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# Towards a valid international standard

CRS and the rule of law, by John J Ryan Jr

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## Abstract

- *The Common Reporting Standard (the CRS), the OECD's ambitious global standard for transparency and exchange of information, may lack validity as a universal standard because not all participating jurisdictions apply the rule of law and taxpayer rights.*
- *The OECD sees participating jurisdictions principally in economic terms, as richer or poorer, the 'haves and the have-nots', as it were. However, they are also democracies, autocracies and totalitarian regimes of various kinds, including despotic autocracies that oppress and tyrannise their citizenry, 'the good the bad and the ugly', as it were.*
- *The OECD Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) has admitted jurisdictions into the CRS provided only that they meet the confidentiality and data safeguard requirements. Moreover, the Global Forum requires that participating jurisdictions exchange information with all interested appropriate partners, including autocracies and totalitarian regimes that do not apply the rule of law, potentially exposing taxpayers to human rights violations.*
- *In order to facilitate automatic exchange of information under the CRS, the Global Forum has eroded the rights of taxpayers under domestic law and, as a result of the foregoing, may have undermined the very rule of law itself.*

The OECD's ambitions for a global standard for transparency and exchange of information have found their full expression in the Common Reporting Standard (CRS), an automatic exchange of information (AEOI) mechanism with 114 participating jurisdictions and counting, except the US.

*(A glossary of all terms can be found at the end of the article)*

However, there is a critical flaw in the OECD's CRS that questions its validity as a universal standard. First and foremost, the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) does not require, as a condition of admission to the CRS, that participating jurisdictions adhere to the rule of law and taxpayer rights in their respective jurisdictions, only that jurisdictions meet the confidentiality and data safeguard requirements of the Global Forum. Making matters even worse, the Global Forum obliges all participating jurisdictions, including rule-of-law states, to exchange information automatically with all interested appropriate partners, including non-rule-of-law states, such as autocracies and totalitarian regimes, potentially exposing taxpayers resident in such jurisdictions to human rights abuses.

## The OECD

The OECD's international tax transparency initiative can be traced back to the publication of *Harmful Tax Competition: An Emerging Global Issue* in 1998,<sup>[1]</sup> when the OECD launched its attack on the international financial centres (IFCs). An asymmetrical conflict ensued between the IFCs and the most powerful OECD countries in the world as the OECD sought to establish a so-called 'level playing field.' Game theory was even applied to explain the dynamics at work in the initial phases of this lopsided conflict and to search for a 'Nash' bargaining solution.<sup>[2]</sup> At the outset, the OECD's effort focused on attempting to drive the IFCs out of existence by coercing them, through 'naming and shaming' and the threat of sanctions, to abandon their so-called harmful tax practices. However, the OECD's approach came to be viewed as heavy-handed and an infringement of the sovereignty of the IFCs. Ultimately, the OECD abandoned its confrontational approach and settled on creating international standards for transparency and exchange of information.

First came the OECD's standard for exchange of information 'on request' (EIOR) in 2009, which required the adoption of the 'foreseeably relevant' standard for exchange of information set forth in art.26 of the *OECD Model Tax Convention on Income and on Capital*.<sup>[3]</sup> Then came the automatic exchange of information (AEOI) under the CRS in 2014. The CRS was developed by the OECD at the request of the G20 and came on the heels of FATCA. Indeed, the CRS was largely based on FATCA but differs because information is exchanged automatically in a fully reciprocal manner.

## The OECD's Global Forum

The Global Forum is the policing authority of the CRS.<sup>[4]</sup> In order to gain admission to the Global Forum, jurisdictions are required to commit to the Global Forum's standards for Exchange of Information on Request (EIOR) and AEOI under the CRS, and participate in the Forum's peer reviews. However, adherence to the rule of law, including taxpayer rights, is not a requirement to join the Global Forum.

The Global Forum, and its peer review group for AEOI (APRG), are charged with monitoring compliance with the CRS, conducting peer reviews to assess compliance and issuing ratings to participating jurisdictions. Critical functions of the APRG are the pre- and post-exchange reviews of the confidentiality and data safeguards for each participating jurisdiction.

## Joining the CRS

Jurisdictions must first adopt the amended *Convention on Mutual Administrative Assistance in Tax Matters* (the Amended Convention), <sup>[5]</sup> which provides for EIOR,<sup>[6]</sup> automatically<sup>[7]</sup> and spontaneously.<sup>[8]</sup> Jurisdictions must also adopt (either the multi-lateral version or the bilateral version of) the Model Competent Authority Agreement (Model CAA) or other agreement authorising AEOI, such as a Double Taxation Treaty (DTT) or a Tax Information Exchange Agreement (TIEA). In addition, jurisdictions must introduce domestic legislation implementing the CRS and must pass the Global Forum's pre-exchange assessments on confidentiality and data safeguards, etc. However, as a condition of joining the CRS, there is no requirement that participating jurisdictions adhere to the rule of law, including taxpayer rights, and are not assessed for these criteria by the Global Forum, either during the pre- or post-exchange assessments.

Under the Model CAA, participating jurisdictions may suspend<sup>[9]</sup> or terminate<sup>[10]</sup> automatic exchange with counterparties where there has been significant non-compliance by the competent authority of the counterparty, defined to include breaches of the confidentiality and data safeguard protections of the Model CAA and the Amended Convention.

## The rule of law

The OECD champions the rule of law as critical for economic development throughout the world. Although there is no generally accepted definition, the OECD has described the rule of law as 'the idea that the same rules, standards and principles are applied to all individuals and organisations, including government itself. The rule of law requires everyone to be treated in accordance with the law, with dignity, equality and rationality, and to have the opportunity of fair procedures before independent and impartial courts'.<sup>[11]</sup> Adherence to the rule of law is of course a matter of degree, as evidenced by the World Justice Project's *Rule of Law Index*,<sup>[12]</sup> with western liberal democracies at one end of the spectrum and autocracies and totalitarian regimes at the other end.

In the eyes of the OECD, the rule of law is seemingly not relevant for AEOI where vital rights are affected. There is no reference to the rule of law in the CRS, the OECD's *Implementation Handbook*, the Global Forum's *Terms of Reference*, the Global Forum's peer review reports or the many periodic publications of the Global Forum on the CRS, including those related to developing jurisdictions. In addition, as we have seen, adherence to the rule of law is not a requirement to join the Global Forum, or to participate in AEOI under the CRS.

The OECD sees participating jurisdictions principally in economic terms, as richer or poorer, the 'haves and the have-nots', as it were. However, they are also democracies, autocracies and totalitarian regimes of various kinds, including despotic autocracies that oppress and tyrannise their citizenry, 'the good the bad and the ugly',

as it were. Autocracies and totalitarian regimes, due to the very nature of their political systems, typically do not adhere to the rule of law and taxpayer rights. Human rights violations, including politically motivated tax prosecutions, tend to be widespread in such regimes.

## Taxpayer rights

Taxpayer rights are a fundamental element of the rule of law. In the context of the exchange of information, these rights are generally understood to mean the right to be notified of information exchange, the right to challenge the information exchange and the right to appeal any decision to an independent court. These and other taxpayer rights have been eroded to facilitate the exchange of information under both EOIR and AEOL standards. Much in the same manner as the OECD's coercive strategies were employed against the IFCs in the 1990s, the Global Forum has exerted pressure on jurisdictions to amend their domestic legislation to facilitate the exchange of information under both EOIR and AEOL standards, thus subordinating the rights of taxpayers to the interests of the states. The OECD's standard for exchange of information evolved from 'necessary' to 'foreseeably relevant', expanded information exchange significantly and included 'group' requests, etc. Equally, under the Amended Convention, contracting states are no longer authorised to invoke domestic protections such as the lack of a domestic tax interest<sup>[13]</sup> or bank secrecy<sup>[14]</sup> as a bar to the exchange of information. In addition, the permissible use of information exchanged has been expanded to include non-tax purposes.

The substantive rights of taxpayers are typically governed by the domestic laws of the place where the taxpayers are tax-resident, which is normally the 'receiving' state in an exchange of information context. In addition, the domestic law of the jurisdiction where the information is held, normally the 'remitting' state, may also provide substantive rights to taxpayers, including rights to privacy and data protection. Where the taxpayer resides in a jurisdiction that does not respect the rule of law, the taxpayer's rights are clearly limited. As a result, the taxpayer's sole recourse in such jurisdictions may therefore ultimately rest with the privacy and data protection laws of the 'remitting' state, which may be robust and substantial in the case of financial centres in developed rule-of-law jurisdictions, such as Switzerland,<sup>[15]</sup> the UK<sup>[16]</sup> and the various financial centres of the EU.<sup>[17]</sup>

## EOIR and AEOL compared

Exchange of information under the EOIR standard is quite different from exchange under the AEOL standard. In EOIR, exchange occurs following the request by one state to another under the Convention (or other agreement), with respect to a particular taxpayer (or a group of taxpayers). The requested state reviews the request and supporting documents and determines whether to provide the requested information on a case-by-case basis. In AEOL, exchange occurs automatically, the type of information to be exchanged is pre-agreed, the information relates to all the taxpayers of the receiving state, and the information is sent in bulk form electronically from one jurisdiction to another. The risk of violating taxpayer rights is far greater under AEOL than it is under EOIR because taxpayers typically have no rights to challenge the exchange under domestic law. Individual taxpayers residing in non-rule-of-law jurisdictions are potentially exposed to human rights abuses, including politically motivated tax investigations, as a result of AEOL.

## A universally valid standard

According to one particular scholar, writing on the EDIR standard, an international exchange of information standard is universally valid only where the rule of law and taxpayer's fundamental rights are respected in every participating jurisdiction.<sup>[18]</sup> It is submitted that this principle is equally applicable with respect to AEOI under the CRS. Therefore, because not all jurisdictions that participate in the CRS adhere to the rule of law and respect taxpayer's fundamental rights, the CRS is not a universally valid tax standard. Simply put, one cannot establish a universally valid standard where the participants play by different rules. However, if the CRS were to be restricted to rule-of-law states where a 'level playing field' should exist among the participants, it could be a valid (although not universal) tax standard.

## The legal basis for exchange

The legal basis for exchange of information between jurisdictions under the CRS is the Amended Convention or other applicable exchange instrument, such as a DTT or a TIEA. The Amended Convention purports to strike a proper balance between the need for effective exchange of information and taxpayer rights. However, it is clear that the balance is tipped in favour of efficient exchange of information and not in protecting taxpayer rights under domestic law. Indeed, the Amended Convention admonishes that domestic safeguards 'should not be applied in a manner that undermines the object and purpose of the Convention'.<sup>[19]</sup>

*The vast majority of participating jurisdictions exchange information under the CRS through the Amended Convention, which presently has 147 signatories.*

Others exchange information through DTTs, TIEAs and other instruments. The Amended Convention provides that any information obtained under the Convention should be treated as secret and protected in the same manner as information obtained under the domestic law of the receiving party.<sup>[20]</sup> The Amended Convention also provides that, to the extent necessary to protect personal data, the remitting party may specify additional data protection safeguards. In regards to confidentiality,<sup>[21]</sup> the Amended Convention provides that such information shall be disclosed only to persons or authorities concerned with the assessment or enforcement of taxation. In regards to the permissible use of information,<sup>[22]</sup> the Amended Convention limits the use of information received by a party to the assessment and enforcement of taxes, but may be expanded to include non-tax purposes in certain situations:<sup>[23]</sup> for example, money laundering, corruption or terrorism financing. However, these protections may not be of great comfort where the receiving jurisdiction does not adhere to the rule of law.

## Public policy (*ordre public*)

The Amended Convention provides that jurisdictions shall not have the obligation to exchange information that would contravene their public policy (*ordre public*),<sup>[24]</sup> defined to include politically motivated tax investigations.<sup>[25]</sup> In order to mitigate these risks, the Model CAA states that jurisdictions may, on public policy grounds, require their competent authorities to specify that information supplied may not be used 'in proceedings that could result in the imposition and execution of the death penalty or torture or other severe violations of human rights (such as for example when tax investigations are motivated by political, racial, or religious persecution).'<sup>[26]</sup> However, as above, these protections may not be of great comfort where the receiving jurisdiction does not adhere to the rule of law. It is important to note that, at least with respect to the Model CAA and its Explanatory Report, the OECD treats politically motivated tax investigations as severe human rights violations.

## The Terms of Reference

The Global Forum's *Terms of Reference* sets forth the criteria against which participating jurisdictions are measured for compliance with the CRS,<sup>[27]</sup> and are binding on its members. They are broken down into three elements:

- **Core Requirement 1:** Due Diligence and Reporting rules (CR 1);
- **Core Requirement 2:** Exchange of Information (CR 2); and
- **Core Requirement 3:** Confidentiality and Data Safeguards (CR 3).

The confidentiality and data safeguard requirements are further broken down into three sub-requirements:

- a legal framework that ensures the confidentiality and appropriate use of information exchanged under international exchange instruments (CR 3.1);
- an information security management (ISM) system that adheres to internationally recognised standards or best practices and ensures the protection of exchanged information (CR 3.2); and
- enforcement provisions and processes to address the occurrence of confidentiality breaches (CR 3.3).

The *Terms of Reference* go to great lengths to detail confidentiality and data safeguards, but they do not establish any assessment criteria for adherence to the rule-of-law and fundamental taxpayer rights. It should be evident that autocracies and totalitarian regimes, which typically do not adhere to the rule-of-law, dedicate significant resources to confidentiality and data security as part of their repressive political machinery and do, no doubt, handily satisfy the Global Forum's confidentiality and data safeguards. At the same time, these types of regimes routinely misuse the sensitive financial information of their own taxpayers in politically motivated tax investigations, which, in the words of the OECD, should be seen as human rights violations.

The *Terms of Reference* do not include adherence to the rule of law and taxpayer rights, jurisdictions are simply not peer reviewed for this criterion. No doubt, adding such a criterion to the Terms of Reference will pose drafting challenges because adherence to the rule of law is not absolute and is a matter of degree, and may risk offending

certain participating jurisdictions. Nonetheless, the OECD cannot simply ignore the relevance of the rule of law in AEOI. Otherwise, there will not be a 'level playing field' among the participating jurisdictions and the AEOI standard will lack universal validity.

The Global Forum's *Terms of Reference* also require that all participating jurisdictions, including rule-of-law states, enter into exchange agreements under the CRS with all interested appropriate partners,<sup>[28]</sup> defined as jurisdictions that wish to receive information from other jurisdictions and that have met the confidentiality and data safeguard requirements.<sup>[29]</sup> Jurisdictions may only decline to enter into exchange agreements where the aspiring counterparty does not meet the confidentiality and data safeguard requirements. To ensure compliance, the Global Forum's peer reviews assess jurisdictions to determine whether they have exchange agreements in effect with all interested appropriate partners.<sup>[30]</sup> It should be noted that, prior to the implementation of the CRS, the OECD stated that 'each signatory has ultimate control over exactly which exchange relationships it enters into and that each signatory's standards on confidentiality and data protection always apply'.<sup>[31]</sup> However, the freedom to determine exchange counterparties appears to have disappeared along the way. The Global Forum's requirement to exchange information with all comers would appear to undermine the protections of the Amended Convention, which provides that jurisdictions are not required to exchange information that would contravene their public policy (*ordre public*).

## The peer reviews

The APRG, comprised of 30 Global Forum members, conducts peer reviews to assess compliance with AEOI under the CRS. The peer reviews assess compliance with CR 1 and CR 2. However, in the case of CR 3, these assessments are conducted separately by the APRG with three additional members participating: Georgia, Uganda and the US.

The Global Forum's *Peer Review Report of the Automatic Exchange of Financial Account Information* included ratings for 106 individual jurisdictions,<sup>[32]</sup> with a 2023 update adding three more jurisdictions. The reports covered compliance with due diligence and reporting requirements (CR 1) and exchange of information (CR 2), but not confidentiality and data safeguards (CR 3). It is important to note that the peer review reports are approved by the consensus of all Global Forum members and that the content of the reports will necessarily reflect this consensual process where all members must agree.

Most surprisingly, these peer review reports show that all 106 jurisdictions assessed by the Global Forum entered into exchange agreements with all interested appropriate partners and not a single jurisdiction declined any exchange relationships, under public policy or other grounds. It is difficult to understand the unanimous acquiescence of all participating jurisdictions. One could rationalise the position of the IFCs, even the larger ones, after years of coercion by the OECD's Global Forum, including the threat of sanctions, 'black lists' and negative peer reviews. However, it is harder to rationalise the position of the developed rule-of-law jurisdictions, including those with robust financial centres, which are more able to defend the exercise of the public policy protections available under their domestic laws.



Moreover, the 2022 Report did not include the confidentiality assessments (CR 3) because these are considered confidential by the Global Forum and are not published,<sup>[33]</sup> rendering it impossible to know the results of these assessments and comment thereon. By contrast, the Global Forum's peer reviews under the EDIR standard, which also assess confidentiality safeguards (*Terms of Reference C3*), are published and available on the Global Forum's website.<sup>[34]</sup>

## The case of Switzerland

Switzerland's CRS-enabling legislation introduced a novel provision, art.19(2) of the *Federal Law on the International Automatic Exchange of Information in Tax Matters* (LEAR),<sup>[35]</sup> which gives individual taxpayers the right to be notified of the exchange of information<sup>[36]</sup> and also the right to file an objection to the exchange of information with the Swiss tax authorities, which may be appealed through the Swiss court system. Switzerland is one of the very few, if not the sole, relevant financial centre that provides such taxpayer rights. In the art.19(2) proceedings, taxpayers must show that they would suffer unreasonable prejudice (*préjudice déraisonnable*) from the exchange of information caused by lack of respect for the rule of law (*préjudice déraisonnable faute de garanties de l'état de droit*).

However, none of the cases brought in Switzerland under art.19(2) of LEAR have succeeded, creating little more than an illusion of meaningful taxpayer redress. The Federal Supreme Court of Switzerland has interpreted *préjudice déraisonnable* as requiring a showing that the exchange of information would expose the taxpayer to violations of Swiss public policy (*ordre public*) in the taxpayer's home jurisdiction, interpreted very restrictively to the very gravest violations defined in the European Convention on Human Rights (ECHR),<sup>[37]</sup> such as the prohibitions against execution (art.2), torture (art.3), slavery and forced labor (art.4),<sup>[38]</sup> and punishment without law (art.7). According to the Supreme Court, the sole relevant issue under art.19(2) proceedings is whether the taxpayer can make a sufficient showing that the information exchange would result in a violation of Swiss public policy, that is, where the taxpayer would be subject to execution, torture, etc. It is submitted that such an exceedingly restrictive interpretation of public policy saddles the taxpayer with an impossible burden of proof and is not supported by the Amended Convention or the MCAA. As we have seen, the *Explanatory Report to the Convention* provides for a far more liberal interpretation of violations of public policy, which include politically motivated tax investigations. No doubt weighing heavily on the Supreme Court in its overly restrictive interpretation of public policy was the Amended Convention's admonition that domestic safeguards 'should not be applied in a manner that undermines the object and purpose of the Convention'.

## Conclusion

The OECD's Global Forum has not only admitted jurisdictions to the CRS that do not adhere to the rule of law but also obliged rule-of-law jurisdictions to exchange information with all comers, including autocracies and totalitarian regimes, potentially exposing taxpayers resident in such jurisdictions to human rights violations. In addition, in order to facilitate AEOI, the Global Forum has undermined the rights of taxpayers under domestic law. In so doing, the OECD's Global Forum may have undermined the very rule-of-law itself. One may well ask

how the OECD could have succeeded in forcing through an international standard with such serious flaws that question its validity as a universal standard. Could the rule-of-law countries have been so concerned about political correctness or the Global Forum's coercive power that they dared not speak out against the CRS as an international standard, or was groupthink at work,<sup>[39]</sup> where concurrence seeking was so dominant that contradictory or opposing views were not properly considered?

In conclusion, rule-of-law jurisdictions should make greater use of any public policy protections available under domestic law, as authorised by the Amended Convention, and should not be coerced by the dictates of the Global Forum to exchange information automatically with autocracies and totalitarian regimes that do not adhere to the rule of law. Going forward, autocracies and totalitarian regimes should be restricted to the EOIR standard, where greater safeguards are present and exchange of information can be determined on a case-by-case basis. The Global Forum's *Terms of Reference* for the CRS should be amended to include, as assessment criteria, adherence to rule of law and taxpayer rights, and include reference to the public policy protections that may be available under domestic law. The Global Forum should suspend or expel jurisdictions from the CRS that do not meet these criteria. Finally, the peer review assessments for confidentiality and data safeguards under the CRS should be made public and included in the Global Forum's peer review reports.

## **GLOSSARY**

### *AEOI*

Means the automatic exchange of information implemented through exchange instruments, such as double taxation treaties (DTTs), tax information exchange agreements (TIEAs), or the Amended Convention. The CRS is an AEOI mechanism.

### *APRG*

Means the Automatic Exchange of Information Peer Review Group (APRG), which is a group of 30 Global Forum member states charged with monitoring and rating jurisdictions for compliance with the CRS. The APRG is chaired by India, with New Zealand and Switzerland as vice-chairs.

### *Amended Convention*

Means the *Convention on Mutual Administrative Assistance in Tax Matters*, as amended. The Amended Convention was a joint initiative of the OECD and the Council of Europe, was opened for signature to member states in 1988, entered into force in April 1995, and was amended in 2010.

### *CRS*

Means the Common Reporting Standard, which is a reciprocal, AEOI mechanism developed by the OECD at the request of the G20 and introduced in 2014. The vast majority of jurisdictions have adopted the CRS, except the US.

## CAA

Means the Competent Authority Agreement (CAA), which is a framework agreement designed to activate AEOI under the CRS with the applicable underlying exchange instrument. They can be multilateral or bilateral.

## *Confidentiality and data safeguards*

Means Core Requirement 3 of the Global Forum's *Terms of Reference* for AEOI under the CRS, which requires jurisdictions to keep information exchanged confidential and properly safeguarded. This requirement is further broken down into three sub-requirements, CR 3.1, 3.2, and 3.3.

## EOIR

Means the Exchange of Information on Request (EOIR) and refers to the exchange of information 'on request' standard, which pre-dated the CRS and remains in effect.

## FATCA

Means the *Foreign Account Tax Compliance Act* (FATCA), an AEOI mechanism introduced by the US in 2010, which differs significantly from the CRS.

## *Global Forum*

Means the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum), which was created in 2001 by the OECD and has 171 members, including all G20 jurisdictions, all OECD members and all relevant financial centres, including the US. The Global Forum is a consensus-based organisation chaired by France.

## *Participating jurisdictions*

Means jurisdictions that have signed the required agreements for AEOI under the CRS, introduced domestic implementing legislation, passed the Global Forum's pre-exchange assessments on confidentiality and data safeguards, etc., and have at least one exchange relationship with a counterparty for AEOI under the CRS.

## *Peer reviews*

Means the peer reviews conducted by the Global Forum's APRG to monitor the compliance of participating jurisdictions with AEOI under the CRS. The peer reviews are published periodically by the Global Forum in peer review reports.

## Terms of Reference

Means the criteria against which jurisdictions are rated for compliance with AEOI under the CRS in peer reviews conducted by the APRG. The *Terms of Reference* are published by the Global Forum and consist of three Core Requirements: Core Requirement 1, Due Diligence and Reporting rules (CR 1); Core Requirement 2, Exchange of Information (CR 2); and Core Requirement 3, Confidentiality and Data Safeguards (CR 3).

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## Footnotes

[1] [bit.ly/3U8V78W](https://bit.ly/3U8V78W)

[2] [bit.ly/4dazbmx](https://bit.ly/4dazbmx)

[3] [bit.ly/45yl1bw](https://bit.ly/45yl1bw)

[4] [bit.ly/3WeocTa](https://bit.ly/3WeocTa)

[5] *Convention on Mutual Administrative Assistance in Tax Matters*, [bit.ly/4coFCRN](https://bit.ly/4coFCRN)

[6] Article 5 of the Amended Convention

[7] Article 6 of the Amended Convention

[8] Article 7 of the Amended Convention

[9] Section 7, art.2 of the Model CAA

[10] Section 7, art.3 of the Model CAA

[11] [bit.ly/3z97E5w](https://bit.ly/3z97E5w)

[12] [bit.ly/4bcCXJM](https://bit.ly/4bcCXJM)

[13] Article 21(3) of the *Multilateral Competent Authority Agreement* (MCAA)

[14] Article 21(4) of the MCAA

[15] *Data Protection Bill* (2023)

- [16] *Data Protection Act 2018*
- [17] General Data Protection Regulation 2018 (GDPR)
- [18] Ana Paula Dourado, 'Exchange of Information and Validity of Global Standards in Tax Law (2013).
- [19] Article 21, para.179 of the MCAA, Explanatory Report
- [20] Article 22(1) of the MCAA
- [21] Article 22(2) of the MCAA
- [22] Article 22(4) of the MCAA
- [23] Article 22(4) of the MCAA
- [24] Amended Convention, 21(2)(b)
- [25] Amended Convention, Commentary, Para.196
- [26] Section 5, para.5 of the MCAA, Explanatory Report
- [27] Global Forum *Terms of Reference*, [bit.ly/3zbJA1R](https://bit.ly/3zbJA1R)
- [28] *AEOL Terms of Reference*, Core Requirement 2
- [29] Paragraph 2(3) of the *AEOL Terms of Reference*, Background
- [30] *AEOL Terms of Reference*, sub-requirement 2.1
- [31] [bit.ly/3Ui79wT](https://bit.ly/3Ui79wT)
- [32] 2022, [bit.ly/4beGJCu](https://bit.ly/4beGJCu)
- [33] The 2022 Report, p.11
- [34] [bit.ly/4a0eTgV](https://bit.ly/4a0eTgV)
- [35] Above, note 30, art.19(2) of LEAR
- [36] Article 14 of LEAR

[37] [bit.ly/44e0GHM](https://bit.ly/44e0GHM)

[38] Federal Supreme Court of Switzerland, 2C\_946/2021

[39] Irving L Janis, (1972). *Victims of Groupthink: a Psychological Study of Foreign-Policy Decisions and Fiascos*