SUMMARY

This article provides a comprehensive view of the guidelines to be followed by States to implement the “effective exchange of tax information” at three levels: political, normative and administrative. The best international experiences and the current situation of various CIAT member countries which are working to improve their levels of transparency and comply with their commitments in this area have been considered in the present article.

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This study analyzes the aspects that must be considered by the decision making levels of a state in order to reach effective tax information exchange, which is consolidated through the implementation of the respective units.

The first step for promoting the exchange of information in a State is the “political will” that should go hand in hand with the “political power”. Information exchange must be guaranteed by the top level authorities of the executive and legislative powers. Like most practices that affect the design of a country’s model, this first step is essential.

In the last years many factors have influenced the "political will" of several countries of Latin America and the Caribbean, which have begun to promote information exchange practices; by entering into broad-based agreements to avoid double taxation with clauses for tax information exchange, specific information exchange agreements and multilateral instruments such as the “Multilateral Convention on Mutual Assistance” which protocol has allowed the adhesion of all the countries in the world.

Nevertheless it is still necessary that many countries that have adopted the “territorial principle” in their tax systems become aware that this international cooperation practice should not be exclusively considered as a cost for improving their reputations as a result of increasing their transparency levels. For example, many benefits could be obtained from their effective application:

- Control of harmful manipulation of transfer pricing;
- Control of consumption taxes such as VAT;
- Control of “treaty shopping” schemes;
- Detection of unjustified patrimonial increases;
- Avoidance of double taxation;
- Assistance in enforced collection;
- Provided that the instrument allows it and the parties authorize it, based on their internal standards, it could be used for other purposes.

The aspects that directly relate to the design of the tax information exchange unit are the domestic legal framework, the size of the network of subscribed and effective instruments; and their characteristics. These aspects should determine the size of the unit for information exchange, in as much as they offer indications on the number of requests that may be taken care of in a certain period of time and the procedures that could be carried out, such as examination abroad, simultaneous or joint controls, automatic exchanges, among others.

Although tax information exchange at the international level is not a complex practice, it has a great impact on different tax administration processes. Such impact not only affects the processes, but also the “organizational culture”. As it may be anticipated, this practice requires a great vocation of service and goodwill, especially the in case of spontaneous exchange of information; where a State disinterestedly and without having received a previous request, provides information on operations or transactions that could involve a tax compliance risk in another State. It also calls for the implementation of measures that may ensure the maximum confidentiality levels in all instances when using the information received from abroad.
1. PRE-CONDITIONS FOR THE ADOPTION OF INFORMATION EXCHANGE PRACTICES

Unlike many other practices related to the access of information by the tax administrations, such as that either provided, captured or directly obtained from state organizations, individuals and/or legal entities; the effective implementation of tax information exchange at an international level requires a strong political support since the beginning.

If we consider countries which have not yet been involved with this matter, we could segment them as follows: those countries which, even though their laws do not prohibit the tax information exchange between States, due to internal issues they do not exchange information; those that their laws guarantee the information exchange but that due to diverse reasons (i.e.: attract certain type of capitals) they do not exchange information or they do so with very few States with which, by virtue of the political, economical and geographical conditions it is not a fluid exchange, and those countries that expressly prohibit information exchange. Also, in all cases these could be characteristics of tax regimes considered harmful: low levels of income tax, lack of clarity with respect to holders of assets (shares, personal property and real estate), and impossibility to exchange information due to banking or other forms of secrecy, among others.

In this regard, the countries having some or several of the above mentioned characteristics could be considered as “tax havens” by other States, either in lists and/or as resulting from specific criteria in their internal norms.

This shows us that although a State could be considered a “tax haven” by another State, this does not imply it will be considered a “tax haven” by a third State. Since the concept of “tax haven” is relative in some cases. The classification of a country a “tax haven” depends on the internal norms, the level of cooperation, how harmful a tax regime may be for another State, and diplomatic relations.

What has been a stated endeavor to justify the initial statement regarding the need to resort to the highest decision making level of a country to pave the way towards the effective tax information exchange

Thus, the “political will” becomes the first step in the future actions for establishing an information exchange unit based on the best international standards.

However, it is necessary to point out the disadvantages that political decision-makers could face in attempting to partly change a country’s model benefitting foreign capitals on base of considerable tax reductions and benefits based on opacity. This could affect “the political power” needed to implement the necessary modifications or tax policy adjustments. This aspect will be more complex to handle in those countries where the main barriers to the information exchange are in their “Magna Carta”.

Finally, some will consider that financial resources are needed for the “effective information exchange”. This aspect is the least relevant of all, since this practice does not demand a considerable investment and it is possible to progress gradually as a State consolidates its network of information exchange instruments. Also, many tax administrations have mentioned in various international forums that the benefits significantly outweigh the costs of maintaining a tax information exchange unit. Further on, in the section dealing with administrative aspects, more detail will be provided regarding the resources needed to establish a tax information exchange unit.
2. FACTORS THAT INFLUENCE THE DECISION TO EXCHANGE TAX INFORMATION

When evaluating the relevant aspects for deciding on the tax information exchange, we could mention in the first place the effect of the “international initiatives”. Since the nineties, more and more initiatives from international organizations and countries to promote tax information exchange have been launched. However, the effects have been marginal, mainly between developing countries and jurisdictions considered as “tax havens” by the international community.

It was approximately in 2008, when most of the countries of the world began to experience crisis symptoms, such as low production, high unemployment, high debt levels and negative balance of payments, among others; that the international community strongly began to support initiatives to increase the levels of transparency and information exchange at a world-wide level.

This critical situation seriously affected tax collection in many countries, especially in developed countries which faced contexts of high public expenditure as a result of previous years of economic growth. There surged the need to fight more aggressively against harmful international tax planning schemes.

As a result, by way of examples one may mention the “Global Forum on Tax Transparency and Information exchange”, which implemented a successful peer review mechanism; and the successive Declarations of the G20. These multilateral strategies, along with efforts of international and regional organizations such as ATAF, CIAT, I.A.D.B., OECD, the World Bank, among others; and unilateral efforts of countries specially interested in increasing the information exchange levels; all of them have influenced considerably in the “political will” to promote these practices.

Gradually, many countries and jurisdictions have been moving from “black lists” to “gray lists”, until being considered transparent by the international community. For example, the 42 financial centers labeled as non-cooperative have taken commitments with the international community, which led the OECD to eliminate them from its famous list of “tax havens”.

If we focus on Latin America, we may observe that many countries have made considerable efforts to develop their networks of information exchange instruments and administrative structures to manage them. For example, 47% of the countries of Latin America have tax information exchange units, many of which were created recently. The following table shows the specific agreements for information exchange (not including agreements to avoid double taxation) signed by a group of countries of Latin America in November 2012:

1. The evolution in the countries of Latin America in the specific agreements for the exchange of information and the agreements to avoid double imposition can be consulted here: http://www.ciat.org/index.php/es/productos-y-servicios/ciatahora/tratados.html
Table 1

<table>
<thead>
<tr>
<th>Country</th>
<th>Amount of agreements</th>
<th>Countries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina</td>
<td>10</td>
<td>Bermuda, Brazil, Chile, China, Ecuador, Spain, Guernsey, Jersey, Monaco and Peru</td>
</tr>
<tr>
<td>Costa Rica</td>
<td>7</td>
<td>Argentina, France, El Salvador, the United States, Guatemala, Honduras and Nicaragua</td>
</tr>
<tr>
<td>Ecuador</td>
<td>1</td>
<td>Argentina</td>
</tr>
<tr>
<td>Jamaica - (JM)</td>
<td>8</td>
<td>Denmark, the United States, Faroes, Finland, Greenland, Iceland, Macao and South Africa</td>
</tr>
<tr>
<td>Mexico</td>
<td>23</td>
<td>Aruba, Dutch Antilles, Bahamas, Bahréin, Belize Bermuda, Canada, Costa Rica, the United States, Gibraltar, Cayman Islands, British Isle of the Man, Cook Islands, Guernsey Islands, Jersey Islands, Marshall Islands, Virgin Islands, Liechtenstein, Monaco, Samoa, Santa Lucia, Turk and Caicos and Vanuatu</td>
</tr>
<tr>
<td>Panama</td>
<td>1</td>
<td>United States</td>
</tr>
<tr>
<td>Dominican Republic</td>
<td>1</td>
<td>United States</td>
</tr>
<tr>
<td>Peru</td>
<td>3</td>
<td>Argentina, Ecuador and the United States</td>
</tr>
<tr>
<td>Trinidad And Tobago</td>
<td>1</td>
<td>United States</td>
</tr>
<tr>
<td>Uruguay</td>
<td>1</td>
<td>France</td>
</tr>
</tbody>
</table>

Source: Study on the Control of the Transfer Pricing manipulation in Latin America and the Caribbean. ITC-GIZ-CIAT. December 2012.

Another important aspect deals with the “attraction of genuine foreign investment”. Generally, the non-cooperative countries or jurisdictions considered “tax havens” receive investments that do not produce significant impacts in the economy of a country; in terms of employment, tax resources or productivity. Generally these are speculative investments. Additionally, the “anti-abuse” or “anti-tax havens” regulations have discouraged the flow of capitals towards these countries, by virtue of the sanctions applied to this type of operations (important retentions, presumptions without need of proof, periodic integral audits, etc.). All this has been discouraging the flow of investments, these being cases when due to considerations of image and ethics many financial companies or banks have to withdraw their offices located in “tax havens”.

Thus, by complying with transparency and information exchange standards, a country could benefit with greater foreign investment or protect the level of existing investment.

An aspect that also must be valued but which should not directly condition the policy for the negotiation of cooperation instruments is that relative to diplomatic relations. It is possible that for diplomatic reasons, two States wish to sign agreements. However, it is advisable before initiating a negotiation, to evaluate a series of aspects such as the commercial exchange, the investment flow, flow of people, the risk represented by the country on the basis of tax planning schemes adopted by the companies operating in the country and the internal capacity to manage information exchange. The risk assumed when indiscriminately signing this type of instruments with the sole purpose of maintaining diplomatic relations is the breach of commitments based on administrative deficiencies or the obligation to face high operational costs without a tangible return.
Following the evaluation of the aforementioned aspects, it is necessary to verify if the tax system and the norms of the country in general abide by international standards. For this end, it would be necessary to identify the main reforms required, evaluating their impact and how the changes will be managed. As previously commented, when discussing the subject relative to the “political power”, it is not easy to implement changes that could affect businesses of the large economic groups that operate in a country. In the following section of the present document, more details will be provided on those normative aspects that must be considered within the framework of this analysis.

Another aspect, not less important, which must be evaluated and was partially commented in the previous paragraphs, is the “capacity to comply with international standards”. The importance of being able to fulfill international standards in this matter lies in the need to harmonize the capacities of the countries and in particular of the tax administrations to access to information and to exchange it. This aspect is important since in some cases, absence of “legal reciprocity” in cooperation instruments could prevent the "effective information exchange”. Also, to increase the levels of “material reciprocity”, standards have been generated which, if adopted, assure a minimum level efficiency to an information exchange unit. Although the aforementioned “material reciprocity” cannot be easily verified and should not be considered “critical” when negotiating a cooperation instrument or taking care of an information request, the tax administrations evolve gradually to harmonize their levels of efficiency in this sphere. In the following sections the aforementioned standards will be analyzed in greater depth.

Finally, it is necessary to highlight an aspect that is critical for many countries that are in high risk of losing of their tax basis, as a result of international within the framework of harmful international tax planning, i.e. the struggle against tax evasion and tax fraud. As commented in previous sections, information exchange is greatly valued by countries which adopt the world income principle, but this does not mean it is less effective in countries which adopt the territorial criteria. The good use of this tool should provide greater tax revenue, through risk perception as well as through its effective use.

3. KEY ASPECTS FOR EFFECTIVE INFORMATION EXCHANGE

The road to the “effective tax information exchange” between states leads us to review a number of legal and administrative aspects that are considered fundamental to achieve this goal. Henceforth, we will discuss the main points for the “domestic legal framework” and “bargaining instruments for information exchange”, as well as the “administrative” aspects to contribute to the successful operation of the “tax information exchange unit”.

a. Domestic legal framework

It is first necessary to determine whether the constitution of a country allows or not the information exchange between States, or does not refer to the subject. Secondly, it is important to verify whether any right of citizens protected under the principle of data confidentiality is so strong that it could be interpreted as a barrier to the information exchange.
Given the supreme nature of the constitution in the hierarchy of rules of the countries, you cannot consider other issues if the necessary adjustments for providing information subject to “tax secrecy” to other States are not implemented. In this line thought, it might be mentioned that in countries where international treaties have “supra legal” status, the constitution would not be a problem. However, it is not desirable that they conflict with the constitution or other national legal dispositions of similar rank.

All the tax administrations around the world have verification and examination powers that allow them to control their taxpayers. However, these powers can vary significantly from one State to another. This will partly depend on the taxpayers’ guarantees and importance of tax resources for a given State.

The need to review these rules is mainly derived from two of the limitations usually considered in the information exchange instruments. They would not allow for facilitating information that cannot be obtained according to laws or internal regulations, or to adopt regulations and administrative measures going against these internal laws or regulations (e.g., paragraph 7 b) and c) of the CIAT Model Agreement for Tax Information Exchange- MCIAT). These limitations might not be absolute. This is so for most instruments in force and models used ensure a minimum information exchange by providing that the laws and practices of a requested State should not prevent or affect the appropriate authority action of a requested State for obtaining and providing information from financial institutions, agents or persons acting as agents or trustees, with respect to the identification of the shareholders or partners of a corporation or other collective entity which is held by the tax administration (e.g. MCIAT Art. 2).

As specified in “Implementing the tax transparency standards- handbook for assessors and jurisdiction” published by the OECD in 2011, the transparency and information exchange is mainly based on the availability of information, appropriate access thereto and the existence of exchange mechanisms. To this end, in line with the comments in the previous paragraph, a State or jurisdiction must have the ability to access banking, asset ownership, identity and accounting information and, as appropriate, obtain this information available as a result of periodic revision of information systems.

There should be no conflict between these standards and the “tax secrecy” or other State secret. “Tax secrecy” is never eliminated; it remains at the time of providing information to another state, which in turn is obliged to provide a similar confidentiality level to the country of origin that must be maintained by the recipient state. Other secrets, such as professional secrecy, trade secrets, trade and business secrets, the privileges of the legal profession, financial / banking secrecy, among others, should not apply with respect to “relevant” information for tax purposes. In this case, the information would, in any case, be covered by the “tax secrecy”.

Those secrets should not be subject to very broad interpretations, since this could cancel out the exchange of “relevant” information.

The following graph shows the capabilities of several Latin American countries to access banking information. As observed, the sum of the three bars exceeds 100% and this is due to the fact that some countries may use different procedures according to the type of bank transaction and other formal aspects:
The chart below shows the information and percentage Latin American countries is available, in which percentage and if it is obtained by periodic updates, with the vertical axis (y) corresponding to the percentage of countries with regular information updates and the horizontal (abscissa) relative to the classification of information:

Source: State of Tax Administrations in Latin America BID – CAPTAC-DR - CIAT: 2006-2010
Although differences can be strong in the powers of control and supervision, and the availability of information between two states, there may be mutual benefits in the context of information sharing, these differences are not barriers. In short, the most valuable of this process lies in the satisfaction of the contracting parties during the implementation of the instrument.

For these reasons, considering the above limitations, the internal rules of countries could become not only the major limitation when exchanging information, but a barrier when contracting with a state that seeks to apply an internationally recognized and observed “reciprocity law” model (e.g. MCIAT, MOCDE, Multiilateral Convention, etc.).

Another important issue has to do with the rules on “files conservation”. Tax rules generally require taxpayers to keep records (books, supporting documentation of transactions, etc.) during a given period. Some countries set different periods depending on the subjects and transactions, while others only establish a general period of application.

This aspect is critical. For example, a state where the obligation to retain information is three (3) years, by the mere fact that the taxpayer has no obligation to retain documents, could not in principle consider a request from another State information relating to a previous period.

Countries usually establish retention periods of at least five (5) years, depending on different factors such as the status of the taxpayer to the tax authority (registered / not registered).

This is closely related to the prescription rules, as these may also in some cases affect the effective information exchange, when the States have dissimilar deadlines. This case is of greater complexity when it comes to concepts such as interruption and suspension, which operate differently in the States. For example, there are countries where debts never prescribe and other where the prescription is automatically interrupted if a control process is initiated.

Regarding this last point, maybe these criteria doesn’t need to be harmonized, but rather one should be aware of the limitations that may exist when requesting information or answering a request for information prior to using or executing an instrument.

To ensure the effective implementation of the Tax administrations’ verification and examination powers, there should be strict sanctions, which likewise should be proportional to the seriousness of the events. In this regard, sanctions for formal non-compliance play a key role.

Based on international standards, the so-called “domestic interest” should not exist when considering a request for information. All available means should be used to address it, as if the request would have originated internally. This means that if the information is required from a taxpayer who fails to comply with his formal duties, he could be liable to a penalty that would urge him to comply.

It is necessary to know in detail the “rights and safeguards” of taxpayers, when addressing or making a request for information, since they directly condition the procedure to be followed. For example, such rights and safeguards may require a taxpayer to be notified whenever information about him/her is exchanged, so he may challenge or not the procedure. Some countries could eliminate this obligation to notify the taxpayer, in cases of tax fraud, or else postpone the notification once the information exchange is completed. Also, in some countries the obligation to notify could be eliminated when a federal court determines that the notification could affect the investigation.

Given these rights and safeguards, it is necessary to be aware of the relevant legislation of the counterparties in the information exchange instrument, so that when information is requested, the reasons may be given as to why notifying the taxpayer could hinder a procedure. As a result, a State may waive the request for information.
An important aspect is the legal and regulatory powers of a State to **exchange information**.

Some countries have internal rules that allow them to answer requests for information from other states even if they have not signed instruments for information exchange. This would allow, under these circumstances, to send requests and validate external documents to be used in formal procedures.

The existence of these rules facilitates the use of diplomatic channels to transmit and receive information. Likewise, if the internal rules allow it, the tax administration could sign administrative instruments for information exchange.

Although these types of internal rules are useful, they do not eliminate the convenience of signing instruments for information exchange, since they are the basis of the “obligation” to respond to requests for information when all of the conditions are agreed.

### b. Negotiating instruments for information exchange

When a state plans to establish the basis for information exchange with another state, several valid options are available. Among these alternatives we could mention the “Double Taxation Agreements” (DTA) with ample provisions for the exchange of tax information, either under the OECD, UN models, and regional or national models. Usually, in this type of instrument, the information exchange lays in Article 26, where there are no major differences between the known versions.

Other widely used instruments are the “specific agreements for tax information exchange”, which may have legal or administrative rank according to each state. As a variant of the specific agreements, there are multilateral agreements or conventions that may be signed at regional or global level. Among the best known experiences are the Directive 77/799/EEC, with updates and complements, the Nordic Convention on Mutual Administrative Assistance in Tax Matters, the Convention on Mutual Assistance and Technical Cooperation between Tax and Customs Administrations of Central America, and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention).

The advantage of multilateral instruments lies in the possibility to access a network for information exchange by negotiating a single document. This represents a considerable saving in time and money in the negotiation process. It is also worth noting that these types of instruments are multilateral because they enable the information exchange with several countries, but the relationship in their execution always remains bilateral.

A country that only wishes to exchange information should not consider an Article 26 of DTA, as the main objective of this type of instrument is to avoid double taxation, and the information exchange in this case is accessory. Progressing on this type of agreement involves analyzing several additional factors not mentioned in the present paper.

According to the wording of Article 26 in the most current versions of the OECD and UN models, at the time of exchanging information there would be no restriction of any kind. For example, in the past, this article presented some barriers regarding the purpose for which the information exchanged could be used.

In certain cases, at the administrative level, it is necessary to generate a “memorandum of understanding”, whose purpose is to generate greater certainty regarding the procedures in the framework of a cooperation instrument. For example, a memorandum of understanding could be generated in the framework of an automatic information exchange in a simultaneous examination or for the aim of developing procedures based on Article 26 of a DTA.
In Latin America, by March 2012, 73% of Latin American countries had DTAs in force and 42% had information exchange agreements in force.\(^2\) As of April 2013, 30\(^3\)% of Latin American countries have signed the Multilateral Convention. Given the growing importance of this issue, it is estimated that these numbers will increase in the coming years.

When beginning the negotiation of instruments for information exchange, it is necessary to consider the following relevant aspects:

- **Bilateral/multilateral**: before initiating bilateral negotiations with a country, it is useful to check whether it would be more convenient to enter into a multilateral convention of which that country is a party. This verification can avoid starting multiple negotiation processes.

- **Characteristics of the Tax Administrations**: Many countries have integrated tax administrations (taxes / customs). In most cases, signing cooperation agreements in the field of taxation that in turn allow exchange on customs matters would be an advantage. Obviously, these models would work only in those negotiations between States with integrated tax administration

- **Subjective scope**: Refers to the population on which information can be exchanged. These could be the residents of a state, its nationals or others individuals on whom information is available.

- **Taxes included**: There should be no restrictions.

- **Notification of relevant legal changes**: Although this aspect is not essential, it could be very helpful for the officials of the Information Exchange Unit when they evaluate whether an information exchange request is admissible, thereby avoiding wasting time and resources.

- **Time scope**: It is essential to specify when an agreement may begin to be applied, as well as the possibility that it may be applied to periods not barred by the statute of limitations.

- **Information exchange for penal purposes**: It is important to define this aspect in the body of the instrument. If accepted, it is recommended that there is no “dual criminality” requirement, where a country would only exchange information in criminal cases if there is an internal open case on the same subject.

- **Cases in which an information request cannot be refused**: This clause ensures a minimum of transparency between the contracting States. Usually it refers to financial information, ownership of assets, etc.

- **Obligation to use all available means**: This clause ensures that a State uses all its powers and resources to address an information request as if it were of its own interest. However it should be limited by the “principle of proportionality”.

- **Limitations**: Information exchange limitations should be applied only in exceptional cases, in which the parties would not be required to exchange information. It is important to specify during the negotiations which cases could be raised as limitations, and which are not. For example, some aspects that should not be a limitation are tax secrecy, banking/financial secrecy, the fact that the information is kept by proxies’ agents and trustees, the “domestic” interest. Cases that affect public policy or public order, or involving actions contrary to laws and

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2. Data obtained from “State of Tax Administration in Latin America 2006-2010. BIB-CAPTAC-DR-CIAT
regulations, or providing information contrary to domestic laws could be cases for limitation. In other cases, the CIAT model has some differences with the OECD model, since the CIATM does not admit reciprocity, industrial and trade secrets and legal professionals’ secrecy privilege as limitations. Limitations are not prohibitions, they just exempt the parties from the obligation to exchange information under specific circumstances, otherwise the possibility of cooperating or not would be discrentional.

- **Persons to whom information may be released:** it is necessary to review this clause carefully to avoid inconveniences when using the instrument. In general, this clause is similar in the different models and details the persons who can access the information.

- **To disclose information in public judicial processes or in judicial resolutions:** It is important to specify this aspect in the instrument’s body.

- **Confidentiality:** A clause should define the level of confidentiality provided to the exchanged information. For example: the information will be considered secret according to the laws of the providing state, if these are more restrictive.

- **Rights and safeguards of taxpayers:** If possible, it is important to specify in the instrument the scope of these rights and safeguards and the procedures to be followed.

- **Admissible procedures for information Exchange:** The instrument must specify the procedures or methodologies that states can apply to carry out the information exchange. For instance, spontaneous, automatic, on request, simultaneous examinations, examinations abroad, among others. Also, other instruments include other additional cooperation procedures such as assistance in enforced collection or in the notification of actions

- **Reservations:** multilateral instruments must include sufficient flexibility for the adhesion by states with different interests and tax systems. In this regard it is important to specify in the body thereof on which aspects it is possible to make reservations.

**c. Administrative Aspects**

It is necessary to distinguish between specific aspects that are directly related to the information exchange unit, and the general aspects dealing with structural issues of a tax administration or a particular State that directly impact the process under analysis.

Here are some specific operational aspects of an information exchange unit:

**Competent Authority for the Information exchange**

Historically, the relations between States have been channeled through the Ministry of Foreign Affairs, their natural environment. However, when we refer to the specific instruments for the information exchange or even DTAs, the area in which they are negotiated and implemented is different. This does not preclude involvement by the Ministry of Foreign Affairs, but experience shows that in this regard the Ministry of Finance and the tax authorities are involved.

The management of the information exchange calls for defining a “competent authority”. All countries do not handle this matter the same way, and many factors influence it, including the structure to be adopted for the Information Exchange Unit, and the procedures for implementing the exchange. For example, if we refer to the DTAs, the competent authority is usually at the ministerial level (e.g. Ministry of Finance) which in turn delegates this function to the tax administration. The internal rules usually attribute this power to tax administrations.
The same situation is applicable to specific agreements for the information exchange.

It is coherent that the competent authority is in the sphere of tax administration, since it determines when requests for information should be sent, collects information as a result of its verification and examination powers, and coordinates the simultaneous examinations or automatic exchanges.

If the information exchange is managed at the highest level or by another public body, management time and consequently its associated costs would increase considerably. This recommendation should be considered by the tax administrations when defining the competent authority, since it is more convenient to delegate the function to an official who is not at a very high-level and who can deal directly with all the documentation received within the framework of this process.

The competent authorities can be one or several persons, depending on the structure adopted. For example, France adopted a decentralized structure that has competent authorities in its different regions, and the U.S. has offices classified according to the region with which they exchange information. Most countries, particularly the Latin American ones, manage the information exchange at central level.

The changes of competent authorities should be notified immediately to the respective counterparts in information exchange instruments. It is advisable that the competent authority be assigned to a function or position within the tax administration and not to a specific person, as this facilitates the management of the changes that may occur.

It is also necessary to define a “direct contact” for each of the exchanges taking place, which will be in charge of maintaining fluid communications and handling the procedures as professionally as possible.

The Information Exchange Unit

In recent years, Latin American countries have established units to exchange information (hereinafter, the Unit). Currently, 47% of countries have these units.

Overall, the resources required to set up an information exchange office are not as much when compared to the potential benefit of “effective exchange”. Nor is it necessary to initiate activities with a great structure. For example, most of the offices in Latin America and the Caribbean operate with an average of three officials (except for Argentina and Mexico). Obviously, the size of the unit will depend on the level of priority assigned to the subject by the authorities, network of existing instruments, functions and tax administration resources.

As mentioned when discussing the “competent authority”, the structure to be adopted by the tax administration to manage the information exchange may be centralized or decentralized. This will depend on the characteristics of each country. In Latin America and the Caribbean, the exchanges of information units are usually centralized.

First, the functions of the unit have to be defined. For example, under certain circumstances, the SAT of Mexico has allowed its unit to carry out audits in order to gather information requested by other states. It is also necessary to define the role of the Unit within the framework of a joint or simultaneous examination or the so-called “audits abroad.” Also, some units have the capacity to intervene in the negotiation of specific agreements for the information exchange and memoranda of understanding. The functions of the unit must be precisely defined in the internal rules of the tax administration.

Another important aspect lies in specifying the responsibilities. For example, the AEAT Unit has officials responsible for each information exchange methodologies (e.g., upon request, automatic, etc.). In small units, it is logical that there is not much room to define responsibilities.
In order to establish more precisely the functions of the area and the responsibilities of its members, it is essential to develop a manual that defines the procedures to be followed in the main processes managed by the Unit. This manual should define aspects dealing with feedback processing, distribution of costs, deadlines and internal procedures, sources to be used for responding to a request for information (internal / external), update counterparts regarding changes in the competent authority and relevant rules, standard forms and formats (request for information, feedback, etc.). The contents of the manual will depend on its objectives, which may be to train, to provide scientific information on how to request and provide information based on current procedures and / or define the main processes of the information exchange unit. The extension of the manual will also depend on its objectives.

The aforementioned matters should be considered within the framework of a series of basic procedures as those mentioned below:

• Sending/receiving requests
• Registering a request
• Sending/receiving information
• Sending/receiving information under the “spontaneous” procedure
• Coordination of automatic exchange. In general, the procedures to be followed depend on what is agreed regarding implementation with the respective counterpart.
• Coordination of Foreign officials’ visits and joint or simultaneous audits.
• Functions of the competent authority
• Management of direct communication
• Control of Information exchange management

Many of these procedures could be specified in a memorandum of understanding during negotiations if for any reason, as a result of the negotiation, it is necessary to provide special treatment to the information exchange with a certain state. However, the importance of manuals, forms, etc., lies in ensuring a minimum standard of quality to the Unit. For example, forms don’t need to be used in all cases, but provide a guideline on the data fields that must be considered in making a request for information based on the best international standards.

In terms of limits, the general rule is to always provide a response as soon as possible. However, based on international experience some terms could be specified (e.g. 2 months for information held by the tax administration and 6 months for information not available in the archives).

Once the above aspects are determined, it is necessary to analyze what human and material resources are needed.

Human resources affected in the area should have several years of experience in various tasks within the tax administration. Since the unit is a cross-sectional area within the organization, related to areas of examination, investigation, and legal areas, among others, it requires officials who know very well the structure of the tax authorities, their partners and processes. The staff profile will depend on the functions of the area. It is not the same if it only sends information between two states, or if it implements controls, assesses, negotiates or performs audits.

They should have:

1. Extensive knowledge of internal rules and relevant rules of the counterparties as well as the network of existing instruments for the information exchange.
2. Ability to solve conflicts with partners and internal conflicts.
3. Ability to understand and process external information and databases.
4. Knowledge of internal administrative procedures.
5. Knowledge of the standards most commonly used for the automatic information exchange. With regard to this aspect it may be necessary that the unit receives support from the IT department when trying to routinely exchange automatized data.
6. Ability to identify flaws in internal procedures regarding the information exchange and to propose adjustments
7. Knowledge of at least one additional language
8. Experience in the investigation and control area.

The unit has no special requirements regarding the material resources. In general, it only requires the resources that are used in every modern office (communication systems, phone, Internet, fax, etc., furniture, general office costs, etc.). Among the specific resources needed by the area, one might mention the cost of translating documents, correspondence costs if necessary, travel abroad for the purpose of performing procedures abroad, participating in international forums, take training, negotiating procedures with counterparties, etc. ...

Once the unit is in function, it is advisable to define management indicators, update and evaluate them. It is valuable to define these indicators from the beginning to compare results in different years and take transcendent decisions (e.g., expanding the capacity of the unit, negotiating new or renegotiate existing instruments, modify procedures, forms, etc.). To define these indicators, it is important to keep at least the following records: date of an application, receipt date, date of notification about invalid or incomplete requirements, notification date about requirements that cannot be attended within the deadlines, exceptional applications (deadlines, certifications, etc.), date on which the information was provided, expiry date of the procedure, date when feedback was sent. It is also important to keep track of procedural issues that have generated problems and other qualitative aspects allowing interpreting the results of the generated indicators. With this information it is possible to work on indicators, such as the following examples of indicators:

- Total received requests/Total attended requests
- Total receipts/Total requests
- Total answers in due time/Total requests
- Total sent or received requests with incomplete information/Total sent or received requests.

It is also important to know the indicators of other units in order to assess the efficiency of the area based on “benchmarking”, in order to implement future improvements.

The Unit's relationship with other areas is an important issue, since the unit would mainly deal with management issues, the audit areas being the main users and providers of the information exchanged.

For example, the unit may be responsible for compiling information available from the tax administration databases to respond to requests for information. However, if they are unable to use these bases or to apply the powers of control and supervision, they should coordinate with the audit areas, which do have access to these databases, files and procedures. For example, it is not common for a unit to request information from a taxpayer, impose sanctions for non-compliance or order searches. In these cases it will depend from other areas to meet the commitment to use every means available to attend the request.

The unit relates to audit areas when processing a request for internal information, receive and respond to requests from abroad, send information abroad, receive and use external information, provide feedback, and receive feedback from abroad. The unit would also collaborate with audit areas when assisting them in the process of information exchange (in some countries, the unit assesses cases in which foreign information can be requested, or identify
and send such information spontaneously) and receives feedback regarding the usefulness of the information received from outside.

In the relation between unit and auditors, it is important to avoid conflicts or manage them in the best way. Conflicts may occur when there are differences on the treatment of a specific information or request and when the unit has capabilities to monitor or become involved in auditing procedures. It is therefore important that the unit properly justify all its actions (for example, if they choose to refuse a request for information or engage in a particular process), since the relationship with the auditors is key to success.

Another task usually managed by these units has to do with “awareness and training” of auditors

As discussed at the beginning of this document, the process of information exchange involves a major change in how auditors work. To incorporate the use of outside information into their routine procedures is not easy. It is even more difficult to identify information that could be useful for other Tax authorities or promote simultaneous audits. It is therefore necessary to implement strategies that encourage the use of instruments, such as rewards, training, etc.

In order to provide a practical example of the use of information exchange in Latin America, the following table shows which countries often use this tool for transfer pricing cases and which ones usually do not:

<table>
<thead>
<tr>
<th>Used Criterion</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>Usually send requests</td>
<td>Argentina, Chile, Colombia, Costa Rica, Mexico and Peru</td>
</tr>
<tr>
<td>Do not send requests</td>
<td>El Salvador, Ecuador1/1, Guatemala2/2, Honduras, Panama, Uruguay, Venezuela</td>
</tr>
</tbody>
</table>

1/ in some circumstances they have requested information but it is not a common practice.
2/ No practice of Information Exchange, because they haven’t started control procedures, however there are already (7) information exchange agreements signed with the Nordic countries.

Source: Consulted Tax Administrations.
Source: Study on Transfer Pricing Manipulations in Latin America and the Caribbean. ITC-GIZ-CIAT. December 2012.

Among the advantages, the following can be mentioned: travelling abroad to participate in international events that allow the exchange of experiences between auditors and have experiences, better qualifications, and access to language courses, among others.

The unit must, independently or in coordination with other areas, design training programs to introduce the existing instruments, explain in detail the procedures to exchange information, address concerns based on real cases and in general, encourage the information exchange.

A good practice is to design a site within the tax administration “intranet” that allows downloading all existing instruments, disseminate those under negotiation, consult the relevant internal rules affecting the information exchange, download manuals and forms, view documents about good practices and the latest international developments, make inquiries on the subject, among others.

The tax administration highest authority must support the message to encourage the information exchange.
General aspects

There are two major issues vital to tax administrations that are closely related to the information exchange process. One of them is ensuring standards of confidentiality and the other is the availability of information.

Since the tax administration must enforce “tax secrecy”, it is important to take all necessary measures to prevent information leaks and misconduct by their officers, whether voluntary or involuntary. While internal information leaks can cause great inconvenience to the tax administration, misleading disclosure of information subject to “tax secrecy” in other states can generate greater responsibilities in terms that could further affect a state’s reputation as information exchanger.

It is important for officials to be aware about the rules to ensure the confidentiality of information and the sanctions they might receive if they do not comply, set the controls, solving problems trying to minimize the negative effects, document all processes, keep information on secure sites, among others.

For this, the internal control area plays a crucial role and should control not only for compliance with the internal rules of confidentiality, but also those established in the respective instruments for the information exchange (e.g. the uses for which information can be provided might not be the same in all cases).

For example, a comprehensive policy of confidentiality protection must be reviewed and approved by the highest authority and consider at least the following aspects: classifying safe information and files, assign responsibilities, establish safe procedures for sending information (physical / electronic) and taking the following set of basic actions:

- Checking the antecedents of the personal and security control for employees
- Detailed evaluation of labor contracts (e.g.: Confidentiality clauses)
- Criteria for access to facilities, electronic and physical registries.
- Personal check out
- Information removal policies
- Management of non-authorized disclosures

When sending information abroad, the documents to protect are requests for information, correspondence and the information itself. Both the request for information and the correspondence could contain important information. That is why many tax administrations use these documents to feed their tax intelligence databases.

When sending information, the competent authority information must be included to grant their validity, all the information deemed confidential must be tagged, including integrated notices on the confidentiality of the information, it must be sent via safe electronic means or through emails that have international records allowing their tracking. In all cases, the correspondence must be received by the competent authority, which will store it in secure files.

When sending electronic information, remember that the confidentiality must be guaranteed during the whole process. Only authorized persons can review the mail of the competent authority. The sender is responsible of the information until it is delivered and received by the competent authority. To manage this process, a safe platform or encrypted emails are necessary.

When exchanging information automatically, it is important to secure registries in order to prevent leaks. Exchanges can occur through optical media, secure platforms or encrypted files sent via email. With regard to the latter mechanism, it is important to consider the size

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4. See the “OECD guide on the protection of confidentiality of information exchanged for tax purposes”
5. See in this aspect the Manual on Internal Control of Tax Administrations and the regulated Internal Control System elaborated by CIAT, AEAT, AECID and IDB www.ciat.org
of the files to ensure that the information is actually received.

In the process of receiving information, it is important, first, to classify the information that is received, and then store it in a safe place such as a physical file, a special database with special access or general database with limited access. To access this information it is necessary to consider safety measures such as the use of electronic fingerprints to control access to information, define authorized officers, print only if necessary, restrict access to the physical file based access to information the principle of “need to know”.

It is also helpful to keep track of people who received the information and accessed copies.

It is recommended that the competent authority includes warnings in the information letter and does not transmit all the information it receives, but the relevant parts must be presumably useful to the receiver. For example, the correspondence is not disclosed to the auditors.

The second vital aspect mentioned at the beginning of this section is related to the “information availability”. This issue is closely linked to a country’s legal rules, the powers of the tax authorities, the level of development, the level of development of other governmental institutions that handle tax-related information and relations with other government institutions.

It takes time and resources to develop a tax administration information system and generate new sources. Taking measures to provide a maximum reliability to all information loaded to the database is also a complex process.

Currently there are numerous technological developments that facilitate widespread access to reliable information, such as “electronic invoice” return filing via Internet, the use of geo-referenced data, etc...

The evolution of tax administrations coupled with the availability of better computerized instruments has allowed tax administrations to maintain in their systems a large amount of data that can be collected and exchanged with other states immediately or in a relatively short time. However, some tax administrations that have not reached a level of average development will have to attend the taxpayer more often and probably take longer to answer a simple information request.

For example, the information that is usually more demanded worldwide, among other aspects, is:

- Information on payments and withholdings
- Relationship Statements
- Bank Accounts: ownership, movements, payments and collections
- Ownership of Property
- Declaration of payments to non-residents, identification of non-residents
- Taxpayer identification data
- Information on legal entities
- Financial Statements
- Supporting documentation of significant operations
- Taxpayer’s returns or third parties’ returns

It is important to determine what information is public, because if it is not used as evidence in formal proceedings, it could be obtained by other channels, more informal.

Based on “State of Tax Administration in Latin America BID – CAPTAC-DR - CIAT: 2006-2010”, 100% of Latin American countries establish in their regulations the obligation for responsible third parties and other third parties to bring information relevant for tax purposes, have a computerized database for the support of control activities, and select taxpayers to audit based on information crossing.

Similarly, 23% of these countries assign a tax identification number to non-resident taxpayers, 70 % can obtain information on whether a company...
is subsidiary of a non-resident parent company, and 53% have implemented a statement on international operations. On base of these data it appears necessary to identify nonresidents in the area and generate information on international operations, which are highly valuable for international information exchange.

To ensure minimum standards of information quality, Tax administrations must rely on a complete, correct and permanently updated taxpayer registry. The following table shows the percentages of Latin American countries which taxpayers’ registry follows the key characteristics to comply with quality standards.

<table>
<thead>
<tr>
<th>SI</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Obligation for all taxpayers to be registered</td>
<td>82%</td>
</tr>
<tr>
<td>Inclusion of information to the taxpayers’ registry in real time</td>
<td>82%</td>
</tr>
<tr>
<td>UIN derives from CI or corporate registry</td>
<td>88%</td>
</tr>
<tr>
<td>Public entities/companies use UIN to register economic transactions</td>
<td>94%</td>
</tr>
<tr>
<td>TA automatically modifies the taxpayers’ registry</td>
<td>76%</td>
</tr>
<tr>
<td>There are automatic update mechanisms based on third party information or TA</td>
<td>41%</td>
</tr>
</tbody>
</table>

Created by the author on base of the “State of Tax Administrations in LA” 2006-2010 – BID-CAPTAC-DR-CIAT

If we focus only on the data of this table, we would write that in Latin America there are no major problems to manage the taxpayers’ registry. However, there are other factors that make its effective and efficient management a challenge for the tax administrations in the world.

Based on the above mentioned study, 100% of the Latin American Tax Administrations can obtain information by means of periodic supplies, without individual requirement. However, just over 50% receive information from the financial system and just under 20% can access to bank account information.

On the other hand, 59% of Latin American countries have external audit reports to identify risk taxpayers and 76% carry out studies on the functioning of the economic sectors. This last aspect is particularly important when exchanging information on industries or branches of economic activity.

In order to strengthen the levels of information available for both internal use and for sharing with other tax administrations, the following points should be implemented:

1. Evaluate the legal capacities
2. Develop studies for identifying information sources
3. Promote alliances with public organizations, the private sector and other states
4. Develop capacities to automatically validate the received information and consolidate it through informer and informed.
5. Developing differentiated control, selection and quality processes.
6. Evaluate in details the cost/benefit relations of information regimes
7. Cooperate with other public entities to improve information quality and availability.
8. Investing in IT.
4. CONCLUSIONS

After dealing with the different aspects necessary to develop the “effective information exchange”, it can be said at the present time that few countries apply all the mentioned political, normative and administrative aspects of this article. However, many countries of Latin America and the Caribbean are determined to overcome the barriers, and in this regard, international collaboration is key.

Another aspect to note is the impact of the information exchange on tax administrations, which are the natural environment where to develop this practice. The information exchange is a relatively simple administrative process, however it requires reviewing many of the major administrative processes (e.g., sources of information, reliability of information, confidentiality, internal control, auditing procedures, etc..), cultural aspects of the organization (e.g., cooperative attitude and dedication to service), as well as the need to develop clear criteria for interpreting regulations and an appropriate legal framework to meet international commitments, without it being a barrier when applying information sharing instruments.

Based on the numerous findings and considerations of the article, it can be concluded that the states’ motivations for sharing information are different, there are several ways to achieve the effective information exchange and it is not necessary to harmonize all the rules. The point lies in carrying out the appropriate action in each state to promote the availability and access of information, and professionally exchange it with other states.

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