

# DEVELOPMENTS IN CROSS-BORDER TAX INVESTIGATIONS TARGET HIGH NET WORTH INDIVIDUALS

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This edition of *Insights* surveys recent developments in seven countries related to (i) tax transparency and (ii) investigation and enforcement mechanisms relevant to high-net-worth individuals (“H.N.W.I.’s”), larger multinational enterprises (“M.N.E.’s”) and cross-border investment.

Tax collection and tax policy remain high priorities for government and international policy makers, most notably the Financial Action Task Force (“F.A.T.F.”) and Organisation for Economic Co-operation and Development (“O.E.C.D.”). These international organizations develop and monitor implementation of standards and recommendations aimed at enhancing transparency, combatting financial crime, and ensuring effective regulation in financial and tax systems. The focus of the F.A.T.F. is on money laundering and terrorist financing, while the O.E.C.D. focuses on tax transparency and information exchange.

The past decade or so has seen accelerated reforms and ambitious deadlines set by governments and international organizations in response to the 2008 global financial crisis, high levels of public debt in major economies, perceived challenges to traditional taxation models posed by digitalization and globalization (particularly “tech giants” and M.N.E.’s and latterly virtual assets), and increased pressures on governments to find ways other than the issuance of debt to fund social programs.

This is reflected in the sheer volume of ongoing domestic and international initiatives and monitoring mechanisms in this area, which include the following:

- Beneficial ownership transparency initiatives, particularly for legal persons and legal arrangements such as trust) under F.A.T.F. Recommendations 24 and 25, respectively, which have led most notably to the 5th E.U. Anti-Money Laundering Directive (“A.M.L.D. 5”) and the U.S. beneficial ownership reporting requirements under the Corporate Transparency Act
- The O.E.C.D. Common Reporting Standard (“C.R.S.”), following and expanding upon the approach taken by the U.S. Foreign Account Tax Compliance Act (“F.A.T.C.A.”)
- Information exchanges under C.R.S. and F.A.T.C.A., the O.E.C.D. Convention on Mutual Administrative Assistance in Tax Matters (the “Multilateral Convention”), and other tax information exchange agreements (“T.I.E.A.’s”) between nation states
- The O.E.C.D. Base Erosion and Profit Shifting (“B.E.P.S.”) framework and the so-called “B.E.P.S. 2.0” initiatives (“Pillar One” and “Pillar Two”), which are predominantly aimed at addressing challenges posed by digitalization, globalization, and ever larger M.N.E.’s

- The O.E.C.D. Crypto-Asset Reporting Framework (“C.A.R.F.”), which was introduced to address the growing use of digital assets and will operate alongside amendments to the C.R.S., requires more detailed reporting on financial assets, including those held in digital form
- Continuing updates to recommendations and standards, coupled with mutual evaluation reports and peer review processes between the members of international organizations that are required in order to monitor the implementation and effectiveness of initiatives

This is by no means an exhaustive list. In this edition, the authors do not discuss BEPS 2.0 or regulation of crypto or virtual assets to any great extent.

## CHALLENGES

Differences between the status of implementation and interpretation of international standards, as well as unilateral or bilateral initiatives involving specific jurisdictions, such as the U.S. adoption of F.A.T.C.A. but not C.R.S., create challenges and increase complexity and uncertainty for H.N.W.I.’s and the financial services industry. Ongoing peer reviews and monitoring reports have revealed inconsistencies in implementation and operational effectiveness across jurisdictions.

There is a marked focus on transparency, reducing avoidance, and strengthening enforcement by and between tax authorities. However, the practicalities of navigating the complex interplay between financial regulation, tax compliance, and an increasingly digital and global economy pose challenges to governments and businesses alike.

In addition to domestic implementation, peer reviews and mutual evaluations have become critical mechanisms for ensuring that countries not only enact the required legislation but also enforce it effectively. From a government’s perspective, meeting international standards is important for reputational purposes, investor confidence, and maintaining access to international capital. From the perspective of H.N.W.I.’s and M.N.E.’s and their advisors, implementation of a system to ensure efficient compliance and keeping abreast of developments undoubtedly adds complexity and costs to cross-border business. Globally, the authors continue to see many domestic tax authorities focus their collection efforts on H.N.W.I.’s and M.N.E.’s, and generally predict an increase in tax investigations and controversies as information exchange initiatives are enforced.