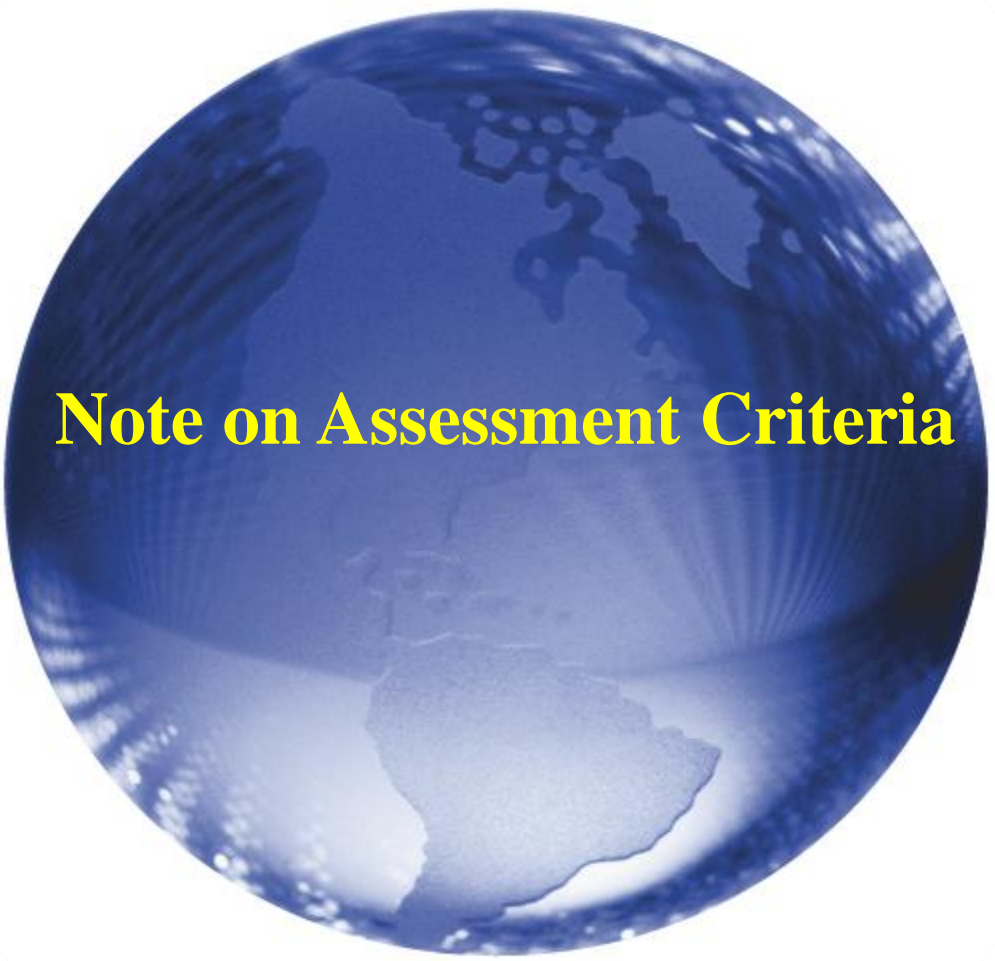




LAUNCH OF A PEER REVIEW PROCESS



Note on Assessment Criteria



2010



THE ASSESSMENT CRITERIA

Introduction

1. The Terms of Reference note breaks down the standards of transparency and exchange of information into 10 essential elements under three broad categories: (A) availability of information; (B) access to information; and (C) exchanging information. This note establishes a system for assessing the implementation of the standards that corresponds to the Global Forum's goals of achieving effective exchange of information and to the subject and structure of the review process for both Global Forum members and non-members. Briefly, Phase 1 reviews will lead to an assessment of the jurisdictions' legal and regulatory framework, accompanied where necessary by recommendations for improvement. Phase 2 reviews will assess the application of the standards in practice, along with recommendations related to all of the categories, and will ultimately lead to a rating of each of the essential elements along with an overall rating. This note must be read in conjunction with the Terms of Reference and Methodology notes¹.

The Goal of the Rating System

2. The object of the Global Forum's review process is to promote universal, rapid and consistent implementation of the standards of transparency and exchange of information. This can be achieved when international tax co-operation allows tax administrations to effectively administer and enforce their tax laws regardless of where their taxpayers choose to locate their assets or organise their affairs.

3. The Global Forum's annual reports already show that the legal and regulatory frameworks in place today are not equivalent among all jurisdictions. Internationally, there is a broad variation in the level of implementation of the standards. The progress made by a jurisdiction in implementing the standards, and likewise a failure to make such progress, should be highlighted as part of the Global Forum's review process. In this context the Global Forum reviews should:

- give recognition to progress that has been made,
- identify areas of weakness and recommend remedial actions so that jurisdictions can improve their legal and regulatory frameworks as well as their exchange of information practices, and
- identify jurisdictions that are not implementing the standards.

4. The assigning of a rating is only one of the components of the review process relevant to achieving these goals. Recommendations setting out clearly what improvements a jurisdiction needs to make and, where possible, obtaining the agreement and commitment of the reviewed country to the recommendation(s) are especially important. Indeed, ratings will always be assigned in light of such

¹ See *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information for Tax Purposes* CTPA/GFTEI(2009)1/REV2 and *Methodology for Peer Reviews and Non-Member Reviews* CTPA/GFTEI(2009)2/REV2.

recommendations. In order to act as an incentive for jurisdictions to follow recommendations and respond to ratings given by the Global Forum, however, the system should be dynamic and capable of taking into account developments as they occur. While the Peer Review Group and ultimately the Global Forum may not be in a position to re-evaluate jurisdictions immediately each time they make changes to their systems of exchange of information, there should be an effective system of on-going monitoring that is flexible enough to respond to a fast-changing environment. In accordance with the Methodology note, the PRG will consider and elaborate proposed procedures for re-evaluating jurisdictions in light of changes that they make to their systems for the exchange of information.

5. The review process is intended to be dynamic with the Global Forum continually monitoring the process as the reviews proceed. Jurisdictions will want to review the recommendations that are addressed to other jurisdictions to see if these are relevant for them.

Structure of the Rating System

Rating of the essential elements

6. The review process is divided into two phases, one that addresses the legal and regulatory framework that is in place in a jurisdiction and one that addresses the effectiveness of the implementation of the standards in practice. As noted, the standards are divided among 3 broad categories and are broken down into 10 essential elements. The essential elements themselves are further broken down into 31 enumerated aspects. A rating system could therefore take on a number of structures. It is possible to rate each element and enumerated aspect during both Phase 1 and Phase 2, to rate only essential elements and/or to give an overall rating. Each aspect of the review process should be evaluated in the manner which best fulfils the objectives set out above and that promotes an efficient operation of the review process.

7. There are a number of reasons why it would not be appropriate to rate each enumerated aspect. Not all of the enumerated aspects are relevant to all jurisdictions, whereas there may be cases of certain considerations that are so specific to a particular jurisdiction that they are not directly covered by a specific enumerated aspect within an element of the Terms of Reference. The same enumerated aspect may also have different significance in different cases. Even if the enumerated aspects are not rated *per se*, they will each have to be evaluated by the assessment team. Recommendations made by the assessment team will be as specific as possible and so will generally be directed to the enumerated aspects. In light of these considerations, the enumerated aspects of the elements will not be given a rating *per se* in the reports provided to the PRG. This will allow the PRG (and the Global Forum) to focus their efforts on the main substantive issues, rather than expending excessive time in discussions of individual ratings, and ensure that where PRG delegates require further information, this will be contained in the commentary of the report, or may be presented by the assessment team during oral debate.

Outcomes of Phase 1 reviews

8. A distinction should be drawn between Phase 1 and Phase 2, and between the respective types of assessment that should be applied to each of them. Phase 1 reviews are concerned with the adequacy of a legal and regulatory framework for the exchange of information and so they evaluate what is a necessary but not sufficient condition for the *effective* exchange of information. Phase 2 reviews consider the effectiveness of the transparency and exchange of information practices in a jurisdiction and thus these reviews can reveal whether and to what degree a jurisdiction is in compliance with the international standards. Consequently, the purpose of a Phase 1 review is to assess the extent to which a jurisdiction has in place the elements that would allow it to achieve effective exchange of information in practice. For this reason it would be inappropriate to assign definitive ratings at the end of Phase 1, although whether a jurisdiction moves to its Phase 2 review will depend on the outcome of the Phase 1 review.

9. Accordingly, Phase 1 assessments will lead to one of the following determinations in respect of each essential element:

Determinations – Phase 1
The element is in place
The element is in place, but certain aspects of the legal implementation of the element need improvement
The element is not in place

These determinations will be accompanied by recommendations for improvement.

10. A jurisdiction will normally qualify for a Phase 2 review once its Phase 1 review has been completed, even if certain aspects of the elements are identified as requiring some improvements. Jurisdictions would normally have strengthened their legal and regulatory frameworks where required in accordance with Phase 1 recommendations. If so, these improvements would be assessed in the context of the Phase 2 review. Where improvements have not been made, this will also have an impact on the Phase 2 outcome.

11. In cases where a jurisdiction does not have in place elements which are crucial to it achieving an effective exchange of information in its particular case, the jurisdiction will not move to a Phase 2 review until it has acted on recommendations to achieve an improved legal and regulatory framework.² Each case may be different, and may require individualized attention from the PRG, but a very clear example of such a circumstance would be a jurisdiction that does not have in place an agreement with any relevant jurisdiction that provides for the exchange of information in tax matters or a jurisdiction that has no access to bank or ownership information or where reliable accounting information generally is not available. If the PRG concludes that the jurisdictions' legal and regulatory framework does not allow for effective exchange of information and as a result the Phase 2 review is deferred, then the position will be reviewed on the occasion of the jurisdiction's detailed written report to the PRG within 12 months of the adoption of the report. Once the jurisdiction has sufficiently addressed the recommendations made in the Phase 1 report, then its Phase 2 review shall be scheduled.

Outcomes of Phase 2 reviews

12. In contrast to Phase 1, it is appropriate in the context of a Phase 2 review to provide ratings of the jurisdiction's compliance with the standards, as the effectiveness of implementation of the essential elements can be rated once an appropriate subset of jurisdictions has been assessed. Through the Phase 2 reviews, jurisdictions will have the opportunity to demonstrate (whether through quantitative data or other factors) that implementation of the essential elements is effective in practice.

13. While each of the essential elements will be rated, the ultimate object of the exercise is to evaluate the overall effectiveness in practice of a jurisdiction's system for exchange of information. The issuance of an overall rating will best achieve both the recognition of progress by jurisdictions toward the level playing field and the identification of jurisdictions that are not in step with the international consensus.

² Jurisdictions chosen for combined reviews are from among those with established systems of exchange of information and experience with its practice. Where the Phase 1 aspects of the combined review indicate that elements which are crucial to the jurisdiction achieving an effective exchange of information are not in place, this should be brought to the attention of the PRG chair and vice-chairs to determine whether an adjustment to the schedule of reviews should be made.

14. The Phase 2 evaluation, including the overall rating, would be applied on the basis of a four-tier system:

Rating	Phase 2 – Exchange of Information
Compliant	The essential element is, in practice, fully implemented.
Largely compliant	There are only minor shortcomings in the implementation of the essential element.
Partially compliant	The essential element is only partly implemented.
Non-compliant	There are substantial shortcomings in the implementation of the essential element.

Application of the Rating System

15. Peer reviews and non-member reviews require informed judgements to be made by the assessors and the members on the basis of the information provided to them. Jurisdictions must implement the international standards in a manner consistent with their national legislative and institutional systems, and so the methods by which compliance is achieved may differ from jurisdiction to jurisdiction. What is essential is that a jurisdiction is able to respond to a request for information in a manner that enables the exchange of information to be effective. Responsibility for ensuring a fair and consistent outcome of the reviews as a whole and the application of the rating system in particular will fall to the PRG, which should have an active role in ensuring that similar cases are treated similarly and that real distinctions in the effectiveness of the systems for the exchange of information in different jurisdictions are reflected in the assessments given to each. Of course, the assessment teams will play a crucial role in this regard as they will be charged with crafting the draft report for approval of the PRG.

16. In determining the ratings for the essential elements in Phase 2 reviews, assessors must exercise judgment in terms of whether shortcomings in the implementation of an essential element are minor or substantial, and how such shortcomings translate into ratings in a four-tier system. In coming to this determination, assessors must ultimately evaluate what impact the shortcomings have on effective exchange of information. This can include an appraisal of the extent to which the impediment was cited by the jurisdictions' exchange of information partners, or whether the type of information or request concerned relates to a large portion of the jurisdiction's flows of income or investment. For example, a jurisdiction may have a deficiency in providing information in practice in respect of companies that have issued bearer shares, but only allow the issuance of such shares in limited circumstances and the jurisdiction's exchange of information partners have not cited this as a significant problem. In such a case this may be regarded as a shortcoming that would not, on its own,³ lead to a determination that the jurisdiction is only Partially or Largely Compliant in respect of element C.1.

17. It is also important to note that assessors will already have considered the impact that a shortcoming has on the jurisdiction's practical ability to exchange information when formulating their recommendations. Assessors should ensure that the classification of a shortcoming as minor or not is consistent with the tenor of the recommendations issued in connection with it. It would be unusual if a particular shortcoming is regarded as minor, but its remedy required the jurisdiction to take quite serious and involved steps to remedy it. For example, if assessors determine that a jurisdiction has an inadequate infrastructure for exchange of information and have made a recommendation for significant and wholesale

³ Whether a series of shortcomings amounts to a deficiency that would lead to a determination that the jurisdiction is only Partially or Largely Compliant will depend on the individual circumstances.

changes, then this should correspond to more than a minor shortcoming in the practical exchange of information. Conversely, if assessors do not uncover significant difficulties in the jurisdiction's practical experience with exchange of information, then this should impact the urgency of the recommendation regarding the jurisdiction's infrastructure.

18. While the overall rating will be based on a global consideration of a jurisdiction's compliance with the individual essential elements, this cannot be a purely mechanical approach. This will require judgment, taking into account the outcomes from the Phase 1 and Phase 2 reviews and the manner in which jurisdictions have responded to any recommendations made. In particular, the Compliant category should not be viewed as an unobtainable goal that requires perfection as consideration must be given to the fact that some jurisdictions engage in extensive exchange of information including in a variety of sophisticated cases, whereas others may be limited to delivering information on a much more limited scale. This judgment must take into account the nature, complexity and scale of information requests made to the jurisdiction.

19. It will be important to complete Phase 2 reviews for a subset of jurisdictions representing a geographic and economic cross-section of the Global Forum before finalising ratings, in order to ensure that application of the ratings system is consistent across jurisdictions. This is because the ratings determination is likely to require some comparative perspective, without which early ratings may not be consistent. Thus, the publication of ratings should be taken up by the Peer Review Group and ultimately the Global Forum at such time as a representative subset of Phase 2 reviews is completed, which would be expected to be within the first mandate.⁴ In the interim, to ensure that the work of the Global Forum progresses expeditiously and promotes rapid and consistent implementation of the standards, both Phase 1 and Phase 2 reports will be published with full assessments as they are adopted by the Global Forum.

Conclusion

20. A variety of considerations have an impact on the choices made in designing an assessment system, from theoretical and substantive factors to practical concerns inherent in any undertaking of this nature. Ultimately, the goal is to create a system that can be fairly and efficiently applied and which encourages continuing progress towards effective exchange of information across a broad universe of jurisdictions each having its own unique characteristics. The assessment system balances these factors against the objectives of the assessment system. Phase 1 reviews assess jurisdictions' legal and regulatory framework coupled with recommendations for improvement for the essential elements in categories A (availability of information), B (access to information) and C (exchanging information). Phase 2 reviews will include recommendations related to all of the categories, and be accompanied by ratings for each of the essential elements, as well as an overall rating, as soon as a representative subset of reviews is completed.

⁴ The PRG will review the question of when ratings should be assigned and advise the Steering Group, which in turn would consult the Global Forum.

For more information

Global Forum on Transparency and
Exchange of Information for Tax Purposes

www.oecd.org/tax/transparency

Centre for Tax Policy and Administration work
on Tax Evasion

www.oecd.org/tax/evasion

