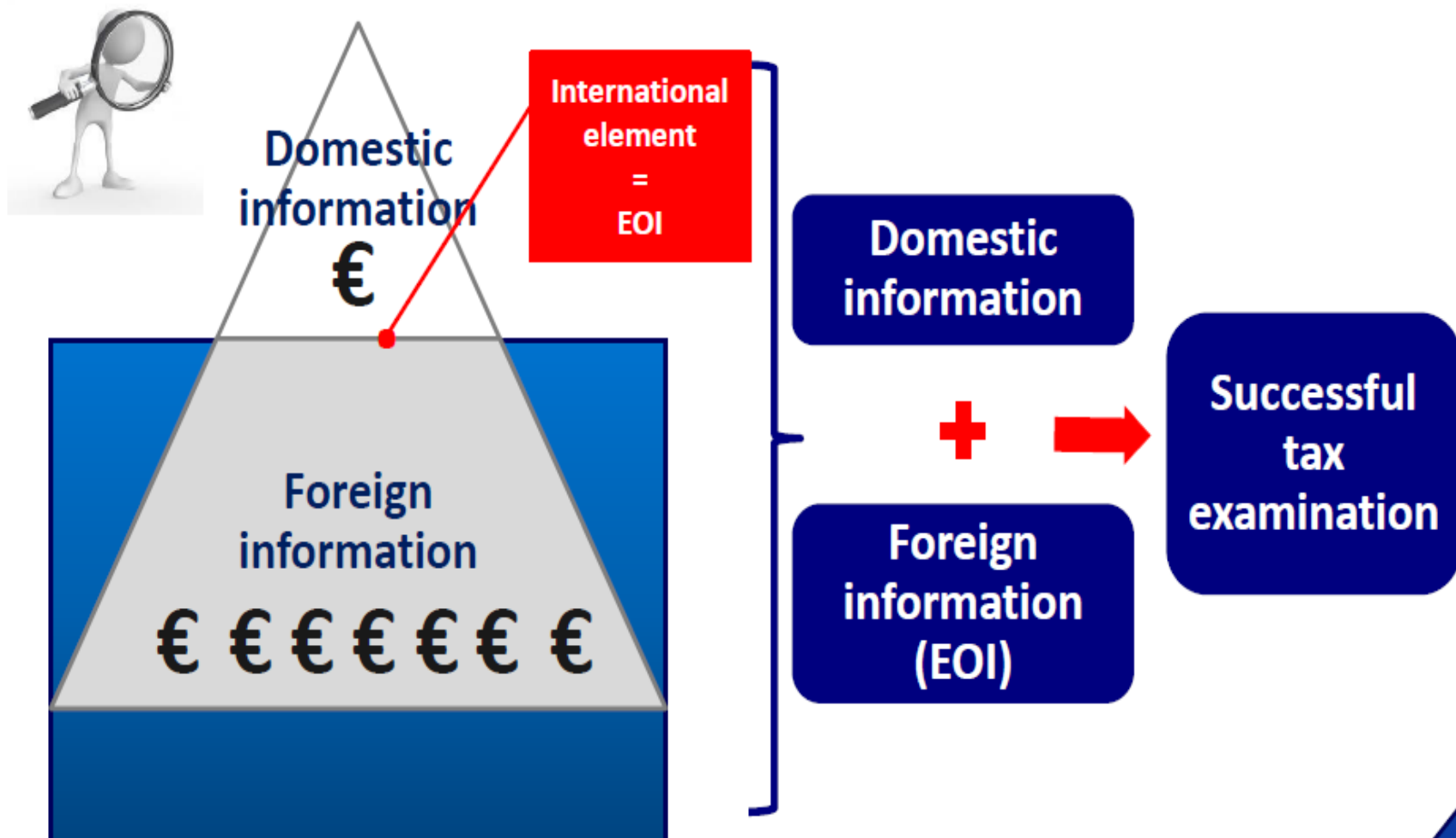
# Why do we need International Cooperation?

## Need for International Assistance



# International Cooperation Benefits

## The hidden part of the iceberg



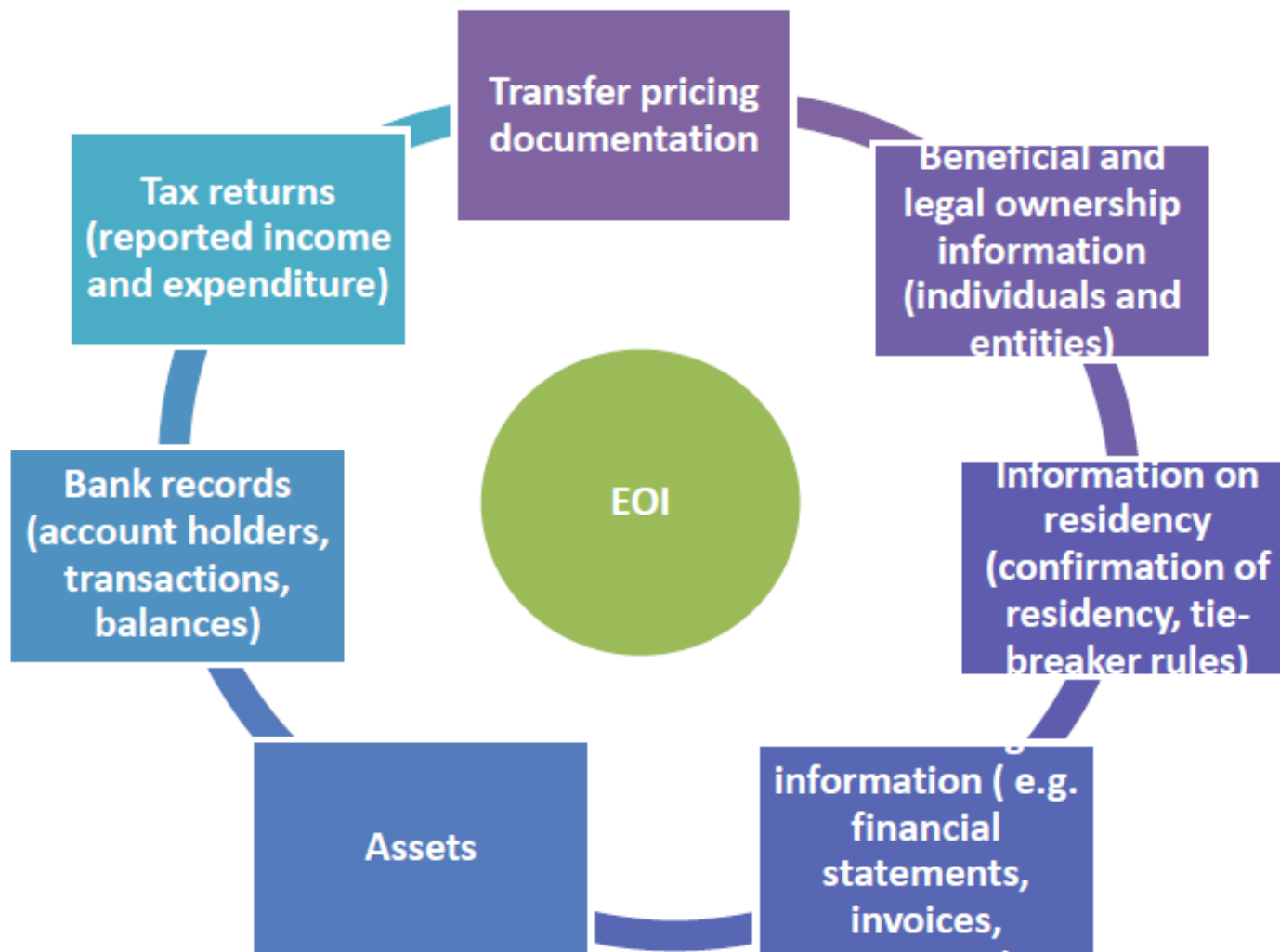
# Introduction to Tax Information Exchange

**Exchange of information (EOI)** is program where tax authorities exchange relevant information for tax purposes through designated Competent Authorities (CAs) based on a legal instrument.

## Types of EOI:

- EOIR
- AEOI
- Spontaneous EOI

# What must be provided, what can be obtained



# EOI Framework in Kenya

## EOI Legal instruments in Kenya:

**Double Tax Treaties (DTAs)** : Kenya has fifteen (15) DTAs in force.

**Multilateral Instruments:** Convention on Mutual Administrative Assistance in Tax Matters (MAC) – over 130 jurisdictions currently participating.

**Competent Authority for Kenya** - The Cabinet Secretary, National Treasury Delegated this role to - Commissioner General, KRA

Commissioner Intelligence & Strategic Operations in Authorised Representative of the Delegated CA and in charge of all operations of the Competent Authority Office (CAO).

International exchange of information carried out by the EOI Unit which comprises of a team of six dedicated to handling EOI requests, relevant legislation and policy matters.

# Convention on Mutual Administrative Assistance in Tax Matters (MAC)

## What?

- The Convention is a multilateral agreement designed to facilitate international co-operation among tax authorities to improve their ability to tackle tax evasion and avoidance
- The MAC was developed jointly by the OECD and the Council of Europe in 1988 and amended by Protocol in 2010.
- The Convention is the most comprehensive multilateral instrument available for all forms of tax co-operation to tackle tax evasion and avoidance.

## Who?

- By mid-August 2021, Maldives, Papua New Guinea and Rwanda were the latest three countries to have signed the multilateral the Convention, bringing the total number of jurisdictions that participate in the Convention to 144.

# All forms of administrative assistance

EOI on request

Automatic EOI

Spontaneous EOI

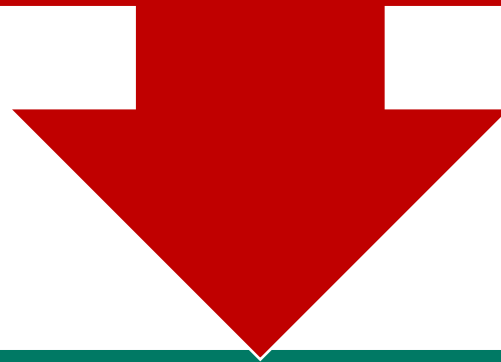
Simultaneous tax examinations

Tax examinations abroad

Assistance in recovery

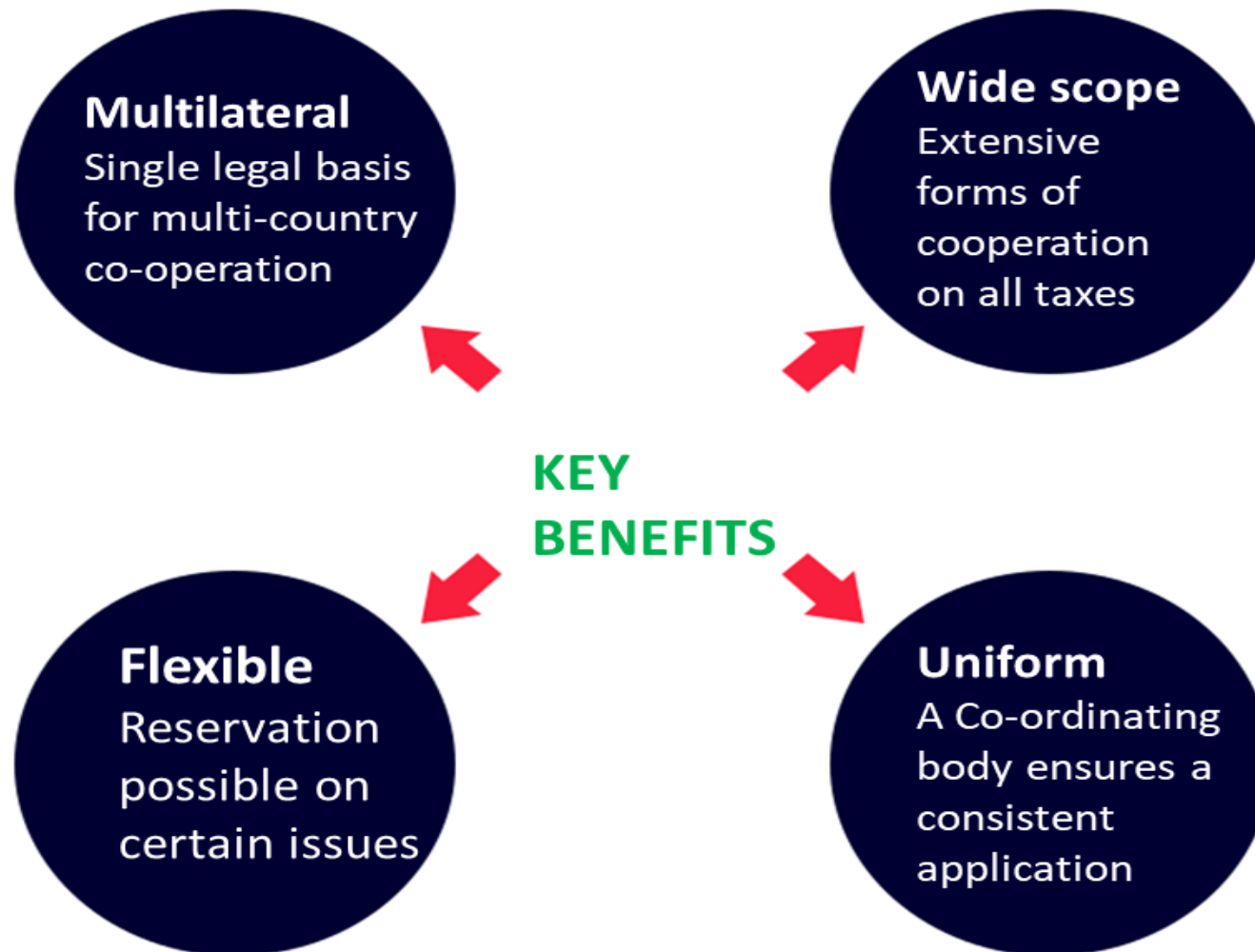
Service of documents

**Subject to reservations**



Global coverage though a single instrument:  
**more than 140 jurisdictions** currently covered

# Why? Key benefits of joining the MAAC



# Key Benefits Cont..

## Implement the Exchange of Information on Request standard

- Becoming Party to the MAAC allows countries to greatly extend the number of EOIR relationships in line with the standard

## Implement the Common Reporting Standard (AEOI)

- Exchange of Financial Account Information in Tax Matters

## Implement BEPS Actions relating to tax transparency

- Exchange of tax rulings under the transparency framework of Action
- Exchange of Country-by-Country Reports

## Combat tax and other serious crimes

- Tax Evasion
- Tax Fraud
- Money-laundering
- Corruption

## assistance in recovery of tax debts

- Via MOU/MOCs

## Information may be used for non tax purposes

- certain conditions upon agreement with the exchange partner

# Current status of MAC in Kenya

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Exchange of Information on Request (EOIR) became a priority in 2010 when Kenya joined the Global Forum as one of the earliest African member country

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As a member of the Global Forum, Kenya committed to implement the EOIR standard. Kenya had a narrow network comprising 15 double taxation agreements at that time.

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To expand the network of EOI relationships, Kenya signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC) in 2016 and deposited the instrument of ratification with the OECD in July 2020.

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The MAC entered into force in Kenya in November 2020 allowing Kenya to significantly expand the potential exchange partners from 15 to about 144. Kenya was the 12<sup>th</sup> African country to sign the Convention and the 94<sup>th</sup> jurisdiction to join it.

# AEOI Framework

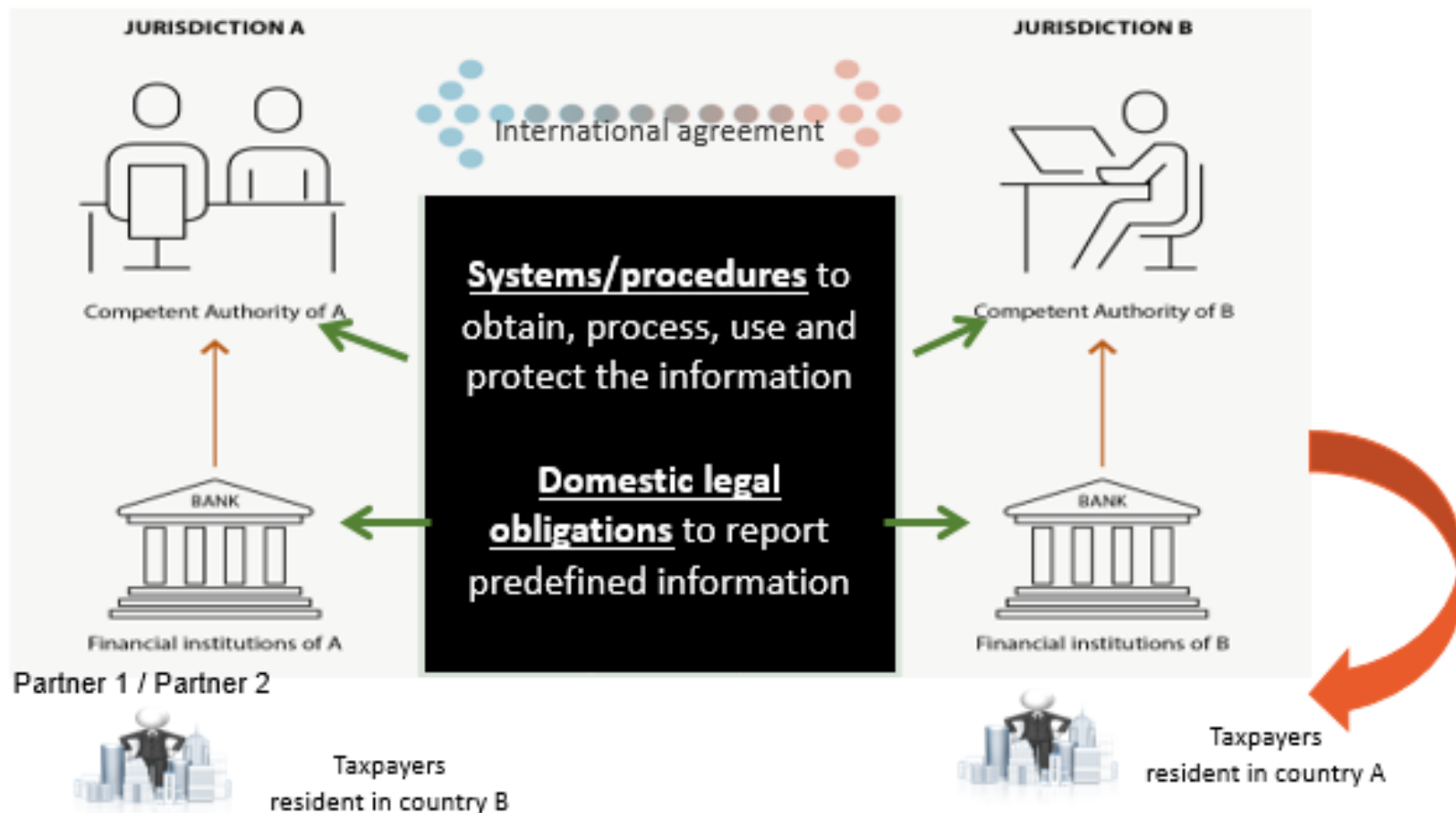
To tackle the scourge of IFFs, curb tax evasion, identify and recover assets held offshore, the OECD/Global Forum initiated the AEOI standard in 2014.

The aim of AEOI is to permit jurisdictions to exchange financial accounts information of individuals, as well as non-individuals at periodic intervals.

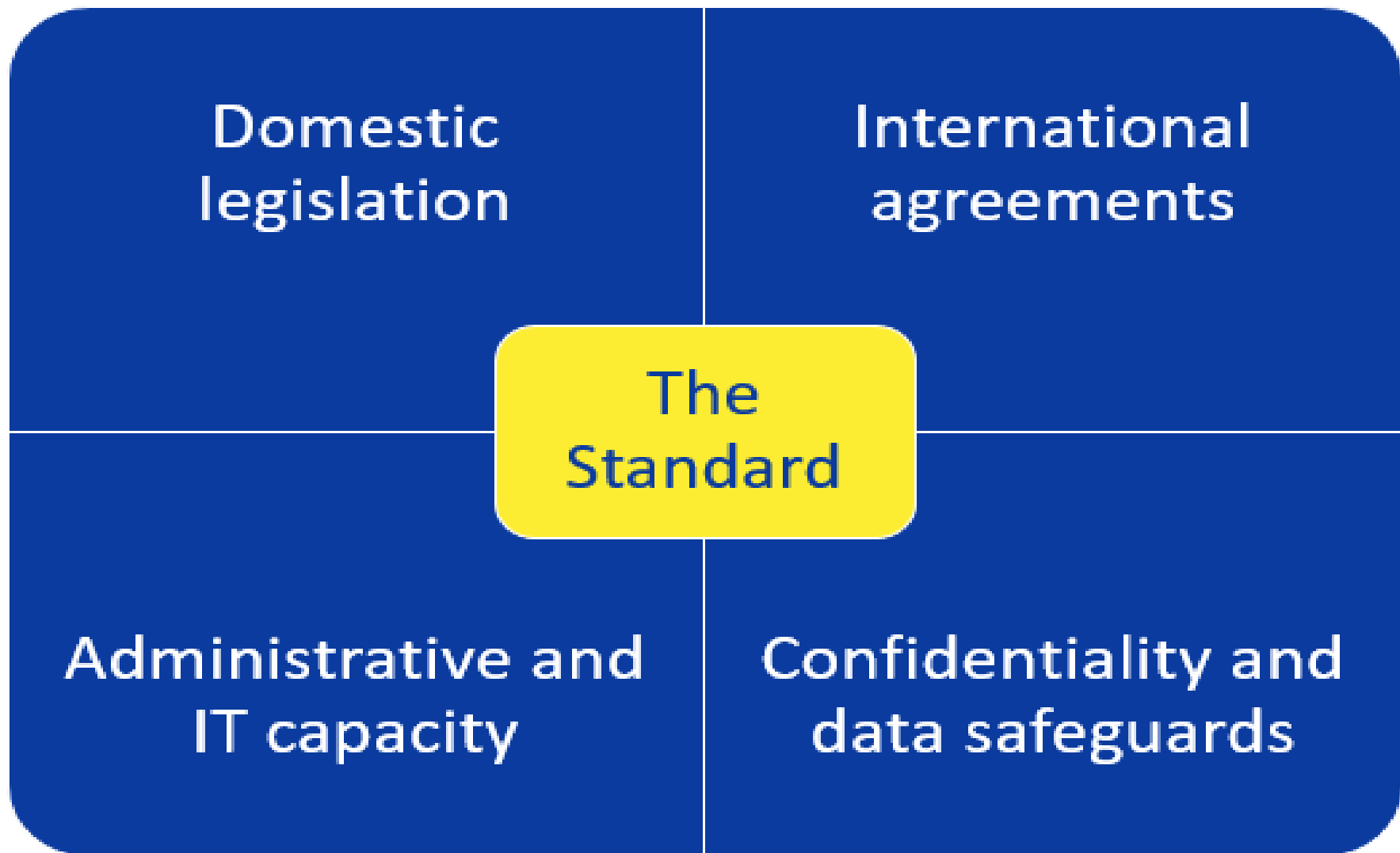
AEOI exchanges are not on request, unlike EOIR, however it was developed with the aim of complementing the existing EOIR standard as part of administrative assistance between jurisdictions.



# EOI: How does that work?



# *AEOI Building Blocks*



# Key benefits from AEOI

Detection of tax evasion and offshore wealth

Deterrence from future non-compliance

Support domestic synergies

Enhance reputation

# Status of AEOI Implementation in Kenya

Kenya has taken several steps towards implementing the AEOI standard including the following:

- MAC ratified in July 2020, and entered into force on 1<sup>st</sup> November 2020
- AEOI implementation Task Force This task force has developed a roadmap for AEOI implementation.
- Common Reporting Standards requirements included into the domestic law. Finance Act 2021- Section 35 (6) of the TPA introduced.
- AEOI Regulations are being drafted and will be published for public participation soon.
- The procurement on an IT system for AEOI implementation is ongoing.
- Initial consultations with financial institutions are ongoing.
- Preparations ongoing for the data security and confidentiality assessment expected to be launched in November 2021.

# Tax information exchange at continental level

The Africa Initiative Tax Transparency in Africa 2021 Report notes that members of the Africa Initiative have expanded their EOI networks to reach 3,752 bilateral relationships in 2020, compared to 685 in 2013.

This rapid improvement is mainly due to the growing number of African countries joining the Convention on Mutual Administrative Assistance in Tax Matters.

The amount of EOI requests they sent increased more than thirteen-fold since the start of the Initiative in 2014. In 2020, for the first time, African countries sent more requests than they received.

Improved EOI infrastructures have helped tax administrations collect more revenue. In 2020, two African countries identified nearly EUR 35 million of additional taxes as a direct consequence of the requests sent.

Interest in AEOI is growing in Africa. Nigeria undertook its first exchanges in 2020, joining Ghana, Mauritius, Seychelles and South Africa, while Morocco and Kenya committed to begin first exchanges in 2022. This dynamic has continued in 2021 with the commitment of Uganda to start AEOI in 2023.

# Revenues collected by African countries through EOIR

**8 African countries secured USD 189 million (2014-19)**

- Burkina Faso, Cameroon, Kenya, Senegal, South Africa, Togo, Tunisia, Uganda

**5 African countries identified USD 12 million in 2019**

- Burkina Faso, Kenya, Togo, Tunisia, Uganda



# Capacity Building

In spite of the limitations imposed by the COVID-19 pandemic, capacity-building activities dedicated to African jurisdictions have expanded. Close to 1,300 officials from 35 jurisdictions benefitted from trainings in 2020, which was more than the cumulative figure for the 2015-2019 period.

In Kenya, the KRA EOI staff have benefitted from training conducted by the Global Forum Secretariat with while auditors and investigators took part in Last Mile Seminars, leading to uptake of EOI to complement tax audits and investigations.

In addition, Kenya received technical assistance from the Global Forum, ATAF and the HMRC on preparation for the EOIR 2<sup>nd</sup> Round Review, The Data Security and Confidentiality Review and development of the CRS legal framework.

Many African countries lack adequate legal frameworks and technical implementation abilities for successfully adhering to the Global Forum's standards for sending an EOI request.

# Taxation of the digital economy

- The greatest challenge with taxing the digital economy is the fact that highly digitalised MNEs no longer need to have a physical presence within a jurisdiction for them to operate therein, therefore making it hard for that jurisdiction to tax the resulting profits.
- The Organisation for Economic Co-operation and Development (OECD), together with many developed and developing countries, have been working together to develop new rules and processes to strengthen the international tax system and to tackle tax avoidance.
- This group of countries is known as the OECD Inclusive Framework on Base Erosion and Profit Shifting (BEPS). Kenya joined the Inclusive Framework in January 2017.
- Base Erosion and Profit Shifting (BEPS) arises when multinational enterprises (MNEs) shift profits away from the jurisdictions where the activities creating those profits take place to low or no-tax locations where there is little or no economic activity. This ultimately results in little or no overall corporate tax being paid.

# Taxation of the digital economy

- The Inclusive Framework developed the BEPS Action Plan which contains 15 Actions aimed at addressing the weaknesses within the international tax system.
- BEPS Action 1 addresses the tax challenges arising from the digitalisation of the economy.
- Global consensus on the tax challenges arising from the digitalisation of the economy is of paramount importance now more than ever, cooperation and multilateralism are required in developing solutions that will assist all countries in rebuilding their economies in a post-Covid-19 environment.
- The OECD has proposed rules to address these challenges and has divided them into two Pillars.

# OECD Proposed Rules To Tax The Digital Economy

## 1. Proposed Pillar One Rules

- Pillar One rules create a new taxing right in market jurisdictions, like Kenya, that go beyond the current permanent establishment (PE) and transfer pricing rules that we have in our domestic laws.
- They provide for the reallocation of a part of the profits of the most profitable MNEs to the market jurisdictions where value is being created.
- The new rules will require MNEs with a global turnover above Eur 20 billion and profitability above 10% to reallocate a portion of its residual profits to its market jurisdictions with sale greater than EUR 1M or EUR250m for jurisdictions with GDP < EUR 40Bn. This amount of residual profits to be reallocated is known as **Amount A**.
- In addition to Amount A, the MNE will be required to allocate a fixed return for tax purposes to routine distribution and marketing activities that take place in the market jurisdictions. This further amount to be allocated is known as **Amount B**. The rate for Amount B is subject to agreement.
- The OECD states that this new taxing right is expected to result in more than USD 100 billion of profit each year to be allocated to market jurisdictions.

# OECD Proposed Rules To Tax The Digital Economy

## 2. Proposed Pillar Two Rules

- Pillar Two rules aim to counter the strategies used by MNEs to artificially shift profits from market jurisdictions to low or no tax jurisdictions.
- This pillar introduces a global minimum tax which would ensure that MNEs pay a minimum amount of tax with respect to their global profits.
- A global minimum rate of at 15% has been proposed which, as the OECD states, is expected to generate more than USD 150 billion in additional global tax revenues per year.
- For developing countries, the proposal also provides for additional source taxation over certain types of base eroding payments (like interest and royalties) through a “subject to tax rule” (STTR), available to all countries through a bilateral treaty.
- In addition, the minimum tax will lead to the demise of tax havens, which will improve the ability of source countries to ensure they are able to protect their tax base from base erosion and profit shifting.
- Finally, the global minimum tax will eliminate tax developing countries provide excessively generous tax incentives in order to attract Foreign Direct Investment.

# Status in Kenya

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Out of the 140 members of the Inclusive Framework, 136 countries have joined the framework but 4 countries have not joined. These countries are Kenya, Nigeria, Pakistan and Sri Lanka.

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The officials of Kenya Revenue Authority and the National Treasury have analysed the proposals and found them not to be in Kenya's interests mainly due to four main issues of concern.

# Main Areas of concern for Kenya

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|---|---|
| <p>1 The application of these new rules requires the removal of all domestic Digital Services Taxes (DST) and other relevant similar measures on all companies.</p> | <ul style="list-style-type: none"><li>- This means that Kenya would be required to abolish its DST regime without having a clear picture of the revenue that would actually be received from this reallocation of profits.</li><li>- The OECD provided an estimate that Kenya would gain between USD 14 to 21 million from this reallocation. But this was based on an earlier proposal that had a global revenue threshold of Eur 750 million, not the Eur 20 billion threshold that has now been set.</li></ul> |
| <p>2 An MNE has to have a global turnover threshold of over Eur 20 billion before the new rules could apply.</p>  | <ul style="list-style-type: none"><li>- This brings into scope only about 100 companies that would be required to reallocate their residual profits to market jurisdictions.</li><li>- Kenya opposed this proposal and submitted a counter proposal for this threshold to be lowered to Eur 250 million. This would bring in more MNEs within the scope of the new rules and give developing countries more opportunities to receive the reallocated profits.</li></ul>   |

# Main Areas of concern for Kenya

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|---|--|---|
| 3 | In order for a market jurisdiction to be eligible to receive the reallocation of the residual profits, the MNE has to derive at least Eur 1 million of revenue from that jurisdiction. | <ul style="list-style-type: none"><li>- A lower threshold of Eur 250 million was set for smaller jurisdictions with GDP lower than Eur 40 billion.</li><li>- The rationale for this was to only capture the MNEs that participate in a sustained and significant manner in the economic life of the market jurisdiction.</li><li>- Kenya opposed this proposal because it would once again deny many developing countries the right to receive the reallocated profits.</li><li>- The revenue amounts that would be considered insignificant by MNEs could be very significant for most developing countries which should be given the right to receive the reallocated profits that were partially derived from their jurisdictions.</li></ul> |
| 4 | The OECD proposed a global minimum tax rate of 15% which MNEs have to pay.   | <ul style="list-style-type: none"><li>- Kenya considers this rate to be low and proposed a higher rate of 20%.</li><li>- This higher tax rate would achieve the aim of preventing a race to the bottom especially among African countries where the average corporate tax rate is about 27%.</li></ul>  |

# Way Forward

KRA is still actively participating in deliberations with the OECD in order to find common ground.

# Opportunity For a Continental Cooperative Framework To Address Tax Challenges In The Continent

- Encourage Africa Countries to sign and ratify MAC
- Implementing AEOI.
- Continental Tax Dialogue - Africa continental platform for policymakers and coordinated and formidable African voice in the international tax arena.
- Harmonised African position on the approach toward taxing digital MNEs operating on the continent and ensure economy.
- African countries to invest in appropriate technologies for tracking and tracing digital transactions.
- Leveraging on existing data, especially that held by telecom companies and other internet service providers as well as exploiting the emerging technologies such as blockchain technologies could help governments to automate transactions in the economy.
- Building the capacity of tax administrators and officers.



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