

Conclusion

The express goal of the OECD Global Forum on exchange of tax information has been stated to be the achievement of 'convergence of existing practices of information exchange to meet high standards' which 'would achieve a global level playing field.'¹³³ The benchmark 2006 Assessment conducted by the OECD has been particularly useful in identifying the existence in all countries reviewed of available tax information frameworks, albeit with variations in the manner in which exchange of tax information is achieved, and in most countries, of limitations in the existing mechanisms for the exchange of information.

There appear to be two principal obstacles to expanding cooperation on tax information exchange. The first is that the form of tax information exchange instrument that is usually offered to small and developing countries is the TIEA which is disadvantageous in comparison with the normal DTC, which is the preferred bilateral instrument for cooperation among more geopolitically influential states. The second is the lack of truly international standards, in that small and developing countries feel unfairly pressured to apply standards not uniformly applied by those countries which are applying the pressure or by other competitor countries with greater geopolitical influence. In relation to each of these obstacles there is an apparent lack of a 'level playing field'.

Overcoming these obstacles would appear to be achievable if there is the will to do so. In relation to the use of fair bilateral instruments, both technical and competition/policy issues exist. The technical issues, which may be highlighted in arguments against the use of DTCs in relation to small and developing countries with taxation systems which may differ in some respects from those of larger and developed countries, are clearly surmountable given a common objective of a 'level playing field'. This is an area in which an intermediary organisation such as the Commonwealth acting as facilitator may be of assistance.

Concern has been expressed by representatives of the smaller countries that they have been pressured by the more geopolitically powerful countries to implement more onerous standards, with tighter timetables, than the more geopolitically powerful countries are prepared to adopt. The 2006 Assessment and related materials add support to the propositions that firstly, the small and developing countries participating in the exercise had justifiable concerns at the outset of the Harmful Tax Competition Initiative and secondly, the small and developing countries are generally able to meet the standards uniformly applied by the member states of the OECD at the date of the 2006 Assessment. Given the evolution of that process and the recent positive developments, the way forward would appear to lie in the expansion and continuation of more inclusive and constructive dialogue among countries with concerns related to tax information

exchange, based on a common commitment to, and understanding of, fair treatment for all participants.

If the objective of the current OECD Global Forum process is to provide a self-enforcing global community of cooperation in relation to tax administration based on a 'level playing field' and if, as indicated in the 2006 Report the 'level playing field' is fundamentally about fairness, then perhaps Rawls's concept of fairness within systems of cooperation should be taken into consideration:

The central organising idea of social cooperation has at least three essential features:

(a) ... [S]ocial cooperation is guided by publicly recognised rules and procedures which those cooperating accept as appropriate to regulate their conduct.

(b) The idea of cooperation includes the idea of fair terms of cooperation: these are terms each participant may reasonably accept and sometimes should accept, provided that everyone else likewise accepts them. Fair terms of cooperation specify an idea of reciprocity or mutuality: all who do their part as the recognised rules require are to benefit as specified by a public and agreed upon standard.

(c) The idea of cooperation also includes the idea of each participant's rational advantage, or good. The idea of rational advantage specifies what it is that those engage in cooperation are seeking to advance from the standpoint of their own good.¹³⁴

This analysis of the 2006 Assessment and the identified background materials thus suggests that the use of fair treaty instruments incorporating commonly developed and applied standards and the fair treatment of small and developing countries will produce the kind of community of cooperation which will provide a stable long-term basis for cooperation in taxation matters. Such a system will have the potential to 'contribute to the expansion of world trade on a multilateral non-discriminatory basis', to quote from Article 1 of the OECD's Paris Convention.