

# Exchange of Information and Tax Transparency

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# Introduction

- ▶ Tax evasion and avoidance is a global concern
- ▶ Global consensus to tackle tax avoidance and prevent treaty abuse
  - ▶ Action 6 of BEPS Project – minimum standard
  - ▶ MLI, PPT and LOB
  - ▶ Specific provisions to prevent treaty abuse
- ▶ Modification of Indian Treaties, enactment of GAAR and POEM
- ▶ International cooperation necessary to prevent tax avoidance
  - ▶ Powers of tax authorities end at their borders
  - ▶ EOI provisions are extension of investigative arm
  - ▶ Not only for tax evasion – undisclosed bank accounts
  - ▶ Wide range of administrative assistance – not only on request basis
- ▶ Creation of deterrence

# Global Consensus on Transparency

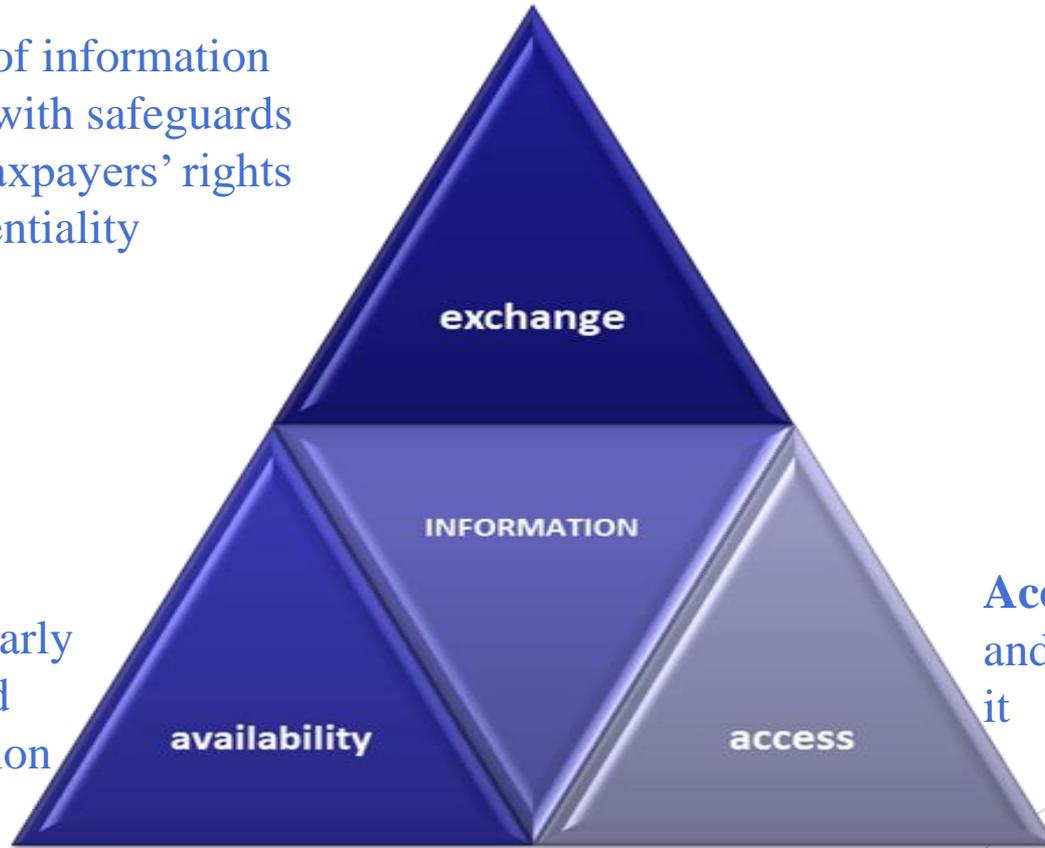
- ▶ International Taxation Dilemma (Cross-border trade and commerce)
  - ▶ Proper distribution rights between source and residence country to avoid double taxation
  - ▶ Cooperation amongst tax officials for administration and enforcement of domestic laws – earliest model treaties had provisions for AEOI
- ▶ Jurisdictions unlikely to provide assistance unless there is a legal basis
  - ▶ Against public policy
  - ▶ Prevented by domestic laws e.g. Article 8 of European Convention on Human Rights
  - ▶ Challenged in their Courts
- ▶ Legal basis – DTAA/TIEA/MAC/SAARC Agreement
- ▶ DTAAAs have Article 26 but dormant
- ▶ No TIEA/MAC

## Global Consensus on Transparency (contd.)

- ▶ Changed after financial crisis of 2009, G20 London “Era of Bank Secrecy is Over”
- ▶ Restructuring of Global Forum on Transparency and Exchange of Information for Tax Purposes
- ▶ Standards of transparency developed
  - ▶ Availability of Information
  - ▶ Access to Information
  - ▶ Exchange of Information
- ▶ Peer reviews and ratings
- ▶ Significant changes in legislative and administrative practices by jurisdictions
- ▶ “Supply side” adequate – lot of work required on “demand side”

# International Standard on EOIR

**Exchange** of information  
on request with safeguards  
to protect taxpayers' rights  
and confidentiality



**Availability** of  
information particularly  
accounting bank and  
ownership information

**Access** to information  
and powers to obtain  
it

# Availability of Information

- ▶ Ownership and Identity Information
  - ▶ Legal and beneficial ownership of companies, partnerships, trusts, foundations, collective investment funds, nominees
  - ▶ Beneficial ownership as per FATF definition – natural person(s) who ultimately owns or control a customer and/or on whose behalf a transaction is being conducted
  - ▶ Trusts – governed by the laws of the jurisdiction, administered in the jurisdiction or where the trustee is resident
- ▶ Means for Satisfying the Requirements
  - ▶ Corporate and other Registry Authorities at the time of registration and on subsequent dates
  - ▶ Listing Rules of Stock Exchanges
  - ▶ Information with Tax Authorities
  - ▶ AML/CFT Regulations as modified by Global Forum requirements as applicable to Tax and Company Service Providers (TCSPs) – most important source of information in offshore financial centres
- ▶ Adequate Enforcement Provisions
- ▶ Provisions for Monitoring and Reviewed that actually done in practice

# Availability of Information

## ▶ Reliable Accounting Records

- ▶ Explains the financial position e.g. bank account details in other jurisdictions (example of BVI company and bank account in Singapore)
- ▶ Underlying documentation
- ▶ Five Years
- ▶ Source of formation is company and commercial laws, taxation laws and also regulations applicable to TCSPs
- ▶ Monitoring and enforcement provisions

## ▶ Banking Information

- ▶ Financial and transactional information for five years
- ▶ Legal and beneficial ownerships of the account
- ▶ Beneficial ownership through due diligence requirements

# Access to Information

- ▶ Competent Authority's ability to obtain and provide information
  - ▶ Within territorial jurisdiction irrespective of any legal obligation to maintain secrecy – also if available for other purposes e.g. FATF
  - ▶ Control in a wider sense – legal right or authority – possession of records and information e.g. by lawyers/service providers
  - ▶ Information may be available with tax authorities, other Govt. authorities, with taxpayers, with Banks and FIs, with nominees and trustees, with Trust and Company Service Providers (TCSPs)
  - ▶ Use of information gathering mechanism and not just the information which have been furnished
    - ▶ Direct power of Competent Authorities
    - ▶ Enquiries through Tax Authorities
- ▶ Notification requirements and rights and safeguards
  - ▶ Right to appeal not denied
  - ▶ Exceptions if investigation is likely to be adversely affected or when information is urgently required

# Exchange of Information

- ▶ Treaties as per international standards
  - ▶ Banking information
- ▶ EOI with all relevant partners
- ▶ Confidentiality
- ▶ Rights and safeguards of taxpayers and third parties
- ▶ Timeliness
  - ▶ Submission within 90 days or provide updates
- ▶ Appropriate organizational processes and resources for quality of requests and quality of response

# Exchange of Information Mechanisms

- ▶ Legal obligation for providing information
  - ▶ Information is “foreseeably relevant” for administration or enforcement of domestic laws of the requesting country
  - ▶ Confidentiality and use of information only for tax purposes
- ▶ Double Taxation Avoidance Agreements (DTAAs)
  - ▶ Article 26 of the OECD and UN Model
  - ▶ Not restricted by Article 2 of the DTAA – covers indirect taxes also
- ▶ Tax Information Exchange Agreements (TIEAs)
  - ▶ Normally covers direct taxes
- ▶ Multilateral Convention on Mutual Administrative Assistance in Tax Matters
  - ▶ 124 countries/jurisdictions have joined
  - ▶ Covers a wide range of taxes including indirect taxes
- ▶ The Competent Authority for tax treaties
  - ▶ Joint Secretary (FT&TR-I) for Europe, North America including Caribbean
  - ▶ Joint Secretary (FT&TR-II) for Rest of the World

# Multilateral Convention

- ▶ Article 2(1)(a)
  - ▶ Taxes on income or profits
  - ▶ Taxes on capital gains
  - ▶ Taxes on net wealth
- ▶ Article 2(1)(b) – reservations possible but not many
  - ▶ Taxes on income, profits, capital gains or wealth imposed by political subdivisions or local authorities
  - ▶ Social security contributions
  - ▶ Taxes in other categories (except customs) including
    - ▶ estate, inheritance or gift taxes,
    - ▶ taxes on immovable property,
    - ▶ general consumption taxes, such as value added or sales taxes,
    - ▶ specific taxes on goods and services such as excise taxes,
    - ▶ taxes on the use or ownership of motor vehicles,
    - ▶ taxes on the use or ownership of movable property other than motor vehicles,
    - ▶ any other taxes
  - ▶ Includes the above taxes imposed by political sub-divisions and local authorities

# Peer Review by Global Forum

- ▶ First Round of Peer Reviews from 2010 to 2016
  - ▶ Review of Global Forum members (153 in number) and all other “jurisdictions of relevance”
  - ▶ Participation on Equal Footing
  - ▶ Level Playing Field
  - ▶ Two Phase review
  - ▶ Phase 1: Legal and regulatory framework
    - ▶ In Place, In Place but need improvements, Not in Place on ten essential elements
    - ▶ Recommendation for going to Phase 2
  - ▶ Phase 2: Practical Implementation (onsite visit)
    - ▶ Ratings on ten essential elements and overall rating
    - ▶ Compliant, Largely Compliant, Partially Compliant, Non-compliant
- ▶ Fast Track Review Process
  - ▶ For those lacking in progress completed before G20 meeting in July 2017
  - ▶ Provisional Rating
  - ▶ Overall Ratings upgraded

# Peer Review by Global Forum (contd.)

- ▶ Completion of First Round of Review
  - ▶ Non-compliant - Trinidad and Tobago
  - ▶ Partially compliant – Anguilla, Curacao, Indonesia, Marshall Islands, Sint Maarten, Turkey
- ▶ Results – compliance with global standards
  - ▶ Removal of strict bank secrecy laws
  - ▶ Elimination of bearer shares
  - ▶ Improved access to accounting records
  - ▶ More rigorous oversight and enforcement of obligations to maintain information
  - ▶ 124 jurisdictions joined Multilateral Convention
- ▶ Second round of Reviews from 2016
  - ▶ Combine Phase 1 and Phase 2 – Ratings assigned
  - ▶ Improved Standards
  - ▶ Focus on Beneficial Ownership
  - ▶ Quality of Requests made

# Key Concepts on EOI

- ▶ Legal Basis for EOI
- ▶ Article 26(1) of the DTAA
  - ▶ 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
  - ▶ Not restricted by Article 1 and Article 2
- ▶ Similar provisions in TIEA and Multilateral Convention

# Key Concepts on EOI (contd.)

- ▶ Tax authorities during inquiry/investigation may require information which is available in foreign jurisdictions
  - ▶ Assessing Officers making inquiry under section 142(2)
  - ▶ Officers of the Investigation Wing
  - ▶ Transfer Pricing Officer for determination of Arm's Length Price
  - ▶ Officers of the International Taxation Wing e.g. for verifying the correct withholding (Form 15CA)
  - ▶ Inquiry by CIT(A) or DRP either directly or through directions to AO for purposes of deciding appeals or objections
  - ▶ By indirect tax authorities also

# Key Concepts on EOI (contd.)

- ▶ Request can be made if foreseeably relevant for
  - ▶ Carrying out provisions of DTAA
  - ▶ Administration/Enforcement of domestic laws
- ▶ Carrying out provisions of DTAA
  - ▶ In many old treaties (e.g. in Switzerland before 7.10.2011) only this provision
  - ▶ Quite useful in many cases particularly by International Taxation Wing
  - ▶ Examples
    - ▶ Lower rate of withholding on interest/royalty if the person is the beneficial owner
    - ▶ Mismatch in the quantum of payment made by a Permanent Establishment to Head Office
    - ▶ Transfer Pricing

# Key Concepts on EOI (contd.)

- ▶ Administration/Enforcement of domestic laws
  - ▶ In all new (after 2009) or modified treaties and also in Multilateral Convention and SAARC Agreement
  - ▶ Can be used to receive information purely for the purposes of tackling domestic tax evasion
  - ▶ Most useful for normal assessment charges also
- ▶ EOI only through Competent Authority
- ▶ Mandatory Exchange
- ▶ Foreseeable Relevance – A priori assessment – resolution of conflict - No Fishing Expedition
- ▶ Exchange of Past Period Information
- ▶ Limitation on Exchange of Information

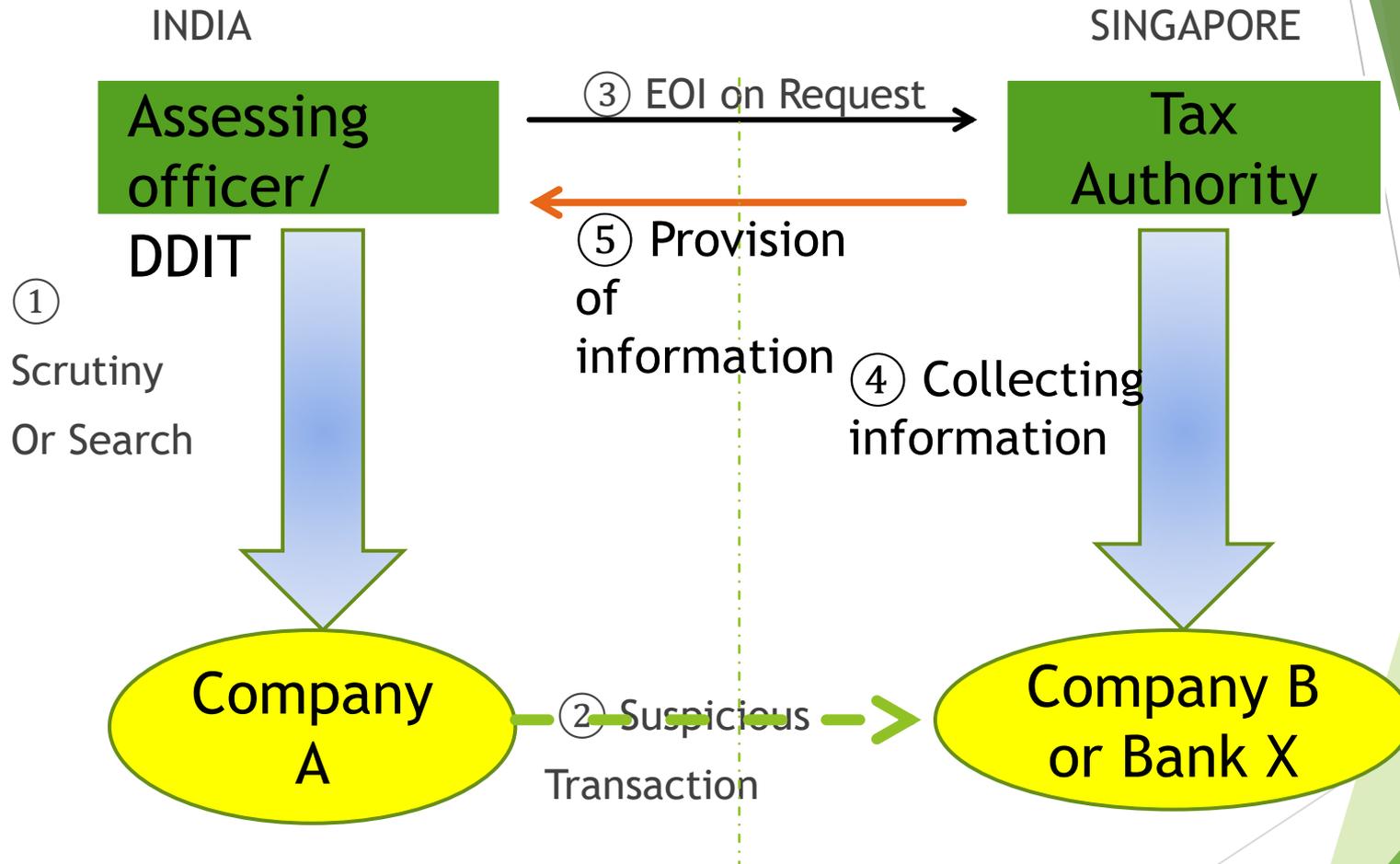
# Confidentiality Provisions

- ▶ Confidentiality Provisions are Legal Obligations
  - ▶ Information to be treated as confidential in accordance with domestic law
  - ▶ Can be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment/collection/enforcement/appeal of taxes
  - ▶ Can be disclosed in public court proceedings
    - ▶ Rationale - innocent must be protected – no name and shame
    - ▶ Discretion of courts for in-camera proceeding
- ▶ Domestic law provisions
  - ▶ Section 138
  - ▶ Exception provided in section 138 not applicable to treaty exchanged information – Azadi Bachao Andolan
  - ▶ Section 280 – cognizable offence

## Confidentiality Provisions (contd.)

- ▶ No Right to Information disclosure
- ▶ Disclosure to oversight bodies
- ▶ Disclosure to taxpayers and their proxies
- ▶ Disclosure for other purposes with consent of supplying State
- ▶ MAC – extra layer of confidentiality – protection of personal data in compliance with the safeguards specified by the supplying State in accordance with its domestic laws
  - ▶ MCAA for Financial Account Information as per CRS on AEOI
  - ▶ CbC-MCAA for Automatic Exchange of Country-by-Country Reports

# Procedural Guidelines on EOIR



# Success Stories (Para 3.3.3 of Manual issued by CBDT)

- ▶ Brokerage and Commission claimed to have been paid to foreign companies not for purpose of business
- ▶ Gifts from foreign persons – no capacity
- ▶ Statement of credit cards issued in foreign countries – details obtained during survey
- ▶ Narration of bank statements establishes unaccounted bank accounts in other countries
- ▶ Commission received from foreign countries not disclosed
- ▶ Search operation – information about trading in commodities
- ▶ Beneficial owners of trusts and companies established
- ▶ KYC details obtained

# Other forms of Information Exchange

- ▶ Automatic Exchange of Information
- ▶ Spontaneous Exchange of Information
  - ▶ Compulsory spontaneous exchange of taxpayer-specific rulings giving rise to BEPS concerns (Action 5)
  - ▶ Directions in Manual on Exchange of Information to exchange information which is of relevance to other tax authorities
- ▶ Tax Examination Abroad
  - ▶ Active vs. Passive
- ▶ Simultaneous Tax Examination
  - ▶ Simultaneous but independent
  - ▶ Transfer Pricing cases – OECD Manual on TP
- ▶ Industry-wide Exchange of Information
- ▶ Joint Audits
  - ▶ Join together to form a single audit team
- ▶ Service of Notice

# FATCA and AEOI

- ▶ Limitation on Exchange of Information on Request
  - ▶ Commencement of Investigation
- ▶ Global consensus towards Automatic Exchange of Information (AEOI)
- ▶ Concerns in USA on Offshore tax evasion (\$100 billion tax revenue loss) led to enactment of FATCA
  - ▶ 30% withholding tax on US Source Payments unless FIs enter into agreement with US IRS to provide information about accounts held by them by USA persons or entities controlled by US persons
  - ▶ Reporting of foreign accounts and assets in new Form 8938
- ▶ Transmission of client confidential information not permitted under domestic laws of concerned countries
  - ▶ Inter Governmental Agreements
  - ▶ Most jurisdictions have signed
  - ▶ Automatic Exchange of Information – not fully reciprocal

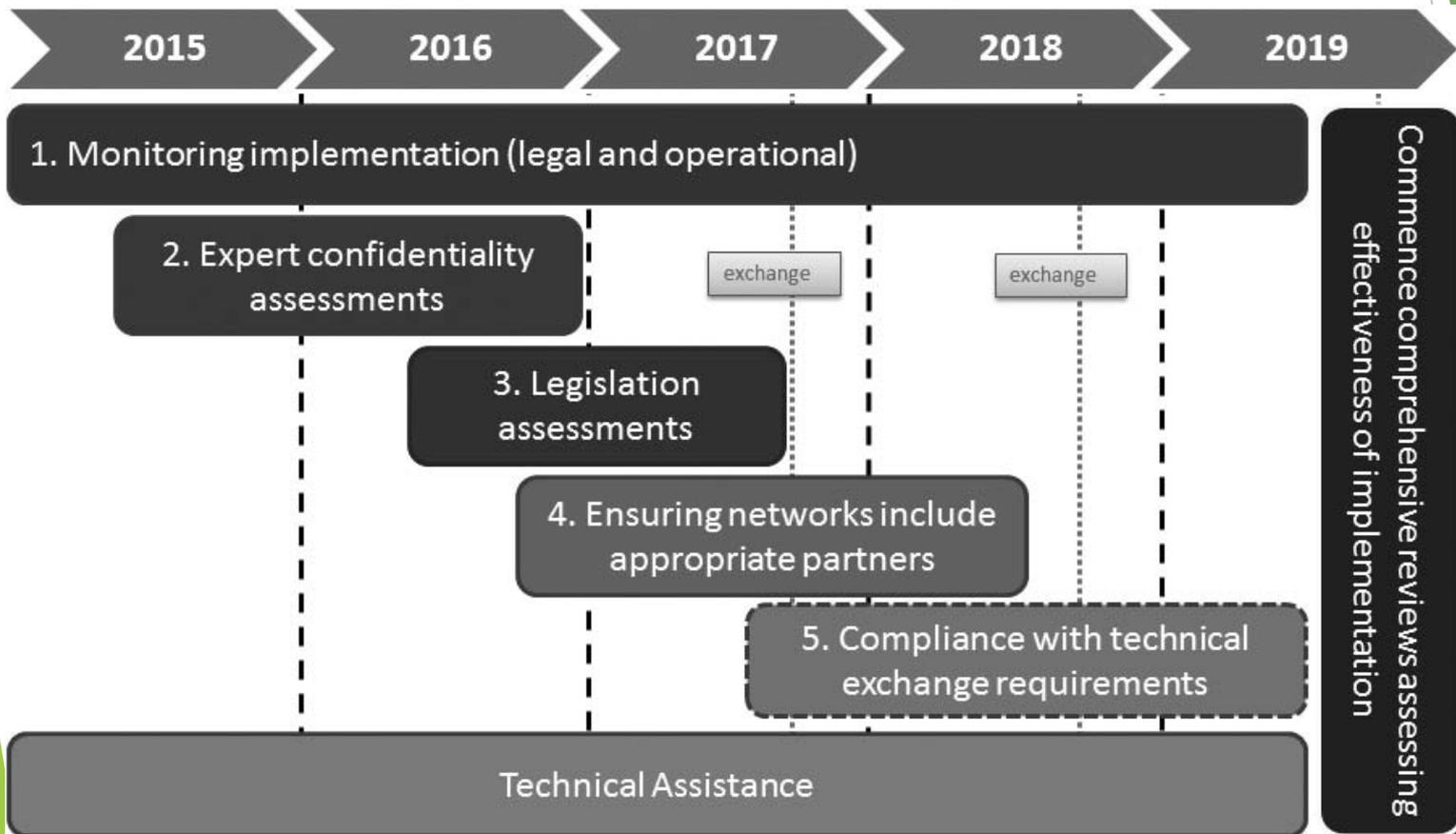
# FATCA and AEOI (contd.)

- ▶ Leveraging on FATCA - CRS on AEOI developed
  - ▶ FIs of “source” jurisdiction to collect information about tax resident of other countries - to be transmitted through Competent Authority for the purposes of DTAA/Multilateral Convention
  - ▶ Due diligence requirements to identify the real owners
  - ▶ Three dimensions
    - ▶ Wide scope of information reporting – all types of investment income, account balance, sales proceeds from financial assets
    - ▶ Reporting by all financial institutions including brokers, collective investment vehicles and insurance companies
    - ▶ All accounts including accounts held by individuals and entities (shell companies, trusts, foundations) also to report individuals that ultimately control these entities
  - ▶ Global implementation by 2017/2018

# Status of Implementation of CRS on AEOI

- ▶ Implementation mostly through Multilateral Competent Authority Agreement (MCAA) where underlying instrument is MAC – also through DTAA and TIEA
- ▶ 101 jurisdictions have committed
  - ▶ 50 jurisdictions first exchange in 2017
  - ▶ 51 jurisdictions first exchange in 2018
  - ▶ Separate commitment by USA through IGAs
  - ▶ Developing countries which are not financial centres have not been asked compulsorily to commit
- ▶ 80% jurisdictions have put in place the complete domestic legal framework
- ▶ Widespread activation of international legal relationships
- ▶ Common Transmission System (CTS) for transmission of data between tax authorities developed by OECD and adopted by Global Forum members

## Status of Implementation of CRS on AEOI (contd.)



## Status of Implementation of CRS on AEOI (contd.)

- ▶ Monitoring Implementation (legal and operational)
  - ▶ Technical assistance
- ▶ Expert confidentiality assessments
  - ▶ Comprehensive assessments similar to FATCA
- ▶ Legislative assessments
  - ▶ Rule 114F to 114H and Form 61B
- ▶ Ensuring networks with all appropriate partners
  - ▶ Those interested in exchange and satisfy requirements of confidentiality and data safeguard
- ▶ Compliance with technical exchange requirements
  - ▶ FIs report and actually exchanged
  - ▶ Data security, encryption etc.
- ▶ Comprehensive reviews building on these modules from 2019 on effective implementation of AEOI Standards
- ▶ 102 signatories to CRS MCAA
- ▶ CRS Disclosure facility launched in May, 2017 to deal with CRS Avoidance Schemes

## Country-by-Country Reports

- ▶ Mechanism of AEOI is also utilized for automatic exchange of Country-by-Country (CbC) reports required to be filed by MNEs in their country of residence
- ▶ Underlying instrument is DTAA/TIEA (bilateral basis) or MAC (multilateral basis)
- ▶ CbC-MCAA developed with MAC as underlying
- ▶ 72 countries have signed CbC-MCAA
- ▶ USA will be exchanging CbC Reports through bilateral treaties

# Important Links

- ▶ **Interactive Map on Implementation of EOI**

- ▶ <http://www.oecd.org/ctp/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm>

- ▶ **Website of Global Forum**

- ▶ <http://www.oecd.org/tax/transparency/>

- ▶ **Manual on Exchange of Information**

- ▶ <https://www.incometaxindia.gov.in/Documents/exchange-of-information/EOI-Manual-2015.pdf>

# Schedule FA and Black Money Act

- ▶ Deterrence only if reporting requirements under domestic law and penalty/prosecution in cases of misreporting
- ▶ Schedule FA of the Return Form by **residents** even if no taxable income
  - ▶ details of foreign bank accounts held (including any beneficial interest)
  - ▶ details of financial interest in any entity held (including any beneficial interest)
  - ▶ details of immovable property held (including any beneficial interest)
  - ▶ details of any other capital asset held (including any beneficial interest)
  - ▶ details of accounts in which the taxpayer has a signing authority and
  - ▶ details of trusts created under the laws of a country outside India in which the taxpayer is a trustee, beneficiary or settler.
- ▶ Penalty of Rs. one million if incorrect information filed under Black Money Act
- ▶ Criminal liabilities under the Black Money Act
- ▶ Prosecution for false verification of the Income Tax Return

## Schedule FA and Black Money Act (contd.)

- ▶ The key requirement of the concept of “beneficial owner” in schedule FA is that the individual concerned must have provided the consideration for the asset, directly or indirectly, for the immediate or future benefit, direct or indirect, of himself or any other person. In addition, the reporting needs to be done in schedule FA if the Indian resident taxpayer is the beneficiary of the asset, i.e., where he has derived benefit from the asset during the previous year, although the consideration for such asset has been provided by any other person.

## Schedule FA and Black Money Act (contd.)

- ▶ The concept of beneficial owner of anti-money laundering and terrorist financing laws have been captured and have been further expanded, through the reporting requirements of “financial interest” in any entity held, including any beneficial interest, at any time during the previous year. It has been stated in the instructions to filing schedule FA that the “financial interest” would include, but would not be limited to the following:
  - ▶ if the taxpayer is the owner of record or holder of legal title of any financial account, irrespective of whether he is the beneficiary or not.
  - ▶ if the owner of record or holder of title is one of the following:
    - ▶ an agent, nominee, attorney or a person acting in some other capacity on behalf of the taxpayer with respect to the entity.
    - ▶ a corporation in which the taxpayer owns, directly or indirectly, any share or voting power.
    - ▶ a partnership in which the taxpayer owns, directly or indirectly, an interest in partnership profits or an interest in partnership capital.
    - ▶ a trust of which the taxpayer has beneficial or ownership interest.
    - ▶ any other entity in which the taxpayer owns, directly or indirectly, any voting power or equity interest or assets or interest in profits.

# Offshore Leaks

## ▶ UBS Scandal 2007

- ▶ UBS paid US\$ 780 million in taxes and fine
- ▶ Mr. Bradley Birkenfield served 40 months in prison also given award of US\$ 104 million

## ▶ Liechtenstein – LGT Trusts – 2008

- ▶ 1,400 accounts sold to Germany, USA etc.
- ▶ Germany gave information about 28 account holders to India
- ▶ US investigated 100 cases – documented the modus operandi

## ▶ FATCA born on account of investigation in UBS and LGT cases in USA

## ▶ Swiss Leaks

- ▶ Mr. Herve Falciani stole HSBC information related to 2006-07 and sold to France
- ▶ 628 names given to India by France
- ▶ Gave information to ICIJ in 2015 – as per Indian Express 1,195 Indians in the list – top 100 names on website of Indian Express even today

# Offshore Leaks (contd.)

- ▶ ICIJ Offshore Leaks in 2013
  - ▶ 120,000 offshore entities and trusts belonging to individuals and companies in 170 countries
  - ▶ Indian Express reports that it contains 612 Indian names (available on website of Indian Express)
- ▶ Lux Leaks in November, 2014
  - ▶ Tax rulings giving benefits to companies in Luxembourg
- ▶ Panama Papers in April, 2016
  - ▶ 11.5 million records – 214,000 offshore entities
- ▶ Bahamas Public Registry leaked in September, 2016

# Offshore Leaks (contd.)

- ▶ Helped the investigative agencies and public at large in understanding the role of service providers, lawyers, banks and financial institutions facilitate tax evasion and avoidance
- ▶ How the AML/CFT laws and anti tax evasion laws are circumvented
- ▶ Leaked data itself may not have evidencary value
  - ▶ Many persons may be innocent – unfair for them to be subjected to adverse public scrutiny
  - ▶ Supplemented by documents and information through mechanism of Exchange of Information

# Anatomy of Offshore Tax Evasion

- ▶ Numbered accounts gone long back
- ▶ Three stage process (the days of numbered accounts are long gone)
  - ▶ Creation of a shell company or Trust in jurisdictions such as BVI or Seychelles
  - ▶ Opening accounts with Banks/Financial Institutions in say Switzerland which hold global assets on behalf of their clients (who are nominally in BVI/Seychelles but in reality are elsewhere) as off balance sheet item
  - ▶ Global assets could be mutual funds registered in Luxembourg or PNs invested in India
- ▶ What would be the effect of transparency (on request and on automatic basis) on these structures?
- ▶ What would be the role of investigating agencies?

# Case Study – POEM through EOI

- ▶ High Court of Australia [2016] HCA 45 confirmed the decision of full bench of Federal Court of Australia that the “central management and control” of the companies incorporated outside Australia as per domestic law as also effective management and control as per DTAAAs are in Australia
- ▶ Liable for tax of global income and/or exemption for capital gains in Australia for foreign companies not available

Taxpayer	Incorporation	Amount	Financial Years
Bywater Investments Limited	Bahamas	\$15,658,276.74	2002, 2003, 2004, 2005, 2006, 2007
Hua Wang Bank Berhad	Samoa	\$6,600,368.54	2004, 2006, 2007
Chemical Trustee Limited	UK	\$4,833,259.45	2001, 2002, 2003, 2004, 2006, 2007
Southgate Investment Funds Limited	UK	\$2,914,450.64	2000, 2001, 2002, 2006, 2007
Derrin Brothers Properties Limited	UK	\$9,723,807.23	2003, 2004, 2005

## Case Study – POEM through EOI (contd.)

- Companies were directly or indirectly owned by two Cayman Island Companies JA Investments and MH Investments
- Mr. Peter Borgas, a resident of Switzerland, was the sole shareholder of these companies, he alongwith his wife and son were directors and the Board meeting of the companies were held in Switzerland
- Information received under TIEA between Australia and Cayman Islands showed
  - As per Article and Memorandum of JA Investments and MH Investments
    - Mr. Vanda Russell Gould, an accountant resident in Australia, was “the Appointer” who has the sole powers to appoint the members of the company
    - Members could appoint and remove the directors of the company

## Case Study – POEM through EOI (contd.)

- Information received under TIEA between Australia and Cayman Islands showed (contd.)
  - “Offshore Nominees Ltd.” appointed as a member of the companies by Mr. Gould
  - Nominee Agreement between Offshore Nominees Ltd. and Mr. Gould

“Offshore Nominees hereby declares that it holds the said shares in the company together with all dividends, bonuses and interests therein on behalf of Mr. Gould and will deal with the said shares as Mr. Gould may from time to time direct”
- On the basis of the above and other enquiries done including recording of statements, the Courts held that these companies are resident in Australia
- Information transmission was challenged in courts of Cayman Islands which gave a finding in favor of taxpayer and “prohibited” Australian Courts to use the information but the Australian Courts held that the information can be used

## Case Study – Beneficial Ownership

- The beneficial ownership requirement for availing the treaty benefits in Articles on Dividend, Interest and Royalty is one of the anti-avoidance provisions and it could be effectively employed by tax authorities using the EOI Provisions
- In the case No. A40-241361/15 decided by the Commercial Court of Moscow on 3<sup>rd</sup> March, 2016, it was held that Bank Inteza, a Russian joint stock company, has failed to withhold taxes on interest paid to a "sister" Luxembourg creditor entity, the beneficial owner of which was the Russian Company's Italian parent
- The Court agreed with the tax authorities that the loan had been channelled through the Luxembourg Company in order to be able to apply the more favourable tax treatment of interest at the source of payment contemplated by the DTAA between Russia and Luxembourg

## Case Study – Beneficial Ownership (contd.)

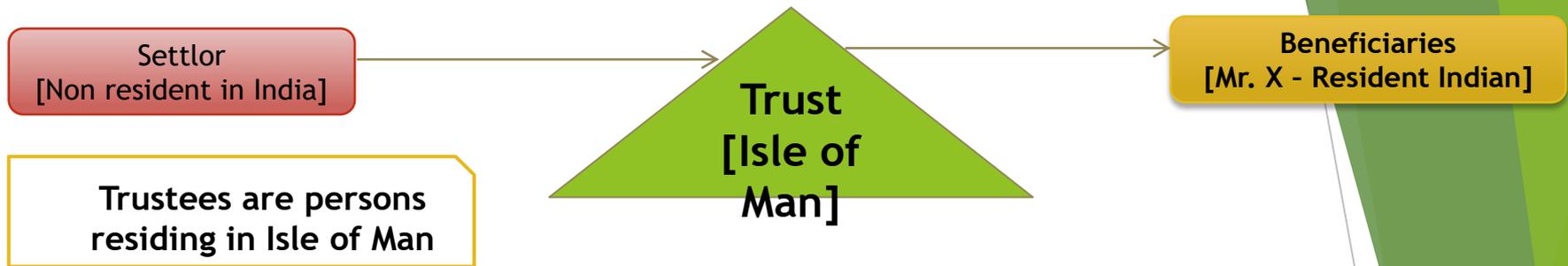
- Information received under EOI from Luxembourg and Italy
  - the terms of the Russian Company's debt obligations to the Luxembourg Company were identical to the Luxembourg Company's debt obligations to the Italian Company, including the amount, currency and term of the debt
  - the purpose of the loans given by the Italian Company to the Luxembourg Company was to finance the Russian Company, which was confirmed by the Luxembourg Company and actual cash flow
  - the Luxembourg Company did not have staff members competent to make independent decisions on issuing loans, for one thing because the most qualified employee was a member of the board of directors of several entities
  - the interest received from the Russian Company was transferred to the Italian Company "immediately almost in full" or was contributed to the Luxembourg Company's equity, from which loans were issued to the Russian Company in subsequent years, which was deemed equivalent to the Italian Company receiving the interest, as the Luxembourg Company was totally owned by the Italian Company

## Case Study – Group Request from Switzerland

- Group request made by Dutch Authorities to Switzerland
- Information about people for whom the following cumulative criteria applied for the period between 1.2.2013 and 31.12.2014
  - the person held one or more accounts with UBS AG
  - the account holder was domiciled and had an address in Netherlands (according to internal sources of Bank)
  - UBS AG had sent a letter to the account holder intending to terminate the business relationship if the account holder either fails to submit the “EU-taxation of savings income – authorization for voluntary disclosure” within a specified deadline or did not prove his tax compliance in any other way
  - the account holder failed to prove his tax compliance in spite of above-mentioned correspondence from UBS AG

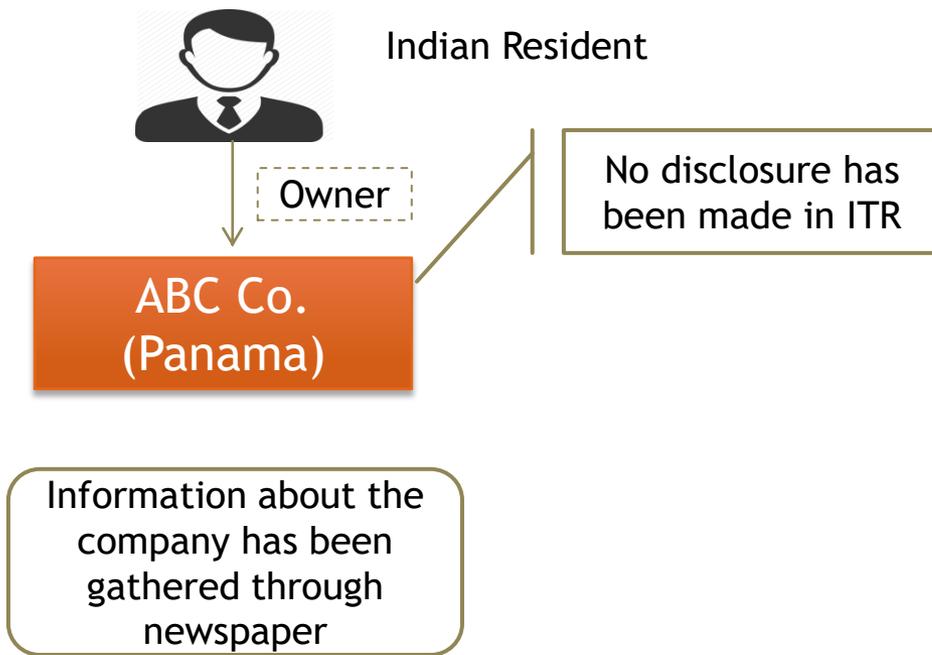
## Case Study – Group Request from Switzerland (contd.)

- DTAA between Netherlands and Switzerland read with Protocol
  - Requesting country has to provide sufficient data to identify the taxpayer, in particular the name and if possible address of the person holding the account
- MoU specifies that the person can also be identified by other means than the name and address
- The Federal Supreme Court (2C\_276/2016) overruled the decision of Federal Administrative Tribunal and held that it is not a fishing expedition which for example could be to send information about all accountholders of Netherlands
- The Court held that Dutch authorities have provided unique features which would identify a particular taxpayer



### Facts of the case

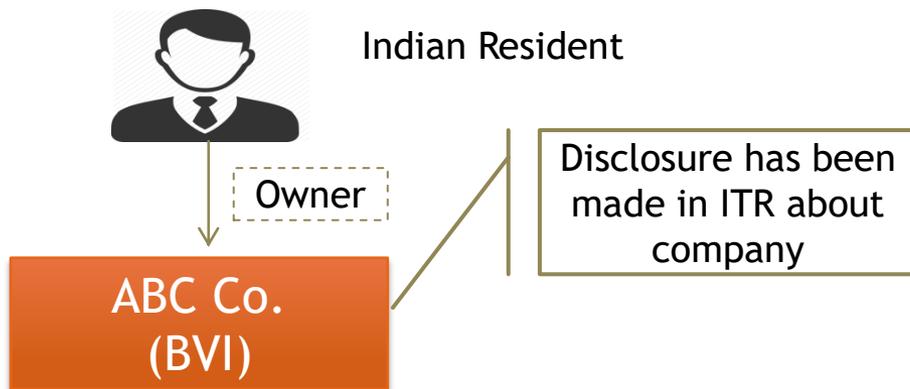
- a. Mr. X is an Indian resident and is a beneficiary in a discretionary trust in Isle of Man
  - b. No benefit is received by Mr. X from the Trust since inception of the trust
  - c. Mr. X does not operate the bank account of the Trust
  - d. The Trustees of the Trust are non-residents residing in Isle of Man and are also operating the bank account of the Trust
  - e. No distribution/payment has been made to any one from the said trust since its inception. In other words, trust has accumulated funds
  - f. The corpus in the trust was deposited 20 years back by and was earned out of legitimate sources outside India but no taxes have been paid in India
- ?
- Can Indian authorities seek information of such Indian beneficiary from Competent Authority of Isle of Man?
- ?
- If Competent Authority of Isle of Man refuses to give information, as the Indian beneficiary has no account but the account of a Discretionary Trust, then how Exchange of Information will be pursued?



## Facts:

- Mr. X, an Indian resident has set up a company, namely ABC Co. in Panama in 1990s.
- Till date, Mr. X has not made any disclosure about the said company in its return of income filed in India.
- Recently, the existence of said company has come to knowledge of the Indian tax Authorities on account of revelations made in various newspapers (called Panama leaks)
- The Indian tax Authorities seek to obtain more information about the alleged Panama company
- India does not have any DTAA or TIEA with Panama.

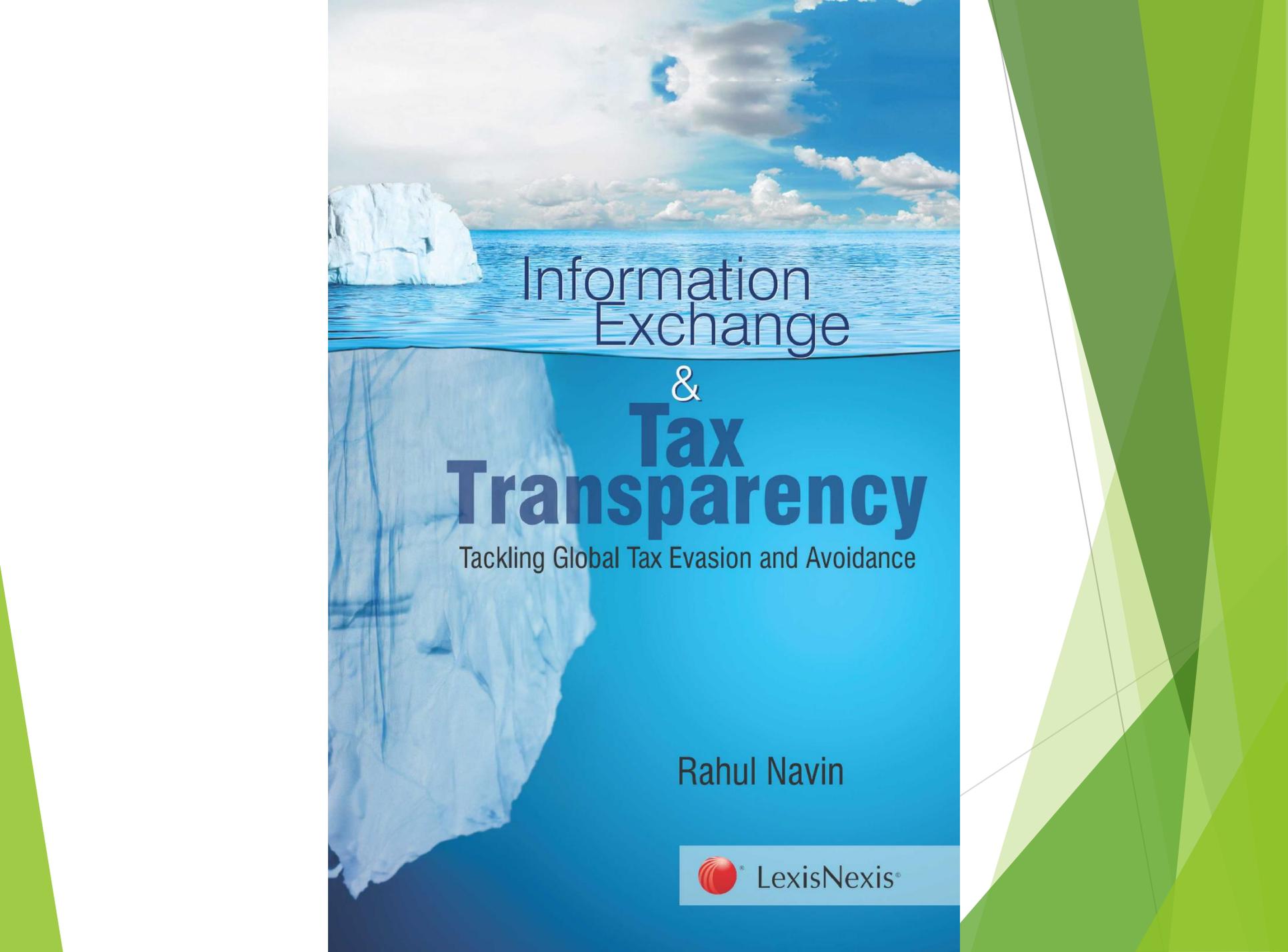
**Under the said circumstances, how the exchange of information will take place?**



## Facts:

- Mr. X, an Indian resident has set up a company, namely ABC Co. in BVI in 1990s.
- Mr. X has made disclosure about the said company in its return of income filed in India.
- There is TIEA between India and BVI.
- BVI does not mandate maintenance of books of accounts or any financial information.
- ABC Co. has a bank account in Panama which has been operated by Mr. X and in this regard disclosure has not been made in his ITR.
- The Indian tax Authorities seek to obtain more information about the bank account of BVI company held in Panama
- India does not have any DTAA or TIEA with Panama.

**Under the said circumstances, how the exchange of information will take place as BVI has no information about the bank account & Panama denies to provide information of bank account?**

The background of the cover features a large iceberg floating in a blue ocean under a bright blue sky with scattered white clouds. The top part of the iceberg is visible above the water line, while the much larger, submerged part is visible below. The text is overlaid on this scene. On the right side of the cover, there are several overlapping, semi-transparent green geometric shapes that create a modern, abstract design.

Information  
— Exchange

&  
**Tax  
Transparency**

Tackling Global Tax Evasion and Avoidance

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# Thank You

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