



A proposal for a research report to be submitted to the Faculty of Commerce, Law and Management, University of Witwatersrand, Johannesburg, in partial fulfilment of the requirements for the degree of Master of Commerce (Specialising in Taxation)

ANALYSING THE TAX AGREEMENTS OF THE EXCHANGE OF INFORMATION THAT EXISTS BETWEEN THE SOUTH AFRICAN GOVERNMENT AND OTHER GOVERNMENT AUTHORITIES AROUND THE WORLD

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1. PROPOSED ABSTRACT

South Africa had entered into 97 double taxation agreements (at the time of this study in 2014) with other countries which generally contain an article which authorises the exchange of information between South Africa and the treaty partner. The 2008 global financial crisis re-emphasized the increase in tax planning structures as a result of globalisation to avoid or evade taxes and this highlighted the need for a more transparent tax information sharing platform.

Since the 2008 economic crisis, one of the key themes has been the attempts to co-ordinate reform of the global financial system in the pursuit of greater international transparency. Since 2012 Treasury started entering into agreements with various other countries to enhance the transparency of taxes paid by entering into exchange of information agreements: these includes the Bilateral Tax Information Exchange Agreements (TIEA) and the Multilateral Mutual Administrative Assistance (MAA) Agreements and the agreement entered into with the United States of America known as the FATCA (Foreign Account Tax Compliance Act) agreement, signed 9 June 2014. This will support the Double Tax Agreement already in place to enhance the information sharing regime. Government Notices 508 and 509, Gazette number 37778, were published on 27 June 2014 in order to facilitate FATCA compliance in terms of the Tax Administration Act 28 of 2011 (TAA) sections 26, 29 and 30.

As FATCA is a new agreement, there is a limited overview of the impact of this exchange of information agreement. This report is to gain insight into the reasons for implementing these agreements, an overview of these agreements and the implications of these agreements, with a specific focus on the newest agreement, FATCA.

<i>Key words:</i>	<i>FATCA, Foreign Account Tax Compliance Act, Double Tax Agreement, DTA, exchange of information, automatic exchange of information, tax information sharing, transparency, Bilateral Tax Information Exchange Agreements, TIEA, Multilateral Mutual Administrative Assistance Agreement, MAA, international tax, AEOI</i>
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2. INTRODUCTION

When original legislation, such as the Income Tax Act, was drafted and came into effect, it was not drafted with globalisation in mind. At that stage only a few international transactions took place and no-one could have anticipated the impact globalisation would have on businesses and transactions in the modern day.

Since the mid-1990's, the internet has had a revolutionary effect on culture and commerce, including the rise of near-instant communication by electronic mail, instant messaging, VOIP (voice over internet protocol) telephone calls, two-way interactive video calls, and the world wide web with its discussion forums, blogs, social networking, and online shopping sites. This was the start of globalisation. Globalisation is defined in the Oxford Dictionary as 'the process by which businesses or other organisations develop international influence or start operating on an international scale'. (Oxford Dictionary Online, 2013)

Globalisation has had a major effect on how business is conducted worldwide and this gave rise to increased international transactions and the formation of multinationals. Having business operations worldwide started to have benefits, one of them being better tax planning opportunities. Multinationals soon realised that with an increasingly globalised world, it is easier for taxpayers to arrange their tax affairs to avoid or potentially evade taxes. (SAIT, 2013); (Croome, 2014)

As a result, the Group of Twenty countries, known as the G20 countries, convened and one of the priorities was to create a more transparent economic environment. The G20 is the premier forum for its members' international economic cooperation and decision-making. Its membership comprises 19 countries, including the European Union. G20 leaders, finance ministers and central bank governors meet regularly to discuss ways to strengthen the global economy, reform international financial institutions, improve financial regulation, and discuss the key economic reforms that are needed in each of the member countries. (G20, n.d.)

In addition to South Africa forming part of the G20 countries, the G20 countries also have close relations with the Organisation for Economic Co-operation and Development (OECD) convention. The OECD comprises 34 official members, and has working relations with 6 other countries (one of these being South Africa). The OECD brings together 40 countries that account for 80% of world trade and investment, giving the OECD a pivotal role in addressing the challenges facing the world economy. It became apparent that both of these organisations have, as one of their main priorities, to increase transparency in the global tax arena. (OECD, 2014a)

South Africa has entered into 97 double taxation agreements (at the time of this study in 2014) and these agreements generally contain an article which authorises the exchange of information between South Africa and the treaty partner (SARS, 2014d) (Baranowska, 2013). The 2008 global financial crisis re-emphasized the increase in tax planning opportunities as a result of globalisation to avoid or evade taxes. The increased tax planning structures gave rise to the G20, once again raising the need for a more transparent tax information sharing platform (SAIT, 2013). The increasing global drive for transparency is transforming the international tax arena, giving rise to a new era of exchange of information legislation. One of the key themes is co-ordinated reform (KPMG, 2014). Since 2012 National Treasury started entering into agreements with various other countries to enhance the transparency of taxes paid by entering into the exchange of information agreements, the most recent being the agreement entered into with the United States of America known as the FATCA (Foreign Account Tax Compliance Act) agreement signed on 9 June 2014. The FATCA agreement will support the Double Tax Agreements already in place to enhance the information sharing regime. Government Notices 508 and 509, Gazette number 37778, were published on 27 June 2014 in order to facilitate FATCA compliance in terms of the Tax Administration Act 28 of 2011 (TAA) sections 26, 29 and 30. (SARS, 2014c)

As this is a new agreement, there is a limited overview of the impact of this exchange of information. This report is to analyse these agreements and the impact these has on the taxpayers of South Africa.

3. THE STATEMENT OF THE PROBLEM

3.1. The Problem Statement

What are the consequences for South African taxpayers of the existing exchange of information agreements that the South African Government has in place?

The research focuses on analysing and giving an overview of the three types of agreements on the exchange of information between the South African government and other government authorities around the world.

The three types of agreements are:

- Bilateral Tax Information Exchange Agreements (TIEA)
- Multilateral Mutual Administrative Assistance (MAA) Conventions / Agreements
- USA Foreign Account Tax Compliance Act (FATCA) Intergovernmental Agreement

An in-depth analysis lists the requirements for the South African Revenue Authorities to exchange information with the agreed countries and under what circumstances this information will be shared. There is a specific focus on the newest agreement, FATCA.

3.2 The Sub-problems

3.2.1 How do the new exchange of information agreements between the government of the Republic of South Africa and other government authorities interact with domestic laws and Double Tax Agreements?

The first sub-problem is to establish how the new exchange of information between South Africa and other government authorities interacts with domestic laws and Double Tax Agreements and to ascertain if domestic laws such as the Promotion of Access to Information Act, 2000 and the new Tax Administrative Act, 2011 are not in direct conflict with the exchange of information agreements.

3.2.2 To what extent is the SARS expected to assist in the gathering of the required information to comply with the exchange of information agreements?

The second sub-problem is to ascertain the extent that the SARS is expected to assist with to obtain this information.

3.2.3 Are there any identifiable problems that the exchange of information agreements may pose for the South African taxpayers?

The third sub-problem is to identify any problems that the agreements may pose to the South African taxpayer. Understand the limitations of these agreements and the possible future problems taxpayers can encounter as a result of this.

4. RESEARCH METHODOLOGY

The research method adopted consists of a review of the relevant provisions of the Acts (including the Constitution, PAIA and the TAA), agreements entered into by the South African National Treasury relevant to this research, publications by the South African National Treasury and the SARS publications and discussion papers relevant

to this research, South African and international textbooks, policies, guidelines, legislation and case law as well as international treaties relating directly to the objective of this research.

5. PROPOSED CHAPTER OUTLINES

5.1 Chapter 1- Introduction

- Introduction to the need for exchange of information between tax authorities in different countries
- Research problem and sub-problems
- Scope, limitations and Methodology

5.2 Chapter 2- An overview the different kinds of exchange of information agreements

This chapter will establish the need for the exchange of information between tax authorities and highlight the different agreement categories. It will be important to distinguish between the three categories of agreements that exist:

These three types of agreements are:

- Bilateral Tax Information Exchange Agreements (TIEAs)
- Multilateral Mutual Administrative Assistance (MAA) Conventions / Agreements
- USA FATCA Intergovernmental Agreement

This chapter will give an explanation of each of the different agreements in place and analyze and assess exactly what information SARS can request from the South African taxpayer under each of the different types of agreements. It will also give an overview of how SARS can request and provide the information, and what SARS and other tax authorities can do with the obtained information.

- Chapter 2.1- An overview of the Bilateral Tax Information Exchange Agreements (TIEA):

Chapter 2.1.1. Introduction to TIEAs

Chapter 2.1.2. Scope and an overview of the basics of TIEAs

Chapter 2.1.3. What the SARS needs to exchange information and the extend the SARS must go to to obtain the relevant information as required by the TIEA

Chapter 2.1.4. Implication of implementation for individuals and businesses and possible compliance problems

Chapter 2.1.5. Summary of the extent of information to be shared under this legislation and the requirements that needs to be met in order for the SARS to share this information

- Chapter 2.2- An overview Multilateral Mutual Administrative Assistance (MAA) Conventions / Agreements:

Chapter 2.2.1. Introduction to MAA

Chapter 2.2.2. Scope and an overview of the basics of the MAA

Chapter 2.2.3. What the SARS needs to exchange information and the extend the SARS must go to to obtain the relevant information as required by the MAA

Chapter 2.2.4. Implication of implementation for individuals and businesses and possible compliance problems

Chapter 2.2.5. Summary of the extent of information to be shared under this legislation and the requirements that needs to be met in order for the SARS to share this information

- Chapter 2.3- An overview of FATCA:

Chapter 2.3.1. Introduction to FATCA

Chapter 2.3.2. Scope and an overview of the basics of FATCA

Chapter 2.3.3. What the SARS needs to exchange information and the extend the SARS must go to to obtain the relevant information as required by the FATCA

Chapter 2.3.4. Implication of implementation for individuals and businesses and possible compliance problems

Chapter 2.3.4. Summary of the extent of information to be shared under this legislation and the requirements that needs to be met in order for the SARS to share this information

This chapter will also make note of how these three categories noted above enhances the double tax agreements already signed.

5.3 Chapter 3- Data Submission Business Requirements Specifications (BRS) as proposed by the SARS

This Chapter will focus on a high level overview of the current BRS as proposed by the SARS.

5.4 Chapter 4- Analysis to determine how this legislation supports or contradicts other domestic legislations

The exchange of information agreements may however contradict other domestic legislations. Other domestic laws have articles dealing with confidentiality and protection of information of the taxpayer. Therefore, in this chapter other legislation will be analyzed to determine if the exchange of information contradicts with the following specific legislation:

- Tax Administration Act, 2011
- Promotion of Access to Information Act, 2000
- Constitution of the Republic of South Africa, (Act 108 of 1996)

5.5 Chapter 5- The limitations of this legislations and possible future problems that the taxpayer or the SARS can encounter as result of this legislations

After all this information is obtained, this chapter will focus if there are any short comings identified in the said legislation. Furthermore if there are any limitations or possible problems the taxpayer may encounter as result of this legislation.

5.6 Chapter 6 - Conclusion

5.7 References and bibliography

5.8 Appendices

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- Income Tax Act 58 of 1962
- Tax Administration Act 28 of 2011
- Promotion of Access to Information Act 2 of 2000

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- SA National Treasury, 2013a, *Agreement between the Government of the Republic of South Africa and the Government of Gibraltar for the exchange of information relating to tax matters*, Signed: 11 July 2013
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