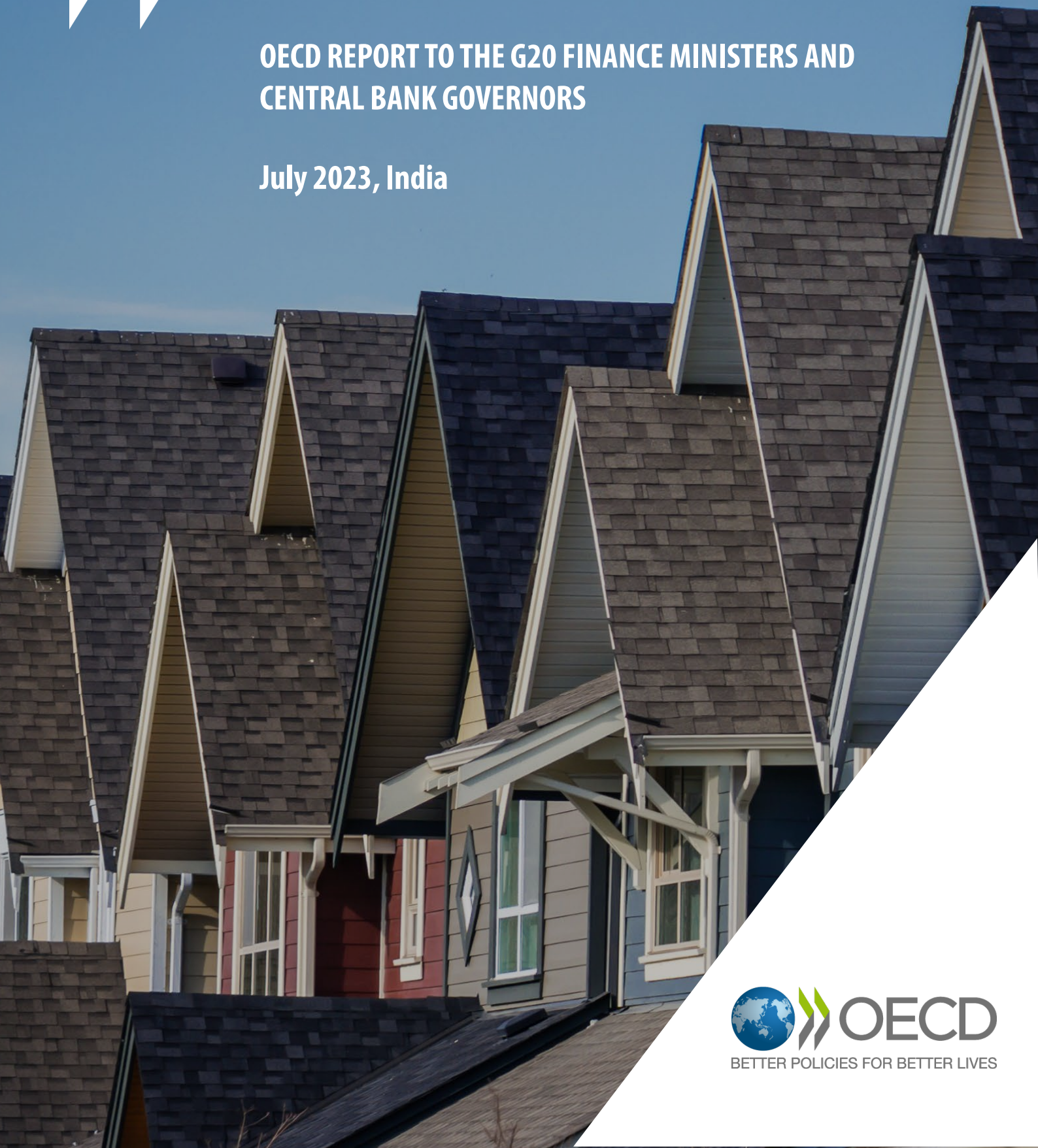




Enhancing International Tax Transparency on Real Estate

OECD REPORT TO THE G20 FINANCE MINISTERS AND
CENTRAL BANK GOVERNORS

July 2023, India



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Central Bank Governors

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Please cite this publication as:

OECD (2023), *Enhancing International Tax Transparency on Real Estate: OECD Report to the G20 Finance Ministers and Central Bank Governors*, OECD Publishing, Paris, <https://doi.org/10.1787/37292361-en>.

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Foreword

At the request of the Indian G20 Presidency, this report examines the current state of tax transparency concerning foreign-owned real estate. It also explores how recent advancements in other tax transparency frameworks, such as the OECD/G20 Common Reporting Standard, and broader policy developments, such as the Financial Action Task Force's work on beneficial ownership, could inform possible improvements to tax transparency in the area of real estate on a voluntary basis. The report is set out in three main sections. The first addresses the potential tax compliance risks in the area of foreign real estate holdings and highlights the benefits of enhanced tax transparency in this area. The second outlines the key domestic and international features required for a successful tax transparency framework. The final section identifies potential short-term and structural improvements to the existing architecture.

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Executive summary

Several studies show that cross-border real estate holdings are on the rise. However, tax authorities often lack visibility into tax relevant aspects of foreign real estate holdings of their residents and there are indications that this raises tax compliance risks. In addition, aspects of the real estate sector have been identified as a risk area by the Financial Action Task Force (FATF).¹ At the same time much progress has been made in recent years in improving tax transparency on financial assets held abroad.

It is against this background that the Indian G20 Presidency invited the OECD to prepare a report that looks into current level of tax transparency on foreign owned real estate and explores how recent improvements in other tax transparency frameworks and wider developments could inform possible improvements to tax transparency in the area of real estate on a voluntary basis.

The report is set out in three main sections. The first addresses the potential tax compliance risks in the area of foreign real estate holdings and the benefits of enhanced tax transparency in this area. The second sets out the key domestic and international features for a successful tax transparency framework. Lastly, the third section identifies potential improvements to the present architecture.

The report suggests that, in the short term, interested countries could make significant progress at limited cost by exchanging information that is readily available on the basis of existing international legal and operational gateways for the exchange of information. The report also explores two models for longer-term structural improvements to tax transparency. The first is based on the traditional exchange of information approach, underpinned by common due diligence and reporting rules. The second is based on a more novel direct access-based model, building on the ongoing trend, in particular in the anti-money laundering and financial regulatory space, towards the interconnection of digitalised ownership registers accessible to designated relevant government agencies on a real-time basis.

For both the short-term and longer-term structural improvements the report recommends a number of concrete steps that could be undertaken by countries wishing to pursue them as a roadmap to deliver enhanced tax transparency on real estate. For ease of reference, the steps to be undertaken for each of the solutions are shown below:

¹ Financial Action Task Force, Guidance for a Risk-Based Approach Guidance for the Real Estate Sector (p. 12), <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-rba-real-estate-sector.html>

Short-term improvements	Structural solutions	
<i>Exchange of readily available and relevant information</i>	<i>Exchange of information based on common due diligence and reporting requirements</i>	<i>Direct access to relevant information in real time</i>
<ul style="list-style-type: none"> • Jurisdictions to assess the real estate information that is readily available for exchange; • Development of a common XML schema for the exchange of information on real estate transactions, holdings and income; and • Development of a multilateral competent authority agreement for countries wishing to participate, based on the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAAC), to agree on the modalities of the exchanges (e.g. specification of the information available for exchange, timing, format and transmission method of the exchanges as well as data safeguards). 	<ul style="list-style-type: none"> • Definition of a standardised set of information to be collected from intermediaries and taxpayers and common due diligence rules to verify such information to ensure a high level of quality; • Implementation of the reporting and due diligence requirements into domestic law by interested jurisdictions; • Development of a common XML schema for the exchange of information on real estate transactions, holdings and income; and • Development of a multilateral competent authority agreement, based on the MAAC, to agree on the modalities of the exchanges. 	<ul style="list-style-type: none"> • Definition of a common set of minimum information to be included in the domestic registers, taking into account the needs of various stakeholders, potentially complemented by common minimum criteria for reviewing the reliability of the information fed into the registers; • A common IT-architecture for the interconnection and querying of registers that takes into account differences in the technical characteristics of national registers and allows the querying of the interconnected registers in a seamless way through a single query portal; • An agreed and audited approach for governing the conditions and actual access to registers (which agencies can get access, the purpose for which they can get access, confidentiality requirements, etc), including through the single query portal; and • Development of an international legal instrument to define the modalities for interconnecting and accessing the registers in a cross-border setting.

The OECD stands ready to support further work towards enhancing tax transparency on real estate, including under the current Indian and upcoming Brazilian Presidencies of the G20.

1 Introduction

Ahead of the July 2023 meeting of the G20 Finance Ministers and Central Bank Governors, the Indian Presidency invited the OECD to prepare a report that explores options to enhance international tax transparency on real estate, including the feasibility of exchange of tax information on a voluntary basis in respect of real estate held by taxpayers outside their jurisdiction of tax residence.

Based on an assessment of the current state of global tax transparency, this report lays out ideas for achieving both short-term solutions, as well as longer-term structural changes that interested jurisdictions could undertake to ensure their tax administrations receive tax-relevant information on real estate held abroad.

Traditionally, bank secrecy rules and limited exchange of information networks resulted in tax administrations having limited visibility over foreign assets and income of their taxpayers. However, important tax policy developments in the past 15 years have significantly reduced barriers to cross-border exchanges of tax information.

The call of the G20 leaders to end bank secrecy in 2009 resulted in the establishment of the international Exchange of Information on Request (EOIR) standard, which allows tax authorities to request information on accounting records, bank accounts and on legal and beneficial ownership of assets, including real estate. Shortly thereafter, global tax transparency took another step forward when G20 countries called on the OECD to develop the Common Reporting Standard (CRS). The CRS requires participating jurisdictions to collect a predefined set of information from their financial institutions with respect to account holders resident abroad and to annually and automatically exchange this information with their jurisdictions of residence. The global adoption of the CRS has led to significant benefits for countries and compliant taxpayers around the world. In 2021, countries automatically exchanged information on more than 111 million financial accounts, assuring the correct taxation on total assets of approximately EUR 11 trillion.

The CRS has recently undergone a comprehensive review, which has led to the adoption of a set of amendments to the CRS as well as a new automatic exchange framework for the automatic exchange of information on Crypto-Asset transactions, the Crypto-Asset Reporting Framework. These updates will ensure that the tax transparency architecture for financial assets remains effective and fit for purpose in an increasingly digital world.

Building on the architecture of the CRS, the OECD expanded the tools and common approaches to automatic exchange of information to other emerging sectors of the global economy. In 2020, reflecting the rapid growth of the gig and sharing economy, the OECD released an automatic exchange framework for Digital Platforms, requiring operators of digital platforms to report to tax authorities the identity of sellers active on their platforms, as well as details on the transactions they have concluded, including those involving the short-term rental of real estate.

While these developments have significantly improved the quality, frequency and scope of global information exchanges concerning transactions in certain sectors, such as financial markets and the platform economy, improvements in international tax transparency on real estate have been less far-reaching. Although under existing international legal instruments jurisdictions are generally required to exchange available real estate information upon request for tax purposes, jurisdictions are not obliged to

ensure the availability and access to such information and therefore not all jurisdictions' tax administrations have such information. Moreover, the scope of spontaneous and automatic exchanges of information on real estate remain limited at present.

2 The case for enhanced tax transparency on real estate

While tax administrations often only have limited visibility over the cross-border ownership of (and income from) real estate, there are indications that the proportion of real estate owned by non-residents has continued to increase in recent years. Equally, following the widespread implementation of the CRS, concerns have emerged that investments in real estate are being used to shelter undeclared assets that would have otherwise been subject to CRS reporting. This can be nuanced to a certain extent, as information exchanged under the CRS can also provide indirect indications to tax administrations about foreign real estate ownership or transactions. However, these trends underline the tax compliance risks associated with cross-border ownership of real estate and strengthen the case for enhancing tax transparency in this area.

Increasing cross-border ownership of real estate

Although there are no comprehensive statistics available on cross-border real estate ownership, a number of recent studies have shed some light with respect to selected jurisdictions and financial centres. These studies, as summarised in the box below, indicate, firstly, that there has been a significant increase in cross-border ownership of real estate over the past decade and secondly, that such increase is partly attributable to a shift from financial assets to real estate following the announcement of the CRS, suggesting that investments in real estate may be used to circumvent CRS reporting.

Box 2.1. Growth of cross-border real estate ownership in selected jurisdictions

- Morel and Uri (2021)² demonstrate that the proportion of French residential real estate owned by non-residents increased by 50% between 2011 and 2019, with the value of such real estate assets amounting to EUR 125 billion at the end of 2019.
- Alstadsæter and Økland (2022)³ report an increase of cross-border ownership of Norwegian real estate over the past decade, with a more rapid increase of ownership through tax havens.
- Alstadsæter, Planterose, Zucman and Økland (2022)⁴ estimate that the total market value of properties in Dubai at USD 533 billion in 2020, of which about 27% was foreign owned.
- The Pandora Papers⁵ also identified a vast amount of investment in real estate through offshore companies.

Potential use of real estate to circumvent CRS reporting

A study by Bomare and Le Guern Herry (2022)⁶ estimates that the value of real estate in England and Wales owned directly by foreign individuals or foreign companies was at least USD 359 billion in January 2018. This study also suggests that the adoption of the CRS has led to a significant increase of investments in UK real estate from companies incorporated in tax havens, estimating that about a quarter of the money that fled to tax haven jurisdictions following the adoption of the CRS went into real estate.

Ensuring effective taxation of cross-border real estate

In order to illustrate the potential benefits of enhancing tax transparency on real estate, it is worth recounting the key principles underpinning the taxation of cross-border real estate ownership and income, both in the source and residence jurisdictions, i.e., the jurisdiction where real estate is situated and the residence jurisdiction of taxpayers, respectively.

² Roxane Morel & Julien Uri (2021). "The increase in non residents' real estate investments is driven by expatriates [L'augmentation des investissements immobiliers des non-résidents est tirée par les expatriés]", Bulletin de la Banque de France, Banque de France, issue 237, <https://ideas.repec.org/a/bfr/bullbf/202123706.html>

³ Annette Alstadsæter, Andreas Økland (2022). "Increasing Cross-Border Ownership of Real Estate: Evidence from Norway", https://www.taxobservatory.eu/wp-content/uploads/2022/12/EU-Tax-Observatory_WP8_ForeignOwners-NorwegianRealEstate_December2022.pdf

⁴ Alstadsæter, A., B. Planterose, G. Zucman, and A. Økland (2022). "Who owns offshore real estate? Evidence from Dubai." EU Tax Observatory Working Paper No. 1, <https://www.taxobservatory.eu/publication/who-owns-offshore-real-estate-evidence-from-dubai>

⁵ Gibbs, M. and Armendariz, A. (2021), "Secret real estate purchases are a driving force behind the offshore economy", International Consortium of Investigative Journalists <https://www.icij.org/investigations/pandora-papers/secret-real-estate-purchases-are-a-driving-force-behind-the-offshore-economy>

⁶ Bomare, J. and S. Le Guern Herry (2022). "Automatic exchange of information and real estate investment. Technical report", EU Tax Observatory Working Paper, https://www.taxobservatory.eu/wp-content/uploads/2022/06/BLGH_June2022.pdf

As a point of departure, jurisdictions take different approaches to the taxation of real estate, including in the context of capital gains on disposals, income tax on rental receipts, transfer taxes on real estate transfers, as well as for purposes of wealth or inheritance taxes.

In the cross-border context where the jurisdiction of tax residence of the owner diverges from the jurisdiction where the property is located, the right to tax real estate income is typically determined by the applicable tax treaty, which will give the primary right to tax real estate income (including capital gains) to the source jurisdiction. At the same time, most treaties apply the credit method to prevent double taxation, and thus additional tax may be due in the jurisdiction of tax residence of the owner where it applies higher tax rates on such income.

In addition, real estate holdings may also be relevant in assessing the application of wealth and inheritance taxes, in cases where either the base or rate take the worldwide assets of a resident taxpayer into account.

Potential benefits of enhanced transparency on real estate

As noted above, there are indications that investments in cross-border real estate may be used to shelter undeclared assets that otherwise would have been subject to CRS reporting. Other studies have shown that cross-border real estate holdings are frequently underreported, posing risks that taxes due in connection with real estate remain unpaid.⁷

In the European context, a recent survey of 18 European Union Member State tax administrations has identified that common elements in real estate tax fraud cases concern complex ownership structures that avoid revealing the beneficial owner of the property, as well as the lack of coherence between the declared income/wealth of the buyer of the property and the value of the real estate property.⁸ In addition, the use of complex loans or credit finance to reduce tax, the manipulation of the appraisal or valuation of the real estate property and the non-declaration of the purchase/sale/ownership or letting of real estate property were also common elements observed.

With this in mind, an immediate benefit of enhancing tax transparency on real estate would be to equip tax administrations with the information necessary to ensure compliance with tax obligations in connection with ownership of and income from cross-border real estate. In this regard, studies have consistently demonstrated that tax transparency frameworks, in particular those reliant on third-party reporting, act as a visible deterrent and increase voluntary compliance rates, the benefits of which could also be unlocked in the cross-border real estate space.⁹

Beyond facilitating compliance with tax obligations in the residence jurisdiction as described in the previous section, visibility over cross-border real estate holdings could also assist tax administrations in determining whether funds used to acquire real estate were declared (and taxed) in the first place. Although relevant gatekeepers (i.e. notaries, lawyers and real estate agents) are typically subject to anti-money laundering (AML) rules, the FATF has noted that disparities among regulations mean that relevant gatekeepers may

⁷ [Alstadsæter, Planterose, Zucman and Økland \(2022\)](#) highlight that, in 2019, about 70% of Dubai properties owned by Norwegian taxpayers were not reported to the Norwegian tax authorities.

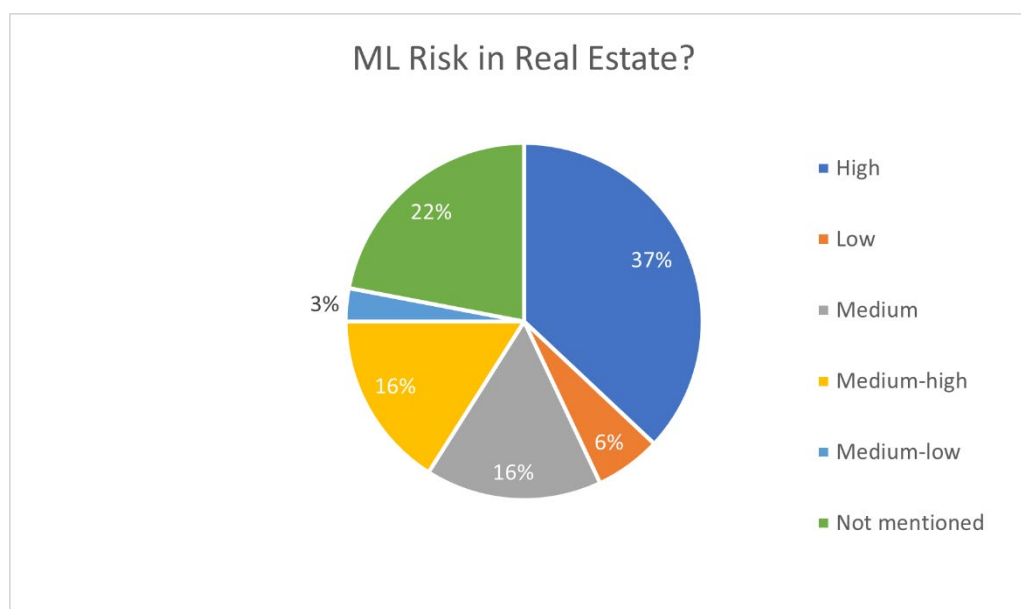
⁸ European Commission, Study on the harmonisation and interconnection of real estate registers (pp. 39-40), <https://op.europa.eu/en/publication-detail/-/publication/77c10664-d3cc-11eb-895a-01aa75ed71a1>.

⁹ The practical advantages of third-party reporting are illustrated by a study conducted by the United States IRS, whereby amounts not subject to withholding or information reporting were subject to a much higher net misreporting percentage of 53.9%, compared to 7% when subject to third-party reporting. Reducing the Federal Tax Gap: A Report on Improving Voluntary Compliance, Internal Revenue Service, US Department of the Treasury. 2007 (p. 12), https://www.irs.gov/pub/irs-news/tax_gap_report_final_080207_linked.pdf.

not always be required to submit suspicious transaction reports (STRs) in certain jurisdictions.¹⁰ To the extent relevant gatekeepers are required to file STRs, FATF has concluded that poor implementation of customer due diligence and beneficial ownership measures by the real estate sector often results in low quality of information reporting. Where gatekeepers do file relevant STRs, legislative constraints may nevertheless prevent tax administrations from accessing STR information in civil tax cases, as STRs are intended primarily for criminal law purposes.¹¹

Finally, it should be noted that increased visibility on cross-border transactions in the real estate sector has the potential to benefit not only tax administrations, but also regulatory, anti-money laundering and law enforcement authorities. Data gathered by the FATF indicates that across 32 FATF member countries, 69% identify the real estate sector as posing a significant risk for money laundering activities.¹² FATF has identified that many of the same techniques used in tax fraud (such as complex ownership structures to hide identities, as well as false or no declarations of relevant assets) are also used to launder funds. Hence, by applying a whole-of-government approach, information collected by tax authorities could be used to combat other types of cross-border financial crimes in the real estate sector.

Figure 2.1. Risk assessment of money laundering/terrorism financing via the real estate sector in 32 FATF countries (2022)



Source: FATF (2022), Guidance for a Risk-Based Approach Guidance for the Real Estate Sector (p. 12), <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-rba-real-estate-sector.html>.

¹⁰ FATF (2022), Guidance for a Risk-Based Approach Guidance for the Real Estate Sector (p. 27), <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-rba-real-estate-sector.html>

¹¹ OECD (2015), Improving Co-operation Between Tax and Anti-Money Laundering Authorities (p. 27), <https://www.oecd.org/ctp/crime/report-improving-cooperation-between-tax-anti-money-laundering-authorities.pdf>.

¹² FATF (2022), Guidance for a Risk-Based Approach Guidance for the Real Estate Sector (p. 12), <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-rba-real-estate-sector.html>

3

Building blocks of an effective international tax transparency framework

The experience of designing the CRS and similar frameworks can serve as a helpful blueprint in identifying the relevant building blocks for improved tax transparency in the real estate sector. The building blocks can be divided into two categories. Firstly, the domestic dimension: i.e., measures facilitating the domestic collection and reporting of tax-relevant and accurate information. Secondly, the international dimension, i.e., the international legal and operational framework for sharing the relevant information with partner jurisdictions.

The domestic dimension

Before relevant information can be exchanged with other jurisdictions, it must first be made available domestically in a reliable manner and be of high quality. In light of the differences in tax regimes amongst jurisdictions, the information that is relevant for tax compliance purposes may vary between jurisdictions. In that respect, it is important to ensure that tax administrations have reliable access to the information that is of relevance to its partner jurisdictions. This can either be information from internal sources, such as tax return information or from external sources, such as other government agencies, databases or third-party information providers.

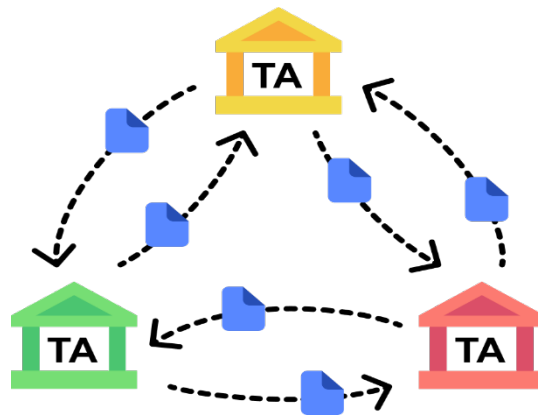
Beyond ensuring the quality of the information, it is also of central importance to an efficient international tax transparency framework that the information and the taxpayer can be reliably linked to a partner jurisdiction, ideally on the basis of an explicit (tax) residency confirmation through a Tax Identification Number (TIN). This is not only important for demonstrating the foreseeable relevance of the information to the partner jurisdiction, but also for making the information readily usable for the receiving tax administration. For these purposes, tax administrations have consistently highlighted the importance of TINs as the most reliable datapoint in the context of CRS exchanges.

The international dimension

In addition to the domestic dimension, an efficient tax transparency framework also relies on international legal and operational gateways to facilitate the sharing of information between jurisdictions.

Conceptually, there are two models that can be considered for sharing information between tax administrations:

- *The exchange model*, for which the legal gateway are international instruments, including bilateral treaties based on Article 26 of the OECD Model Tax Convention, as well as the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAAC), in which nearly 150 jurisdictions participate. From an operational perspective, consistency is ensured through common IT-formats for reporting and exchanging the information, such as an XML schema and the Common Transmission System for sending data in a secure and encrypted manner; and



Source: OECD

- *The direct access model*, which provides access to relevant data repositories, such as registers or databases, and which would need to be underpinned from an operational perspective by a minimum common data set in all registers, that would then allow the data repositories to be queried on the basis of a common query function. This could then be further strengthened by interconnection multiple data repositories to a single query portal, allowing information from multiple data repositories to be retrieved through a single query.



Source: OECD

4

Current level of tax transparency on real estate and areas for enhancement

The last decade has witnessed substantial improvements in tax transparency and information exchange. While the rapid expansion of the global network of exchange relationships was primarily driven by the end of bank secrecy and the implementation of the EOIR standard and the CRS, this has resulted in a global information exchange infrastructure that permit exchange of information and international cooperation in tax matters more generally, including on real estate. In this respect, the MAAC is of particular importance, as it enables the exchange of real estate information for tax purposes (including amongst others income, wealth and inheritance taxes) on an on-request, spontaneous and automatic basis between its nearly 150 participating jurisdictions. In addition, a wide range of bilateral tax treaties and tax information exchange agreements permit the sharing of tax-relevant real estate information.

Beyond the international legal instruments, the wide adoption of the CRS has also led to the implementation of the Common Transmission System (CTS), which facilitates the secure transmission of tax information, including on real estate, between the over 100 jurisdictions connected to the system.

In spite of the existence of an international legal architecture and a secure transmission system with a global reach that permits the exchange of real estate information, the actual exchange practice in this area differs significantly between jurisdictions and regions:

- Both **bilateral or regional tax treaties** (such as the Nordic Tax Convention) permit the spontaneous and/or automatic exchange of real estate information in certain instance. An OECD survey conducted some time ago amongst 37 OECD member countries in this respect has shown that spontaneous and automatic exchanges on income from real estate take place under 30% of the bilateral treaties in place between respondents, while automatic exchanges on real estate ownership and transactions take place under less than 5% of the exchange relationships. To support the exchange of real estate information the OECD has developed the Standard Transmission Format (STF) that, *inter alia*, permits the standardised collection and exchange of information in relation to the beneficiaries of income from real estate in an XML-format;
- The European Union has agreed on automatic exchange of information framework in respect of real estate. These requirements, set out in the **Directive on Administrative Cooperation**, require European Union Member States to exchange information on the ownership of and income from real estate with the European Union Member State of tax residence of a taxpayer, to the extent such information is available to the sending tax administration. This approach enables the automatic exchange of information in the area of real estate, while allowing European Union Member States to rely on their existing domestic legislation and operational framework for gathering the information, without a requirement to introduce additional, standardised information collection or reporting obligations. This approach has ensured that 24 of 27 European Union Member States are currently engaged in the regular automatic exchange of real estate information on an “as available” basis. A

common electronic form has been developed to facilitate the exchange of information on the basis of the Directive on Administrative Cooperation; and

- More recently, **the OECD's digital platform reporting rules** ensure that information is collected in relation to rental income from real estate that is rented out through digital platforms. This specific information is then made available through automatic exchange to the tax authorities of the jurisdiction of the location of the real estate, as well as the jurisdiction of tax residence of the direct legal owner of the real estate.

Table 4.1. Existing tax transparency frameworks for real estate

	First European Union Directive on Administrative Cooperation (DAC 1)	OECD Model Reporting Rules for Digital Platforms	Bilateral treaties based on Article 26 of the OECD/UN MTC
Geographical scope	European Union Member States	25 jurisdictions under DPI MCAA and European Union Member States (through DAC 7)	N/A
Information exchanged	Recurrent income, transactions and ownership, as available	Recurrent income from immovable property rented via online platforms	Recurrent income
Standardised reporting/due diligence procedures	No	Yes	No
Standardised exchange format	Yes	Yes	Yes

Source: OECD

Limitations of current practice

The current transparency framework for real estate presents two key limitations. Firstly, under most existing exchange frameworks and practices, the information that is exchanged is limited to what tax administrations have available for domestic tax compliance purposes, and for which a (secondary) relevance for a foreign tax administration is identified. Secondly, even where such information that is relevant for a foreign tax administration is readily available, it is often not or only very partially exchanged.

The information exchanged is limited to what was collected for domestic purposes

As highlighted above, for international tax transparency to be successful, it is important that a jurisdiction has access to reliable information regarding real estate located in such jurisdiction that is foreseeably relevant for the administration of the taxes in the jurisdiction of tax residence of the owner.

Under most of the existing frameworks, the information that is being exchanged is limited to what is currently available to domestic tax authorities. In the area of real estate, such information can come from a variety of sources:

- *Third-party reporting:* In many cases, jurisdictions rely on third-party reporting (e.g., notaries, attorneys or real estate agents) or reporting by payors to verify and report relevant information concerning transactions for the acquisition or disposal of real estate. See Box 4.1.

Box 4.1. Third-party reporting

In the United States, third-party reporting requirements are relied on (in addition to self-reporting) in order to obtain tax-relevant information on real estate transactions. In particular, the United States requires that the parties to a real estate transaction, as well as the attorney that settles the transaction, report such information directly to the Internal Revenue Service, which retains this information directly for use in its tax compliance work.

Forty seven out of 58 jurisdictions covered in the 2019 Edition of the Tax Administration Series have some form of third-party reporting in place in connection with transactions for the acquisition or disposal of real estate.

Note: The Tax Administration Series provides comparative data on aspects of tax systems and their administration in 58 advanced and emerging economies, https://www.oecd-ilibrary.org/taxation/use-of-third-party-data-2017_ff675fd6-en.

- *Information obtained through tax returns:* in most jurisdictions rental income and capital gains on the disposal of real estate are subject to income or capital gains tax for resident and non-resident owners, which will be required to include such income in their local income tax return;
- *Real estate registers:* many jurisdictions have land registers or property registers, which play a crucial role in documenting and recording ownership and other relevant information about real estate. There is a great variety amongst jurisdictions in connection with the way such registers are organised, the level of accessibility and available information. Certain jurisdictions have centralised registers where all transactions occurring within a jurisdiction are recorded. This model is particularly prevalent within the European Union, where at least 19 jurisdictions currently have such registers.¹³ Where these centralised registers are digitalised and can be queried online, tax administrations are often able to access the information directly, match the information with other data held about taxpayers, thus improving their ability to analyse such information for domestic tax compliance purposes. Alternatively, the register may provide an updated copy of its ledger to the tax administration on a regular basis, which would allow the tax administration to populate its own, internally managed, ledger. Other jurisdictions do not have centralised registers but may instead rely on more decentralised models for recording and sharing information concerning real estate ownership. In these models, information may be maintained in multiple registers at regional or local level, either in electronic or paper form. The ability of tax administrations to easily access this information will depend on the extent to which such information is digitally available and can be queried in an efficient manner.

¹³ European Commission, Study on the harmonisation and interconnection of real estate registers, <https://op.europa.eu/en/publication-detail/-/publication/77c10664-d3cc-11eb-895a-01aa75ed71a1>.

Box 4.2. Real estate registers

Direct access model: Tax administrations in both Belgium and Finland each maintain a centralised register of property transactions in the country. This information is populated from data received directly from the digitalised national property register, which is then cross-checked and matched with the identification information of individuals held in the tax administration and the national register on beneficial ownership information to generate a profile, including the TIN and jurisdiction of residence, of each person transacting real estate. This information is therefore easily electronically searchable, and is exchanged with other jurisdictions, after filtering for the relevant jurisdiction of residence.

Decentralised model: In the United States and Germany there is no harmonised federal land register. In Germany, the land registry is a special division of the local court (Grundbuchamt beim Amtsgericht). In the United States real estate registers are maintained at a state and local (i.e., county) level.

As set out above, tax administrations will in many instances have information on transactions in, ownership of, and income from real estate from a variety of resources. There are, however, certain inherent restrictions with respect to the extent to which such information is suitable for sharing with partner jurisdictions:

- The manner in which information is held and reported (e.g., in registers or domestic tax returns) may mean that such information is **not readily shareable** with tax administrations of other jurisdictions. For instance, where real estate information is recorded in separate local registers, tax authorities cannot easily access such information so as to permit it to be exchanged spontaneously or automatically;
- The information may be incomplete and may not match the needs of tax administrations of partner jurisdictions. For instance, jurisdictions that do not generally tax individuals on rental income or capital gains will not have the corresponding information readily available and the information may **not always identify the jurisdiction of (tax) residence** of the real estate owner, making it difficult to identify the accurate recipient jurisdiction;
- The information will in most instances **not include the TIN** of the jurisdiction of tax residence of the real estate owner, as the information is initially collected for domestic purposes. For instance, not all European Union Member States collect information on the tax residence of the persons acquiring real estate, nor their TIN. Recently, the European Commission noted that only 2% of the taxpayers on which real estate information was exchanged were associated with a TIN issued by the recipient jurisdiction.¹⁴ As set out above, such information is important for allowing the tax administration of the jurisdiction of residence of a taxpayer to match the information to the taxpayer's file; and
- The information will generally not **include beneficial ownership information**. Such information can be important to identify individuals that make use of foreign legal entities or arrangements to invest in real estate in order to hide undeclared income from the tax authorities. Some jurisdictions, such as the UK and Germany, have recently implemented registers of the beneficial ownership of foreign legal entities owning local real estate. If effectively enforced and accessible by tax authorities, such registers could, on their own, be an efficient manner to enhance transparency.

¹⁴ 2018, Report from the Commission to the European Parliament and the Council on overview and assessment of the statistics and information on the automatic exchanges in the area of direct taxation, https://taxation-customs.ec.europa.eu/system/files/2018-12/report-automatic-exchanges-taxation-dac-844_en.pdf

Readily available and relevant information is often not exchanged

Despite there being an international legal basis in place for the exchange of real estate information for tax purposes between a wide range of jurisdictions, in particular under the MAAC, at present actual exchanges are mostly confined to punctual exchange of information on request, provided such information is available, and limited spontaneous exchange arrangements. Information on request is by definition limited to situations where the interested jurisdiction already has indications that a person owns real estate abroad. In addition, there are certain instances where information spontaneous or automatic exchanges on real estate take place, but these are either limited in number and/or in geographical scope.

While the CTS enables jurisdictions to exchange real estate information with each other in a secure manner, there is currently no comprehensive international IT-format that captures the relevant information on the ownership of and income from real estate in a consistent manner. The OECD STF format covers information in relation to real estate income but currently does not allow information on real estate holdings and transactions to be collected and reported in a standardised XML-format. Therefore, jurisdictions wishing to exchange such information either rely on the transmission of unstructured documents and information or would need to agree a particular format, such as for instance the case in the context of the exchanges on real estate under the European Union Directive on Administrative Cooperation.

Approaches for enhancing tax transparency on real estate

Efforts to enhance international tax transparency on real estate can focus on more short-term strategies that largely rely on the existing infrastructure and can be implemented at limited cost or more long-term structural approaches or both.

Short-term gains: exchange of readily available and relevant information

In the short term, there could be benefit in designing a common approach, both from a legal and operational perspective, to facilitate the exchange of information on real estate transactions, holdings and recurrent income, respectively. These exchanges would rely on existing international legal instruments, in particular the MAAC, and the existing operational infrastructure, in particular the CTS. The approach could be modular and voluntary in nature, allowing jurisdictions to identify those elements they are interested in and capable of participating in, both from a sending and a receiving perspective. In all instances, the information would be collected and exchanged on an “as is and as available” basis, in order to allow jurisdictions to rely on existing domestic information resources.

This approach could consist of three modules:

- A first module that would cover real estate holdings by non-residents. From a legal perspective, this would take the form of a single spontaneous exchange of information on the basis of (i) information on the (tax) residency of the legal and/or beneficial owner(s) of the real estate available to the sending jurisdiction and (ii) an opt-in by the interested receiving jurisdiction, in which the foreseeable relevance on the information is demonstrated;
- A second module that would foresee the spontaneous exchange of information on real estate transactions, i.e., acquisitions and/or disposals. These spontaneous exchanges would take place at regular intervals and would again be based on the premise that the sending jurisdiction has information on the (tax) residence of the transacting parties and that the interested receiving jurisdictions have opted into the exchanges by demonstrating the foreseeable relevance on the information; and
- A third module would cover the exchange of information on recurrent real estate income. Given the nature of the information, this module could be structured as an annual automatic exchange of information, to the extent the sending jurisdiction has information on the (tax) residence of the non-

resident taxpayer, and the receiving jurisdiction has demonstrated the foreseeable relevance of the information.

For all three modules, the exchanges would be underpinned by a common XML schema, which could build on the OECD STF format and could, *inter alia*, draw inspiration from the current electronic formats in use for the exchange on the ownership of and income from real estate under the European Union Directive on Administrative Cooperation.

This approach would ensure that the benefits of the existing international legal framework for exchanging real estate information, as well as information on real estate holdings, transactions and income of non-resident taxpayers already available to tax administrations, can be used to the largest extent possible. It would also improve the operational framework for the exchanges by introducing a structured and standardised IT-format, which will in turn allow sending tax administrations to efficiently compile the information for exchange and receiving tax administrations to seamlessly integrate the information into their systems for the purpose of their tax compliance activities.

Despite the potential for further improvement in light of the above-mentioned current restrictions, even without introducing any additional information reporting obligations, it would appear that most jurisdictions do have some information readily available that is foreseeably relevant and therefore of interest for exchange purposes. This is also demonstrated by the fact that in the European Union 24 out of 27 Member States had information on real estate holdings and/or rental income available for exchange under the Directive on Administrative Cooperation.¹⁵

Box 4.3. Steps to be undertaken

- Jurisdictions to assess the real estate information that is readily available for exchange;
- Development of a common XML schema for the exchange of information on real estate transactions, holdings and income; and
- Development of a multilateral competent authority agreement for countries wishing to participate, based on the MAAC, to agree on the modalities of the exchanges, reflecting the modular approach set out above.

Structural enhancements

While it is possible to partially address the domestic and international challenges through the short-term improvements set out above, it is likely that certain issues will remain. In particular, the information to which the jurisdictions have access may be limited and, where such information is readily available, there may be practical challenges for the jurisdiction where the real estate is located to keep the tax residence information of non-resident real estate owners up to date over time. Relevant information on real estate may therefore not always reach the jurisdiction of tax residence of the owner.

In that light, there appears to be merit in exploring structural enhancements to the international cooperation architecture that could address the challenges identified. There are two potential pathways of doing so: one option would be to develop a more structured approach towards the exchange of information. An

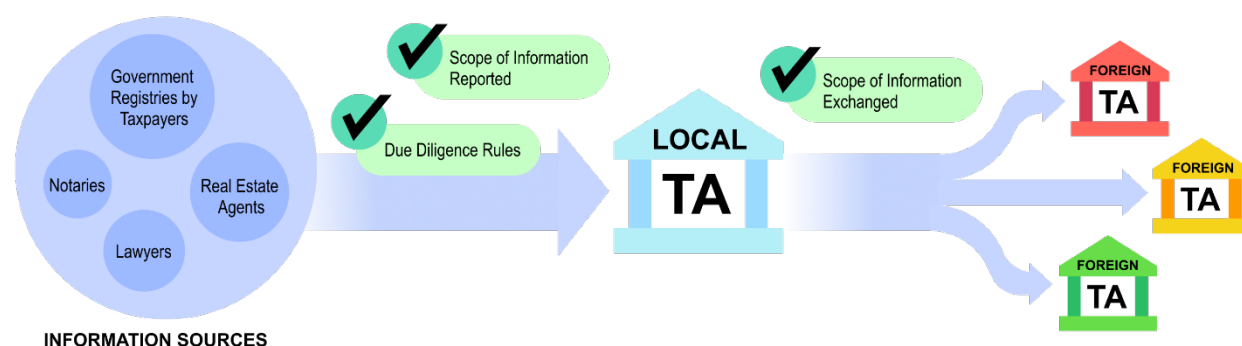
¹⁵ 2019, Commission Staff Working Document, Evaluation of the Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (p. 20), https://taxation-customs.ec.europa.eu/system/files/2019-09/2019_staff_working_document_evaluation_on_dac.pdf.

alternative, and more holistic approach, would be to contemplate a direct access model through interconnected registers.

Enhancing the collection and exchange of relevant information, based on common reporting and due diligence rules

Similar to the short-term solution, under this approach exchanges would rely on existing international legal instruments, in particular the MAAC, and the existing operational infrastructure, in particular the CTS. However, unlike the short-time solution, where jurisdictions exchange readily available information, a more structured approach would be developed towards the information to be exchanged, underpinned by common reporting and due diligence rules, and aimed at ensuring that the information required by interested receiving jurisdictions is available for exchange by tax administrations.

Figure 4.1. AEOI on the basis of common reporting and due diligence rules



Source: OECD

With respect to acquisitions and disposals this would consist of a set of common reporting and due diligence obligations on notaries, lawyers and real estate agents that facilitate, and/or on government registries that record, an acquisition and disposal of real estate to support a mandatory spontaneous exchange of such information. The information collected and exchanged would be standardised and defined with residence jurisdictions' tax compliance needs in mind. The information collected would amongst others include tax residences and the TINs of the jurisdictions of residence of the parties to the transaction, as well as essential financial information on the real estate acquired or disposed. It could also include information on beneficial ownership information where real estate is acquired through legal entities. Similar to the CRS, this would provide verified, consistent and quality information, while ensuring that the information reaches those tax authorities for which this information is foreseeably relevant.

In addition to acquisitions and disposals, it could be contemplated to also exchange information on recurrent income from foreign real estate. However, since there would generally be no independent third party on which to impose reporting obligations, such exchanges would mostly rely on the tax returns submitted by the owner to that effect (if any) in the jurisdiction of location of the real estate. It may be challenging to collect such information in jurisdictions where owners currently do not have an obligation to declare rental income (e.g., because they are taxed on a fictitious rental value attributed to the property).

Box 4.4. Steps to be undertaken

- Definition of a standardised set of information to be collected from intermediaries and taxpayers and common due diligence rules to verify such information to ensure a high level of quality;
- Implementation of the reporting and due diligence requirements into domestic law by interested jurisdictions;
- Development of a common XML schema for the exchange of information on real estate transactions, holdings and income; and
- Development of a multilateral competent authority agreement, based on the MAAC, to agree on the modalities of the exchanges.

Enabling direct access to relevant information in real-time

A direct access model requires standardised repositories of relevant information in digital form as well as the provision of access rights to authorised users (unless of course registers are already publicly accessible). As regards the former aspect the recent increase in efforts across the globe to digitalise real estate ownership registers are an important development. The digitalisation of real estate ownership registers entails the standardisation of the information items captured and allows the information contained in the register to be searched through a query function.

The trend of digitalising ownership registers is not limited to only a few jurisdictions but is prevalent among many high- and middle-income countries. For instance, the World Bank noted that already, as of 2016, agencies across 89 different jurisdictions had in place an electronic database to record property boundaries, check maps and provide cadastral information. This trend towards digitalisation has had significant uptake in high- and middle-income jurisdictions (where at over half the jurisdictions have either scanned or fully digitised their land records). Despite the advantages that land record digitisation can have for developing countries, over 80% of low-income countries were identified as still having their land registries in paper form.¹⁶ Nevertheless, a number of developing countries are actively engaging in efforts to not only improve the digitalisation of land registries, but to also link land registries with their tax administrations. For instance, the African Tax Administration Forum (ATAF), has identified a strong trend in property tax reforms happening across the African continent to use technology to improve efficiency across the property tax cycle.¹⁷ In particular, reform programmes in Angola, Kenya, Mozambique, Senegal, Tanzania and Zambia have sought to digitalise property records and allow for information sharing with tax administrations. While such reforms require long-term political commitment, at least some of these efforts appear to have already led to increased revenue collection by tax administrations.¹⁸ Overall, these trends point to the potential for developing countries to reap significant benefits from the digitisation of land registries.

¹⁶ World Bank, Doing Business Report 2016 (pp. 80-81)

<https://www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB16-Full-Report.pdf>.

¹⁷ ATAF, Five tenets for consideration when undertaking property tax reform in Africa, December 2021 (p. 9), https://events.ataftax.org/index.php?page=documents&func=view&document_id=152.

¹⁸ International Centre for Tax and Development, The Role of Information Communication Technology to Enhance Property Tax Revenue in Kenya, Tanzania and Zambia, https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/14527/ICTD_RiB_41_Online.pdf?sequence=1&isAllowed=y.

One example of the potential of digitisation to improve intergovernmental information access, is the work of the European Union on the interconnection of business registers (BRIS) on the basis of the Company Law Package.¹⁹ It has delivered a single query portal through which the information in business registers of the European Union Member States can be searched and retrieved. This is achieved through an API and an agreed, common IT-format that defines the items to be searched (e.g., name and identification number) and to be communicated in response (e.g., name, legal form, address, date of incorporation), while the structure and underlying technology of each domestic register can differ.

If such an approach were to be translated to the real estate domain, this could enable tax administrations to query real estate registers of partner jurisdictions through a single query portal, in order to ascertain whether particular taxpayers own real estate abroad. This approach is already currently being contemplated at European Union level as one of the key features of the proposal for the 6th Anti-Money Laundering Directive.²⁰

Beyond ensuring effective access to information on the direct ownership of real estate by means of a single query function for multiple domestic real estate registers, a further enhancement to tax transparency could be achieved by associating such direct ownership information with beneficial ownership information, in cases where the real estate is owned by a legal entity. This approach could assist in overcoming the current challenge that beneficial ownership information on real estate held abroad through a legal entity is rarely available to tax administrations for exchange.

This enhancement could build on the current global trend towards creating beneficial ownership registers for legal entities. Recent amendments to the FATF's international standards on anti-money laundering and countering the financing of terrorism require that companies hold adequate, accurate and up-to-date information on their own beneficial ownership, and that jurisdictions also require beneficial ownership information to be held by a public authority or body functioning as beneficial ownership registry or alternative mechanism.²¹ Such developments are currently taking place, amongst others, in the European Union, Japan, the United Kingdom, by means of the PSC register, and the United States, where reporting requirements of the Corporate Transparency Act (CTA) were issued in September 2022 and are expected to go into effect in 2024.²²

1. In line with the approach set out above with respect to the interconnection of registers, conceptually the beneficial ownership registers could be made accessible through a single query function. In this respect, the European Union's BORIS project is currently underway to achieve that outcome for European Union Member States, with relevant authorities in Member States being in the process of linking up their beneficial ownership registers to the interconnected single query portal.²³

Finally, it could be contemplated to then associate the direct, legal ownership registers and the beneficial ownership registers with each other, in order to be able to obtain the beneficial ownership information in respect of real estate abroad through a single search. To do so at European Union level is one of the delivery models currently contemplated as part of the 6th Anti-Money Laundering Directive.

With the above enhancements, tax administrations would be able to get efficient, up-to-date and targeted access to both direct ownership and beneficial ownership information in respect of foreign real estate held

¹⁹ Directive (EU) 2017/1132 on the interconnection of business registers and Implementing Regulation (EU) 2015/884.

²⁰ https://www.europarl.europa.eu/doceo/document/A-9-2023-0150_EN.html.

²¹ FATF Public Statement on revisions to Recommendation 24, <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/R24-statement-march-2022.html>.

²² <https://www.fincen.gov/boi>.

²³ Directive (EU) 2015/849, as amended by Directive (EU) 2018/843.

by their taxpayers. As such, this approach could address the challenges identified and could be an alternative to a model of exchange of information, allowing information to be retrieved real-time, whenever needed by a tax administration. Even where not all tax relevant information is maintained in the register (e.g., information on rental income), the available ownership information would still be a good starting point for further investigations and/or compliance activities.

Compared to a model based on the regular exchange of information, the direct access approach has a number of distinct advantages:

- It allows tax administrations to search for real-time information on foreign real estate owned by a taxpayer directly in the register, rather than receiving information through static, periodic exchanges of information;
- Access could be given not only to tax administrations, but also to other relevant law enforcement agencies, as appropriate; and
- It would contribute to data minimisation, as data would only be retrieved when it is necessary for tax compliance or other law enforcement purposes, whereas the exchange of information model may entail the sharing of information on all relevant real estate transactions, holdings and income.

While this approach presents a number of advantages, it is also likely to be more legally and operationally challenging to put in place than an exchange of information-based model. This is mainly due to the legal and operational differences between registers amongst jurisdictions, for instance in relation to the (de)centralisation of the administration of the register, the level of information kept, the IT-formats used, and the access rights granted to government agencies.

It is further important to bear in mind that real estate and beneficial ownership registers are generally not maintained by tax administrations and that a wide range of government agencies (including Financial Intelligence Units, law enforcement agencies and regulators) have an interest in particular information items available in the registers. Putting in place this model would therefore require close collaboration between tax administrations and other stakeholders that may benefit from the direct access to interconnected registers.

In any event, despite the challenges, there is a move in a considerable number of jurisdictions towards the digitalisation of registers and it would be beneficial for these jurisdictions to seek standardisation so that in the future interested jurisdictions could, on a voluntary and reciprocal basis consider granting each other cross-border access in an efficient, secure and interconnected manner.

Box 4.5. Steps to be undertaken at international level

- Definition of a common set of minimum information to be included in the domestic registers, taking into account the needs of various stakeholders, potentially complemented by common minimum criteria for reviewing the reliability of the information fed into the registers;
- A common IT-architecture for the interconnection and querying of registers that takes into account differences in the technical characteristics of national registers and allows the querying of the interconnected registers in a seamless way through a single query portal;
- An agreed and audited approach for governing the conditions and actual access to registers (which agencies can get access, the purpose for which they can get access, confidentiality requirements, etc), including through the single query portal; and
- Development of an international legal instrument to define the modalities for interconnecting and accessing the registers in a cross-border setting.

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Enhancing International Tax Transparency on Real Estate

OECD REPORT TO THE G20 FINANCE MINISTERS AND CENTRAL BANK GOVERNORS, JULY 2023, INDIA

Following a request from the Indian G20 Presidency, this report examines the current state of tax transparency concerning foreign-owned real estate. It also explores how recent advancements in other tax transparency frameworks, such as the OECD/G20 Common Reporting Standard, and broader policy developments, such as the Financial Action Task Force's work on beneficial ownership, could inform possible improvements to tax transparency in the area of real estate on a voluntary basis. The report is set out in three main sections. The first addresses the potential tax compliance risks in the area of foreign real estate holdings and highlights the benefits of enhanced tax transparency in this area. The second outlines the key domestic and international features required for a successful tax transparency framework. The final section identifies potential short-term and structural improvements to the existing architecture.



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