



Policy Brief

Bank Secrecy in Egypt: Amendment of the Unified Tax Procedures Law

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Introduction

On 18 December 2022, a draft law was passed by the House of Representatives amending article 78 of the Unified Tax Procedures Law. The amendment would add a paragraph to article 78 allowing the Egyptian Tax Authority to obtain information on the personal accounts of the banks' clients for the purpose of international tax agreements concluded between Egypt and other countries.

The background behind this amendment, its causes and impact will be addressed here.

I. Background

- Egypt has joined the Global Forum on Transparency and Exchange of Information for Tax Purposes (henceforth: The Global Forum) in August 2016 with the purpose of developing its legal framework to be able to comply with global standards on the exchange of information (EOI) for tax purposes.
- With more than 165 members, the Global Forum is the leading international body working on the implementation of global transparency and exchange of information standards around the world. Since the G20 declared the end of banking secrecy in 2009, the international community has achieved remarkable success in the fight against offshore tax evasion. Working through the Global Forum, countries have implemented robust standards that have prompted an unprecedented level of transparency in tax matters.
- Currently, 33 African countries are members of the Global Forum (+16 since 2014). African countries represent 20 percent of the Global Forum membership.
- The Global Forum's aim is to ensure that all jurisdictions adhere to the same high standard of international co-operation in tax matters. This is done through a robust monitoring and peer review process to which Egypt will also be subject.

II. Implementation of International Standards of Tax Transparency and Peer Reviews

- All Global Forum members, including Egypt, are committed to implementing the international standard of exchange of information on request (EOIR) and automatic exchange of information and are required to undergo a peer review to assess its effective implementation. The EOIR provides for international exchange on request of foreseeably relevant information for the tax administration or enforcement of the domestic tax laws of a requesting party.

- All members have agreed to have their implementation of the EOIR standard assessed by peer review. In addition, non-members that are relevant to the Global Forum’s work are also subject to review.
- The peer review process is designed to assess both the legal and regulatory framework and the practical implementation of the standards and to identify any areas of the legal or practical implementation that have gaps and require improvement, and thus ensure a level playing field.
- Peer reviews are undertaken based on agreed terms of reference and methodology of the Global Forum. The outcome of this process is the assignment of an overall rating to the jurisdiction. Four distinct ratings can be assigned to a jurisdiction once it has undergone a full peer review:
 - **Compliant:** The EOIR standard is implemented. This rating can be granted even if a few recommendations were issued, to the extent that no material deficiencies were identified.
 - **Largely Compliant:** The EOIR standard is implemented to a large extent, but improvements are needed. Some deficiencies identified are material but have a limited impact on EOIR.
 - **Partially Compliant:** The EOIR standard is only partially implemented. At least one material deficiency, which has had—or is likely to have a—significant effect on EOIR in practice, has been identified.
 - **Non-Compliant:** Fundamental deficiencies in the implementation of the EOIR standard have been identified.
- The reviews are generally conducted as separate reviews for Phase 1 (review of the legal framework) and Phase 2 (review of EOIR in practice), but the EOIR reviews commencing in 2016 combine both Phase 1 and Phase 2 aspects into one review.
- Final review reports are published, and reviewed jurisdictions are expected to follow up on any recommendations made. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

III. Issuing Ratings

- Assigning ratings to assessed jurisdictions is the last step of the review process.
- The ratings assigned are based on the seriousness of the deficiencies identified during the review process and are accompanied by recommendations to the jurisdictions to improve their legal framework or effectiveness in practice.
- Ratings can be improved over time when a jurisdiction effectively responds to the recommendations made (and could be downgraded when a step back is identified). Ratings have so far only been issued in relation to the EOIR Standard.
- When combined with the publication of the results of the reviews, including the ratings, there is a reputational impact encouraging any recommendations to be addressed.
- Furthermore, the proper implementation of the standards assures international investors that the jurisdictions in which they are investing have a sound regulatory framework to ensure tax compliance, with some development banks making their investments conditional on positive outcomes from the Global Forum's peer review processes. The G20, the European Union and others also use the results of the Global Forum peer reviews when establishing their related policies.

IV. Consequences and Impact

A. Consequences of failing to comply with the EOI standards:

- Membership of the Global Forum and implementation of international standards carry reputational advantages, which is an important consideration for inward investors.
- In 2016, both the G20 (through the OECD) and the European Union (EU) developed lists of jurisdictions that are non-cooperative with respect to tax standards. The G20 issued its list, which is limited to tax transparency, in July 2017 and the EU published its list in December 2017, which goes beyond tax transparency. Regarding tax transparency criteria used by the G20 and the EU, although there are some differences, they both fully rely on the work of the Global Forum and its ratings.
- Several international financial institutions incorporate the results of the Global Forum peer reviews into their policies determining the routing of investments (e.g., the Council of Europe Development Bank, the European Bank of Reconstruction and Development, the European Investment Bank and the IFC, a member of the World Bank Group). **All these**

international organisations restrict the routing of investments through jurisdictions that have been found to be “Non-Compliant” or “Partially Compliant” in their peer review for EOIR.

- Jurisdictions failing to meet the transparency criteria are likely to be subject to defensive measures (e.g., special withholding taxes, disallowing deductions or credits, denial of benefits, etc.) that will impact investment decisions and create uncertainties for economic operators. It is also likely that international financial institutions will also consider these developments in their policies.

V. Egypt’s Position Compared to the African Countries.


As of 9 November 2022, more than 120 members of the Global Forum members (out of 161) have been reviewed in the second round of EOIR peer reviews and the ratings assigned are generally very good (Ref. 2022 GLOBAL FORUM ANNUAL REPORT – pages 41 – 43)

Exchange of Information on Request Schedule of Peer Reviews 2022-2024

2022				2023				2024			
Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
Albania	Argentina Phase 2	Anguilla Suppl.	Bulgaria	Botswana Suppl.	Bosnia and Herzegovina	Azerbaijan	Benin	Chad	Eswatini	Cabo Verde	Algeria
Czech Republic	Belize	Antigua and Barbuda Phase 2	Egypt	Cameroon	Ecuador Phase 2	Colombia	Burkina Faso	Niger	Jordan	Guinea	Cook Islands Phase 2
Faroe Islands	Greenland	Dominica Suppl.	Kenya Phase 2	Georgia	Grenada	Djibouti	Cambodia	Niue	Montserrat	Mali	
Nicaragua*	Lesotho Phase 1	Latvia	Malta Suppl.	Israel Phase 2	Lithuania	Guyana	Côte d'Ivoire Phase 2	New Caledonia**	Oman	Namibia	
Nigeria	Paraguay Phase 1	Serbia	Mauritania Phase 1	Romania	Moldova Phase 2	Senegal	Honduras	•	Viet Nam	Palau	
South Africa Combined	St Vincent and the Grenadines	Seychelles Suppl.	Pakistan Phase 2	Sint Maarten Phase 2	Mongolia	Vanuatu Suppl.	Madagascar				
	Togo Phase 1	Sweden Phase 2	Poland Phase 2	Tanzania Phase 2	Montenegro		Rwanda				
	(Ukraine Phase 2)	Thailand		Trinidad and Tobago	Uganda						

Source : <https://www.oecd.org/tax/transparency/documents/schedule-of-reviews.pdf>

Egypt’s Global Forum Membership Current Status

Jurisdiction	Year	OVERALL RATING	A1 Ownership & identity information	A2 Accounting information	A3 Banking information	B1 Access to information	B2 Rights & safeguards	C1 EOI mechanisms	C2 Network of EOIR mechanisms	C3 Confidentiality	C4 Rights & safeguards	C5 Quality & timeliness of responses
 Egypt	n/a	Not yet reviewed	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

Source: Global Forum on Transparency and Exchange of Information for Tax Purposes • Get the data • Created with Datawrapper

Exchange of information on request (EOIR)

Global Forum membership	yes
EOIR rating round 1	not reviewed
EOIR rating round 2	scheduled Q4 2022
Mutual Administrative Assistance Convention	no

With respect to EOIR rating round 2, view the complete Schedule of Reviews for more information: <https://oe.cd/4dy>

Automatic exchange of information (AEOI)

Commitment to AEOI (CRS)	not committed to a specific date
CRS MCAA signed	not applicable
Review of the AEOI legal frameworks	not applicable
Initial review of effectiveness in practice of AEOI	not applicable
Mutual Administrative Assistance Convention	no

With respect to the Commitment to AEOI (CRS), the Global Forum on Transparency and Exchange of Information for Tax Purposes endorsed the AEOI Standard in 2014. As a Global Forum member, this jurisdiction is committed to the implementation of the Standard. However, this jurisdiction has not yet been required to commit to a date to commence exchanges and has not yet decided on such a date.

BEPS

Inclusive Framework on BEPS membership	yes
Two-pillar plan to address the tax challenges arising from the digitalisation of the economy (October 2021)	participates in agreement
Existence of harmful tax regimes (Action 5)	not harmful (no harmful regime exists)
Exchange of information on tax rulings (Action 5)	reviewed/recommendations made
Preventing treaty abuse (Action 6)	2022 review ongoing
CbC – Domestic law (Action 13)	legal framework in place
CbC – Information exchange network (Action 13)	CbC MCAA not signed
Effective dispute resolution (Action 14)	review to be scheduled/deferred
Multilateral Instrument (Action 15)	in force

A. Egypt's Position

- Most of the elements of an EOI infrastructure are in place (delegation of the competent authority function, EOI unit and tools) and the drafting of an EOI manual is in progress.
- A wide EOI network is in place but not fully in line with the international standards. Egypt should have in place EOI mechanisms providing for effective EOI and allowing for exchange of information on request where it is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction. This can be done by becoming a party to the Convention on Mutual Administrative Assistance in Tax Matters (MAAC).
- Technical assistance by the Global Forum on Transparency and Exchange of Information¹ is provided for the implementation of the EOIR standard. Technical assistance also covers the process to become a party to the MAAC.

Mutual Administrative Assistance in Tax Matters (MAAC)

- The Convention on Mutual Administrative Assistance in Tax Matters ("MAAC") was developed jointly by the OECD and the Council of Europe in 1988 and amended by Protocol in 2010.
- MAAC is the most comprehensive multilateral instrument available for all forms of tax co-operation to tackle tax evasion and avoidance. It facilitates international co-operation for a better operation of national tax laws, while respecting the fundamental rights of taxpayers. It provides for all possible forms of administrative co-operation between states in the assessment and collection of taxes.
- This co-operation ranges from exchange of information, including automatic exchanges, to the recovery of foreign tax claims.
- Since 2009, the G20 has consistently encouraged countries to sign the Convention stating, "All jurisdictions should sign and ratify the multilateral Convention on Mutual Administrative Assistance in Tax Matters". The Convention requires the Competent Authorities of the Parties to the Convention to mutually agree on the scope of the automatic exchange of information and the procedure to be complied with.

¹ <https://www.oecd.org/tax/transparency/>

B. Egypt's Position Regarding MAAC

- While Egypt is not party to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAAC), it expressed interest to join the Convention.
- Egypt would benefit from engaging in mutual exchange of information with other countries by signing the Convention on Mutual Administrative Assistance in Tax Matters.
- Currently, strict bank secrecy legislation prevents the tax administration from accessing such information, which is a requirement under the international agreements. The amendment of the unified tax procedures law is a milestone and will enable Egypt to benefit from information exchange with other countries.

Benefits of Joining the MAAC to Egypt (Report on Tax transparency in Africa 2022)

- MAAC is the most comprehensive multilateral instrument available for all forms of tax cooperation to tackle tax evasion and avoidance.
- 145+ jurisdictions currently participate in the MAAC. Joining MAAC is the fastest way of expanding the network of EOI relationships: African countries, which are signatories to the MAAC, have a larger network of EOI partners compared to those who are solely reliant on bilateral agreements.
- Addressing bank secrecy should allow Egypt to sign the “(MAAC)”. This will permit Egypt to access an impressive network, equivalent to over 6,000 bilateral agreements, allowing countries to obtain tax-related information from participating jurisdictions around the world, including all international financial centres.
- In conclusion, by effectively implementing the EOI standards, Egypt would significantly strengthen its tax system, combat tax evasion, address the informal sector, enhance its domestic revenue mobilisation and its global standing while avoiding the reputational impacts of a negative rating and its correlative potential consequences.

Importance of Undertaking the Peer Review (Consequences)

- As previously mentioned, jurisdictions failing to meet the transparency criteria are likely to be subject to defensive measures (e.g., special withholding taxes, disallowing deductions or credits, denial of benefits, etc.) that will impact investment decisions and create uncertainties for economic operators. International financial institutions will also consider the rating.

- Egypt should have undertaken the peer review in previous years, and it was postponed more than once. However, the peer review will commence in December 2022.
- The law amendment aims to prove that Egypt is committed to the international standards of transparency and exchange of information including the exchange of information on bank accounts and bank transactions.

VI. Recommendations

For the proper implementation of the law amendments, it is recommended that:

- the Executive Regulations of the Unified Tax Procedures Law be amended to determine the procedures of applying the amendments to the Law through clear, transparent, and not-open-for interpretation or abuse procedures;
- the competent authority authorized to exchange information be determined and equipped with the right security safeguards to protect the taxpayer's confidentiality. Staff of EOI competent authority should receive extensive training and be equipped with robust IT infrastructure to provide and exchange information in secured electronic means.
- a joint committee between the ETA and the Central Bank of Egypt (CBE) be formed for monitoring the implementation of EOI procedures and ensuring that the law is properly applied.

In conclusion

- The exchange of information issue is not a new topic; it is already embedded in the double tax treaties.
- In accordance with article (26) of Double Taxation treaties signed between Egypt and several states (now 60 tax treaties), competent authorities of the contracting states should exchange related information necessary to apply the provisions of the treaty and/or the provisions of the domestic laws of contracting states.
- Also, in accordance with article (78) of the Unified Tax Procedures Law issued by the Egyptian Tax Authority (ETA), Exchange of Information (EOI) for tax purposes should be applied between tax jurisdictions with which Egypt has tax treaties.
- Given that domestic laws of most states contracting with Egypt allow the disclosure of bank information for the purposes of exchange of information in application of the

provisions of tax treaties into which the contracting state enters, Egypt—according to the principle of reciprocity—should amend the Egyptian domestic law with a view to allowing the disclosure of bank information for international tax treaties.

- Furthermore, in case Egypt has not amended the domestic law to allow disclosure of bank information for international tax purpose, the “Peer Review” scheduled for the fourth quarter of 2022 would likely result in Egypt getting as a “Non-Compliant rating”.
- In brief, exchange of tax information with double tax treaties’ partners is stipulated in both the Unified Tax Procedures Law and bilateral treaties. The only addition, according to the recent amendment, was the possibility of disclosure of bank information in application of Egypt’s commitment to the Global Forum on transparency and exchange of information for tax purposes.