

Exchange of Information in Tax Matters: Experiences from Croatia and Slovenia

*Irena Klemenčić**

*Maja Klun***

UDK: 336.227(497.4:497.5)
336.228.3(497.4:497.5)
35.071.5:341.24(497.4:497.5)
3.071.5:341.24(497.4:497.5)
351.88(497.4:497.5)

<https://doi.org/10.31297/hkju.22.4.5>

Review article / pregledni znanstveni rad

Received / primljeno: 2. 1. 2022.

Accepted / prihvaćeno: 3. 6. 2022.

Following developments in the field of global administrative cooperation, which started in 2009 and resulted in the acceptance of automatic exchange of information as the global standard of tax transparency, this paper examines the first results of the implementation thereof. Building on the corpus of published analyses and research of the development of the latest global standard, the authors examine the available data on implementation of exchange of information in Croatia and Slovenia. The two EU member

* Irena Klemenčić, Assistant at the Faculty of Law, University of Zagreb, Croatia (asistentica na Pravnom fakultetu Sveučilišta u Zagrebu, email: iklemencic@pravo.hr).

ORCID: <https://orcid.org/0000-0003-3804-946X>

** Maja Klun, Professor at the Faculty of Public Administration, University of Ljubljana, Slovenia (profesorica na Fakultetu javne uprave, Sveučilišta u Ljubljani, Slovenija, email: maja.klun@fu.uni-lj.si).

ORCID: <https://orcid.org/000-0002-1025-9134>

states of similar background and governed by the same EU framework on administrative cooperation take a different tax policy approach to addressing the issues of tax transparency and fighting tax evasion. The paper results in recommendations stressing the importance and benefits of higher tax transparency.

Keywords: exchange of information, tax transparency, tax evasion, Croatia, Slovenia

1. Introduction¹

Over the years, exchange of information has undergone a transformation from an ancillary instrument, aimed at assisting the implementation of tax treaty provisions, to a globally accepted tax procedure used to fight tax evasion. The development of this instrument at an international level over the past decade has been unprecedented. In the 1990s, exchange of information was hardly perceived by the tax law community as an instrument of international significance and only a few authors mentioned it in the context of confronting tax havens and aggressive tax planning, as countries with a strong bank secrecy tradition firmly protected their positions. However, following the “big bang” of 2009² and the declaration that the era of bank secrecy had come to an end (G20, 2009), the situation started to change rapidly. Exchange of information plays an important role in providing countries with information on their residents’ income and property earned and held in other countries. Currently, there are many opportunities for international exchange of tax information, depending on the countries involved and the tax information exchanged. This paper will focus on the most commonly used instruments in Croatia and Slovenia, particularly with regard to the latest global standard of (automatic)

¹ This paper is an outcome of the bilateral project *Development of transparency in tax procedures and data in the EU*, Slovenia and Croatia (BI-SI-HR/20-21-010), which is (co) financed under the Slovenian Research Agency and the Croatian Ministry of Science and Education.

² White, grey, and black lists of countries were introduced, in accordance with their commitment to the implementation of a tax treaty network, as well as the “rule of 12 tax treaties” necessary for a country to be included on a white list. On 13 March 2009, Austria, Belgium, Luxembourg, and Switzerland announced that they would include the current standard of Art. 26 of the OECD Model in their tax treaties (Oberson, 2018, p.8).

exchange of information – Art. 26 of the OECD Model, Foreign Account Tax Compliance Act (FATCA) and the Directive on Administrative Cooperation (DAC), as well as exchange of information on VAT.

The purpose of this paper is not to thoroughly analyse the instruments of exchange of information, but to provide an insight into the functioning of exchange of information, to the extent of available information. Hence, after brief introductory remarks on each instrument, the paper provides data on applying exchange of information procedures and an evaluation of the instrument conducted by various stakeholders. In writing this paper, the authors used a normative analysis of the relevant legal sources on exchange of information. The normative analysis is accompanied by a historical and comparative approach. In examining the effects of implementing exchange of information, the selected national data on the executed exchanges is analysed quantitatively.

Following the introductory remarks, the paper starts with a historic and normative overview of the development of exchange of information by the OECD, starting with Art. 26 of the OECD Model Tax Convention, which subsequently led, under the influence of many factors, to the introduction of the Common Reporting Standard (hereafter referred to as CRS). The third chapter of the paper describes the FATCA legislation, followed by a chapter on EU legislation on exchange of information. The fifth chapter describes the relevant legislative frameworks of Croatia and Slovenia. In the sixth chapter, the authors evaluate the available information on exchange of information in Croatia and Slovenia, providing a comparison of the two countries. The paper ends with some concluding remarks.

2. OECD's Work on Exchange of Information

In traditional international relations, tax matters between countries have most frequently been regulated through a network of bilateral tax treaties based on the OECD Model Tax Convention on Income and on Capital (OECD, 2017). Although tax treaties have the primary purpose of preventing double taxation, their role in preventing double non-taxation is considerable. Therefore, Oberson (2018) emphasizes the dual function of Art. 26 of the OECD Model – ensuring proper implementation of the treaty, especially for a country of residence applying a worldwide taxation system, and helping fight tax evasion and tax avoidance. Art. 26 on exchange of information is a regular component of tax treaties. Cu-

rently, the 2014 version of Art. 26 is included in the latest, 2017 version of the OECD Model (OECD, 2017). Art. 26 of the OECD Model deals with exchange of information and provides for exchange of information on request, spontaneous exchange, and automatic exchange – as set out in point 9 of the commentary on Paragraph 1 of the Art. 26 of the OECD Model (OECD, 2019b, p. C(26)-9). Although it refers to all forms of exchange of information, it is primarily directed at exchange of information on request. Unlike other tax treaty provisions, the exchange of information provision is not restricted by the scope of Art. 1 and 2, which set out the rules on taxes and persons covered by the treaty – it therefore covers all taxpayers and all taxes (Traversa & Cannas, 2015, p. 150). The provision relates to the exchange of foreseeably relevant information, providing the widest possible extent of information and eliminating so-called “fishing expeditions” (Traversa & Cannas, 2015, p. 150). This means that a request for information must be thoroughly elaborated and accompanied by relevant information regarding the taxpayer at issue, otherwise the requested country is not obliged to provide information. The provision has the purpose of protecting requested countries from vague requests from requesting countries “taking a leap in the dark” and hoping to find information on tax evasion by sending vast numbers of requests unsubstantiated by evidence.

The second paragraph of Art. 26 deals with the confidentiality of information exchanged – it prescribes the obligation to keep the exchanged information secret, in the same manner as information obtained under the domestic laws of a contracting state. The paragraph further limits the circle of persons authorised to access and use the information, allowing the use of information for other purposes upon authorisation by a competent authority of the supplying state.

The third paragraph of Art. 26 sets out cases in which contracting states may decline to provide the requested information. The cases relate to administrative measures opposing the laws and administrative practice of contracting states, and supplying information not obtainable under the laws or in the normal course of the administration of contracting states. Additionally, contracting states may choose not to supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information whose disclosure would be contrary to public policy (*ordre public*). Traversa and Cannas (2015) explain that the international exchange of information must be carried out without crossing the lines of usual practice of each state taking part in the exchange.

Furthermore, Art. 26 contains Paragraph 4, which prohibits a requested state from declining to provide information due to a lack of interest in this information for its own tax purposes. Finally, Paragraph 5 prohibits contracting parties from declining the exchange of information because the information is held by a financial institution (i.e. bank), invoking bank secrecy.

New global circumstances have required a further strengthening of globally accepted measures to fight tax evasion and have directed the development of the exchange of information standard from request of information on demand towards automatic exchange. Art. 26 of the OECD Model provides for the use of automatic exchange of information; however, unlike the other two forms of information exchange, the use of automatic exchange requires an additional agreement between the contracting parties. The OECD once again recognised the need to launch a global initiative, which was achieved by publishing the CRS, the latest globally accepted standard providing for the automatic exchange of information. The creation of the CRS was encouraged by developments in the USA, namely by the adoption of the Foreign Account Tax Compliance Act (FATCA) legislation; however, the two instruments differ to some extent.³ In the EU, the provisions of the CRS have been included in the Directive on Administrative Cooperation (DAC) and its subsequent amendments.

The CRS was the OECD's response to FATCA regulations on the automatic exchange of information, endorsed by G5, G8, and G20 countries. Having committed to an automatic exchange of information as the new global standard, the OECD developed a model consisting of the Model Competent Authority Agreement (OECD, 2014a) and the CRS, adopted in 2014 by OECD member states and an additional group of countries, the so-called "early adopters". The OECD also published Standard AEOI (OECD, 2018) (the standard for automatic exchange of financial account information in tax matters). The intention of the global model is not to restrict other types of automatic exchange of information, but to determine a minimum standard. Although the starting point for the CRS was FATCA (see further on in the text), the CRS differs in its multilateral approach, corrections of the US system of taxing citizens, and omitting the punitive withholding tax. The EU implemented the CRS by modifying

³ For a more detailed analysis see: Gadžo & Klemenčić (2017).

the DAC (see further on in the text). The first information was exchanged automatically in 2017 (Oberson, 2018, p. 194).

Tax treaties containing Art. 26 may serve as legal basis for the automatic exchange of information. Another practical option, recommended by the OECD (2014b, p.13), is to use the Multilateral Convention (see further on in the text). Either solution must be accompanied by the Competent Authority Agreement (CAA).

The CRS requires an active role of financial institutions, which must conduct due diligence procedures and apply reporting rules in order to identify and report to their national revenue authorities. The information relates to reportable accounts (including interest, dividends, account balance or value, income from insurance products, sale proceeds from financial assets, and other income. Reportable accounts are accounts held by individuals and entities (with the obligation to look through passive entities) (Oberson, 2018, p. 198).

3. FATCA

FATCA regulations are a direct consequence of many cases of tax evasion by US citizens related to banks located in countries with a high level of banking secrecy, i.e. tax havens, as well as the economic downturn of 2008 (see Gadžo & Klemenčić, 2017 for a more comprehensive overview of the circumstances leading to the adoption of FATCA). High revenue losses and budget deficits were the incentive behind some previous attempts at fighting offshore tax evasion; however, FATCA brought about a brand new approach to tackling those issues.

The purpose of FATCA is to ensure annual reporting on the value of assets and income of US direct and indirect owners of foreign financial accounts (Tello, 2014, p. 91). FATCA is US domestic legislation that prescribes the obligation of foreign financial institutions to report tax information about their US clients to the IRS. As domestic legislation it is not applicable outside the US; therefore, the US has developed a special international agreement, the Intergovernmental Agreement (IGA), which serves as an instrument for the international implementation of FATCA and provides a new international standard on automatic exchange of information (Parada, 2015). To implement FATCA, two IGA models have been developed, each with sub-versions and a different scope. Model 1 IGA, also used as a template for OECD's CRS, provides for reciprocal

obligations of the contracting country. Model 2 IGA has a more limited scope and represents a legal framework for providing the IRS with information on US taxpayers by financial institutions (Somare & Wöhrer, 2014, p. 396).

Another important issue for the implementation of FATCA is the legal basis – there should be a treaty or a bilateral agreement in force regarding exchange of information between the contracting countries. As many countries did not have an appropriate agreement with the US in force, the OECD's and Council of Europe's 1988 Multilateral Convention on Mutual Administrative Assistance in Tax Matters⁴ was chosen. It contains a more thorough set of rules on exchange of information than tax treaties, as its main purpose is to regulate the exchange of information between countries.

In its aim of improving tax compliance, FATCA legislation does not involve obligations for individual US taxpayers, but imposes rather burdensome obligations on financial institutions (banks, securities brokers, and the like). They are required to conduct due diligence procedures and report information on account holders to their national tax authorities or directly to the IRS, depending on the IGA model chosen by the contracting state. The functioning of the system is enforced by a punitive 30% withholding tax charged on payments from US-source income to be paid by non-US financial institutions which do not comply with the FATCA requirements. The same obligation exists for non-financial non-US entities receiving payments from a US source, which also have to provide information about US owners to the IRS (Eckl & Sambur, 2012, p. 37).

4. EU Legislation

4.1. Exchange of Information on Direct Taxes

The European Union started its work on harmonising the area of administrative cooperation in the 1970s, with the adoption of a Directive on mutual assistance in direct tax matters in 1977. The work on expanding the scope of application of exchange of information continued with the

⁴ More about the Convention at: <https://www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm>.

adoption of the Savings Directive⁵ in 2003, which provided for an automatic exchange of information on income from savings in other member states. Its relatively narrow scope related to natural persons.

As these efforts proved not to provide a sufficient legal basis for the rapid development of exchange of information globally, a new Directive on administrative cooperation in tax matters (DAC) was adopted in 2011, repealing previous Directives and expanding the scope of exchange of information. The DAC and its amendments closely follow the latest global initiatives in international taxation, particularly automatic exchange of information. Therefore, it includes the elements of the BEPS initiative, as well as the OECD's CRS (Oberson, 2018, p. 87).

DAC deals with exchange of information on direct taxation and it corresponds to the provisions of the CRS, i.e., the global standard for exchange of information. It encompasses assistance in assessment and enforcement of "all taxes of any kind levied by, or on behalf of, a Member State or the Member State's territorial or administrative subdivisions, including the local authorities" (Art. 2). Furthermore, the "Directive shall not apply to value added tax and customs duties, or to excise duties covered by other Union legislation on administrative cooperation between Member States... (...) shall also not apply to compulsory social security contributions payable to the Member State or a subdivision of the Member State or to social security institutions established under public law." Fees and dues of contractual nature are also excluded from the scope of DAC.

In the chapter on exchange of information, DAC sets out rules on exchange of information on request, mandatory automatic exchange of information, and spontaneous exchange of information. Further chapters include rules on other forms of administrative cooperation (presence in administrative offices and participation in administrative enquiries, simultaneous controls, administrative notification, feedback, and sharing of best practices and experience).

DAC does not stop at exchange of information on direct taxes in its efforts to ensure fiscal transparency. After the first amendment on automatic exchange of information (DAC 2), subsequent amendments relate to automatic exchange of tax rulings and advance pricing agreements (DAC 3), automatic exchange of country-by-country reports (DAC 4), access to beneficial ownership information collected pursuant to anti-mo-

⁵ Council Directive 2003/48/EC on taxation of savings income in the form of interest payments

ney-laundering legislation (DAC 5), and automatic exchange of reportable cross-border arrangements (DAC 6). Currently, the EU is working on introducing tax transparency rules for reporting by digital platforms on their sellers (DAC7).

4.2. Exchange of Information on Indirect Taxes

Even though, globally, exchange of information in tax matters as a tool of fiscal transparency is related mostly to direct taxes, there is a similar procedure for indirect taxes, namely VAT. The exchange of information on VAT is prescribed by Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax. The Regulation introduces effective measures against cross-border fraud and the collection of VAT where the place of taxation is different from place of establishment of the supplier. It also sets out conditions for the cooperation of competent authorities in EU member states with each other and with the Commission to comply with VAT laws. It facilitates the following: exchange of information on request, exchange of information without prior request (spontaneous and automatic), feedback, storage, request for administrative notification, presence in administrative offices, simultaneous control, provision of information to taxable persons, and Eurofisc.

5. Legislative Frameworks in Croatia and Slovenia

5.1. Legislative Framework in Croatia

Croatia is active in supporting international efforts at tackling tax evasion and was one of the “early adopters” of tax transparency initiatives regarding automatic exchange of information. The analysis of the implementation of exchange of information starts with the most common and oldest instrument: tax treaties. In September 2021, Croatia was party to 66 treaties⁶ and all of these contain an exchange of information clause, based on the corresponding version of the OECD Model which was in force

⁶ An extensive list of treaties between Croatia and its partners is available at the Croatian Tax Administration website: <https://www.porezna-uprava.hr/bi/Stranice/Dvostruko-oporezivanje.aspx>

at the time each treaty was concluded. In this regard, it can be seen that three treaties date from before 1991 (when Croatia declared its independence) and these contain an older version of Art. 26. The second group of treaties relates to the period from 1997 to 2015, containing an article which mostly uses a major exchange of information clause,⁷ along with a provision on the secrecy of exchanged information. The third group of tax treaties contains treaties concluded based on the amended Art. 26 of the OECD Model. These treaties use the standard of foreseeable relevance of the information to be exchanged. Secrecy provisions are also included, as well as situations in which a party is not obliged to exchange information or may decline the exchange. The latest treaties that entered into force in 2020, signed between Croatia and Japan, Kazakhstan, and Vietnam, contain the latest version of Art. 26 of the 2014/2017 OECD Model.

The Multilateral Convention on Mutual Administrative Assistance in Tax Matters, a multilateral instrument developed by the OECD and the Council of Europe for the purpose of exchange of information, has been open for signatures since 1988 and entered into force in 1995. However, Croatia only signed the Convention in 2013, when its provisions were needed to serve as legal basis for the implementation of FATCA and OECD/DAC automatic exchange of information instruments. This is particularly important because Croatia did not have a tax treaty in force with the US, so the Multilateral Convention served as legal basis for conducting automatic exchange of information. Most of the banks operating in Croatia have foreign owners and are parts of international groups doing business in the US, so the implementation of FATCA was unavoidable. The IGA between Croatia and the US was signed in March 2015 (reciprocal IGA Model 1A) and entered into force in December 2016, while the first exchange of information took place on 30 June 2017. In accordance with the agreement, Croatian banks must provide information on US citizens' bank accounts to the Croatian tax authorities, who then send the information periodically to the IRS. In return, US authorities have a reciprocal obligation and must supply Croatian tax authorities with information on Croatian citizens' bank accounts in the US.

As has already been noted, the EU has played an active role in all international initiatives directed at improving fiscal transparency. Apart from

⁷ A major exchange of information clause relates to an exchange of information which exceeds the purpose of applying a tax treaty. A minor exchange of information clause, on the other hand, only allows exchange of information for the purpose of implementing a tax treaty.

the early efforts, the EU included the provisions of the CRS in the DAC Directive, thus enabling its member states to implement CRS contents in their national legislations with the highest level of harmonisation. In Croatia, the provisions of the DAC Directive and all its amendments have been transposed in the form of a separate piece of legislation: The Act on Administrative Cooperation in Tax Matters.

The provisions on administrative cooperation were previously part of the General Tax Act, i.e. the act that prescribes the rules for tax procedure. With the adoption of FATCA and the increase of DAC provisions, the legislator decided to include all the international exchange of information provisions within a single act. The jurisdiction for the implementation of administrative cooperation was entrusted to the Ministry of Finance, Tax and Customs Administration. The act applies to all taxes of any kind prescribed by member states (with certain exceptions regarding VAT, customs, excise duties, and social security contributions). It sets out the rules for administrative cooperation in the field of taxation between the Republic of Croatia and EU member states, automatic exchange of information on financial accounts between the Republic of Croatia and other jurisdictions, automatic exchange of information on country-by-country reporting between the Republic of Croatia and non-EU jurisdictions, and the implementation of the FATCA agreement between the Republic of Croatia and the USA.

5.2. Legislative Framework in Slovenia

Slovenia has been an EU member state since 2004 and as such has automatically followed the regulations adopted by the European Commission. Therefore, all Directives (AEOI DAC 1-4) and other regulations connected with exchange of information have been included in Slovenian legislation, mostly as part of the Tax Procedure Act (ZDavP-2) of 2006 with changes. Apart from EU Directives, other legislative background for exchange of information adopted in Slovenia is connected to the OECD Convention on Mutual Administrative Assistance in Tax Matters, CRS MCAA (Multilateral Competent Authority Agreement) and CbCR (country-by-country reporting), bilateral agreements on avoiding double taxation, FATCA, and the Decision on the approval of the Memorandum of Understanding between the Financial Administration of the Republic of Slovenia and the Netherlands Tax Administration regarding exchange of information in direct tax matters of 2021.

According to the annual report of the Slovenian Tax Administration, due to the CRS and DAC2 Slovenia automatically exchanged information with 106 jurisdictions in 2020, while according to the OECD report, it exchanged information with 78 partners in 2021 (OECD, 2021b, p. 33). Slovenia had signed 59 bilateral agreements on avoiding double taxation until 2021. Most of these had been prepared according to the OECD Model, as explained previously.

6. Evaluation of Exchange of Information

6.1. Evaluation of Exchange of Information Generally

The topic of exchange of information has been very fruitful in terms of academic papers, which have mostly focused on the effects of automatic exchange of tax information. Research shows that the behaviour of tax evaders has changed over the last several years. According to research by De Simone, Lester and Markle (2020), FATCA decreased equity foreign portfolio investment among US individuals. Ahrens and Bothner (2020) estimated that household assets in tax havens have declined by 67% and have increased in non-havens. Similar findings can also be seen in other academic papers (i.e., Ahrens, Hakelberg & Rixen, 2020) but some of these also emphasize that “sophisticated” tax evaders are finding new ways of avoiding regulations (i.e., Lips, 2019; van Brederode, 2019; Juel Andersen, Johannesen & Rijkers, 2020). Therefore, the effectiveness and evaluation of automatic exchange have raised several new issues and research over the last few years to find reasons and opportunities to improve the effects of automatic exchange of information (Baker & Murphy, 2021; Janský & Prats, 2015, Meinzer, 2019). An interesting analysis by Noked (2018) addresses FATCA and CRS non-compliance opportunities which arise from classifying private entities as financial institutions, unlikely to report its owners to tax authorities, and not falling under banks’ and other financial institutions’ obligations to report their beneficial owners. Another piece of research included a series of interviews with government officials in eight countries on collecting and using information, as well as the strengths and weaknesses of automatic exchange of information. The findings warn of the limited scope of information submitted to partner countries (especially by the US) and cases of declining to take part in information exchange due to inadequate data protection by the contracting states. A rather limited scope of automatic exchange of information

obligation, focused only on financial assets and omitting e.g. real estate, jewels, or art has also been noted as challenging for a successful fight against tax evasion (Finér & Tokola, 2017).

An evaluation of automatic exchange of information among EU member states concluded that in most cases the DAC Directive did not reach the effectiveness expected, but at the same time it could be evaluated as efficient (European Commission, 2019). The report includes member states' observations on the impact of DAC and the conclusions are similar to those of individual pieces of research: increased voluntary disclosure, a downward trend in offshore hidden wealth, and the ability to fight cross-border tax fraud and evasion. The evaluation of the functioning of the internal market or the perceived fairness of the tax system did not gain enough evidence to be assessed as effective. Another interesting conclusion from the report is the observation that taxpayer awareness of the Directive is low (European Commission, 2019).

A general evaluation by the European Commission regarding the quality of AEOI and the use of the data exchanged contains recommendations intended to improve the quality of information, as some information remained unusable because data was lacking to connect the account information with taxpayers. The report also recommends that better use be made of the data received via AEOI.

The European Court of Auditors (2021, p. 48) produced another report on the exchange of tax information. The report concludes that the system for the exchange of tax information has been well established and that a suitable framework is in place, but more needs to be done in terms of monitoring, ensuring data quality, and using the information received. The feedback from various countries is that the information exchanged was of limited quality and was underused. The recommendation is to enhance the coverage of the EU legislative framework, develop monitoring and guidance, improve the quality and completeness of DAC1 and DAC2 data, make better use of the information received, and monitor the impact of information exchange.

6.2. Evaluation of Exchange of Information in Croatia

The Croatian tax authorities have a rather non-transparent approach to informing the public about the implementation of the key instruments to enable tax transparency. Although they are obliged by the Right of Access to Information Act to actively inform the public about their work,

there are no annual reports on this topic (unlike in other EU member states, which publish extensive reports, see the example given for Slovenia) (FURS, 2021). Even a formal request for general statistical information on the executed exchanges of information in previous years was only partially complied with.

The first set of available information is shown in Table 1 and relates to exchange of information on VAT.

Table 1: *Exchange of information on VAT in Croatia*

Year	Amount of received information				Amount of sent information			
	2017	2018	2019	2020	2017	2018	2019	2020
Exchange on request	348	297	275	252	250	297	434	389
Spontaneous exchange	46	56	37	78	53	34	23	37
Total	394	353	312	330	303	331	457	426

Source: Authors, based on the information obtained from the Croatian Tax Administration upon formal requests in 2020 and 2021.

The amount of received and sent information is relatively constant; however, the amount of sent information is rising, while the amount of received information is declining. The amount of sent information reached a peak in 2019 and declined afterwards, presumably due to the start of the global pandemic and its negative influence on economic activity.

Further available information provides the exchange of information based on FATCA and includes the number of taxpayers and number of accounts sent to and received from the USA in the period 2014–2019.

Table 2: *Exchange of information based on FATCA in Croatia*

Year	Information	Number of taxpayers	Number of accounts
2014	Sent to the USA	2,202	4,323
2014	Received from the USA	922	929
2015	Sent to the USA	4,053	8,447
2015	Received from the USA	711	721

2016	Sent to the USA	6,968	14,522
2016	Received from the USA	708	816
2017	Sent to the USA	8,194	16,938
2017	Received from the USA	868	975
2018	Sent to the USA	3,973	8,430
2018	Received from the USA	987	1,131
2019	Sent to the USA	2,268	4,576
2019	Received from the USA	1,239	1,400

Source: Auhors, based on the information obtained from the Croatian Tax administration upon formal requests in 2020 and 2021.

As shown in Table 2, the number of information exchanges relates to the number of taxpayers and accounts regarding which information was exchanged. The numbers rose steadily from 2014 to 2017 and fell significantly in 2018 and 2019. Croatia sends a significantly larger amount of information to the USA than it receives, which leads to the conclusion that US entities are more active in Croatia, where they keep bank accounts, than Croatian ones in the US.

The data on the implementation of AEOI in Croatia is only available from the 2019 OECD Report (OECD, 2019c, p. 4). Croatia had 60 partners to which it sent data for 2017 (in 2018) and 65 partners to which it sent data for 2018 (in 2019). The 2019 OECD Global Forum Report (OECD, 2019a, p. 90) includes some information on exchange of information on request and spontaneous exchange of information. Croatia received 149 requests during the period under review (2015–2017). Annually, Croatia generally receives approximately the same number of requests as it sends, with the same EOI partners (its neighbouring countries and trading partners):

Table 3: *Exchange of information on request and spontaneous exchange of information in Croatia, 2015–2017*

	Type of information	Number of cases
1.	Ownership information	27
2.	Accounting information	48

3.	Banking information (cases regarding account holders)	64 (38 related to natural persons and 26 to legal persons)
4.	Other type of information	79

Source: Authors, based on information published in OECD (2019a).

Out of these requests, 105 cases were linked to companies, while 113 cases were linked to individuals (some requests entailed more than one piece of information and/or entity). The information was mostly exchanged with Slovenia, Italy, Germany, Serbia, and Bosnia and Herzegovina (OECD, 2019a, 91).

Further information relates to exchange of information on request, as reported by the OECD for the period from 2015 to 2017.

Table 4: *Exchange of information on request in Croatia, 2015–2017*

Year	2015	2016	2017	Total
Total number of requests received	41	54	54	149
Full response	41	54	53	148
Declined	0	0	0	0
Failure to provide information	0	0	1	1

Source: Authors, based on information published in OECD (2019a).

As shown in Table 4, which provides the number of cases for which information was requested, there are no significant differences in the number of exchanges and the numbers are relatively low. In total, 149 requests were received over a three-year period. Regarding spontaneous exchange of information during the period from 2015 to 2017, Croatia sent 1,152 pieces of information and received 212. This was information related to residence, employment, business transactions, banking information, and tax ruling, and was mostly exchanged with EU member states (OECD, 2019a, p. 80).

In the OECD Global Forum 2020 Report (OECD, 2020, p. 31), Croatia was graded and compared on the implementation of the automatic exchange of information standard. The OECD observed that the Croatian domestic legal framework was in place but needed improvement. The international legal framework was also found to be in place, but without

the need for improvement. The overall conclusion was that Croatia needed to work on improving the implementation of the automatic exchange of information standard. According to the report, Croatia is effective at implementing the standard of transparency, but there is insufficient experience in the implementation of the strengthened standard of beneficial ownership. The report notes as a positive feature the use of a Personal Identification Number, which allows competent authorities to access a wide range of information. The report contains some recommendations, such as the need to identify the holders of bearer shares and to fully implement the strengthened standard of beneficial ownership. The OECD Peer Review of the Automatic Exchange of Financial Account Information 2021 (OECD, 2021a, p. 118) also finds that the Croatian international legal framework for information exchange is in line with requirements, while “Croatia’s domestic legislative framework requiring Reporting Financial Institutions to conduct the due diligence and reporting procedures (CR1) has a deficiency in an area significant to the proper functioning of an element of the AEOI Standard”. The report finds that “Croatia’s domestic legislative framework does not impose sanctions on Account Holders and Controlling Persons for providing a false self-certification” and makes the recommendation that Croatia should amend its domestic legislative framework to include sanctions. All other observed issues are satisfactory and require no further actions to be taken.

According to the OECD Global Forum 2021 Report (OECD, 2021b, p. 31), Croatia had 75 receiving partners for the 2020 data sent in 2021.

6.3. Data on Exchange of Information in Slovenia

The Slovenian Tax Administration (FURS) provides data on exchange of information in its annual reports. The published data refer to the amount of exchanged information according to different regulations, especially in the field of VAT. In the same chapter, data are provided on cooperation in tax inspection, use of the Eurofisc network, use of the EUCARIS-VAT application, and spontaneously exchanged information. The data are presented for at least three consecutive years, and include countries with which most of the information is exchanged. According to our findings, the data are presented in a very transparent way and are easy to obtain. First, we present the exchange of information in the field of VAT.

Table 5: *Exchange of information on VAT in Slovenia*

Year	Amount of received information				Amount of sent information			
	2017	2018	2019	2020	2017	2018	2019	2020
Exchange on request	432	385	420	322	393	477	617	448
Spontaneous exchange	62	28	64	55	50	34	47	17
Total	494	413	484	377	443	511	664	465

Source: Authors, based on Finančna uprava Republike Slovenije (2020; 2021; 2022).

As we can see from the table, the amount of received information on VAT is relatively stable. However, exchange on request for sent information increased gradually over the years and decreased in 2020, while at the same time spontaneous exchange decreased. One of the reasons for this was the situation connected to the COVID–19 pandemic, because tax administrations announced that delays in exchange of information would be a consequence of the situation in several countries. In the observed period, the Slovenian Tax Administration cooperated in two international tax inspections in the field of avoidance of VAT. Within the Eurofisc network, the Slovenian Tax Administration also checked over 600 suspicious transactions.

Furthermore, the Slovenian Tax Administration automatically exchanges information in direct taxation as is shown in Table 6.

Table 6: *Automatic exchange of information on direct taxation in Slovenia in 2019 and 2020*

Information under the legislation	EU		Other countries	
	2019	2020	2019	2020
Sent information OECD				
Received information OECD	4,871	3,843	2,386	0
Sent information AEOI DAC1	66,775	70,094		
Received information AEOI DAC1	74,653	71,961		
Sent information AEOI CRS/DAC2	62,837	69,885	10,139	13,951
Received information AEOI CRS/ DAC2	182,955	183,510	6,075	16,326

Sent information AEOI DAC4	63	41	13	9
Received information AEOI DAC4	468	447	156	132
Sent information FATCA			1,097	1,164
Received information FATCA			1,720	2,063
Total	392,622	399,781	21,586	33,645

Source: Authors, based on Finančna uprava Republike Slovenije (2020; 2021; 2022).

On average, the Slovenian Tax Administration automatically exchanges over 3,000 pieces of information in the field of direct taxation. Most of the information is connected to financial accounts which Slovenian residents have opened abroad, and it is exchanged by neighbouring countries: Austria, Croatia, and Italy (around 50% for all three countries). Germany and Cyprus are also important partners: the former because many Slovenian residents do business with Germany as the most important business partner, and the latter mostly because of lower taxation of businesses. In 2019, as can be observed in the Slovenian Tax Administration report, most of the financial accounts opened abroad belonged to taxpayers in the lowest income tax bracket, which shows how important the exchange of data is (Finančna uprava Republike Slovenije, 2020).

The data exchange under DAC1 in 2020 shows that most of the exchanged information is connected to pensions (51%), wages (44%), real estate (4%), and payments to managers and life insurance products (around 1%). In connection to DAC4, the data of almost 700 companies were exchanged. The Slovenian Tax Administration estimated that as a result of the exchanged information in the period 2015–2019, an additional 13.5 million euros in taxes were paid. For instance, in 2019, an additional 2.5 million euros in tax were collected due to exchange of information, because the information received made it possible to cooperate through tax execution. Cooperation and exchange of information is therefore an important process.

6.4. Comparison of Information Exchange Data for Croatia and Slovenia

As regards a comparison between the two countries, there are several factors which should be taken into account. Firstly, there are no comparable sources on information exchange data. While Slovenian tax authorities publish a comprehensive annual report containing data on exchanges,

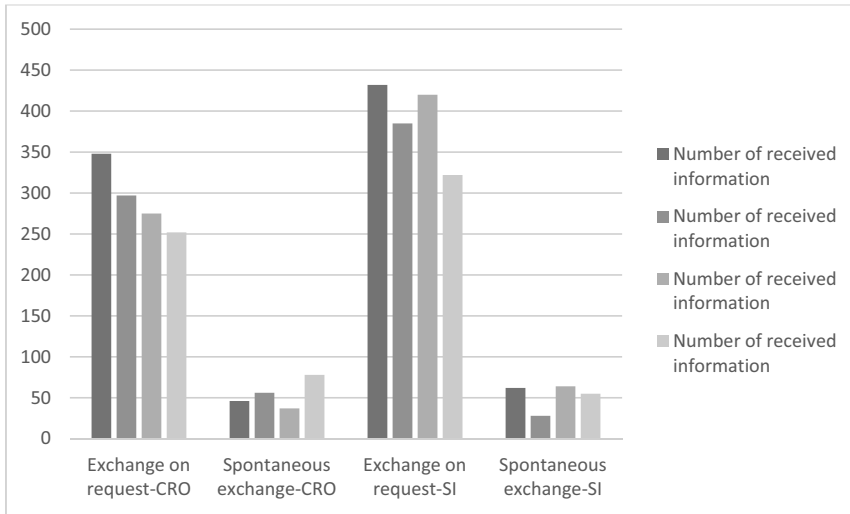
Croatian data is collected from publicly available sources published by the OECD and the EU, while only a small segment of the data was made available by the tax authorities on request. The absence of certain data for Croatia, however, does not lead to the conclusion that there is poorer implementation of exchange of information procedures – it only makes the comparison harder. Additionally, the two countries have undergone the Global Forum peer review at different times, so the data published by the OECD are not comparable, because they relate to different periods. Moreover, the two countries are neighbours and hence important trading partners, which is proven by the high level of administrative cooperation between the two countries. And finally, Slovenia started its integration process into international and subnational organisations (OECD, EU) much earlier than Croatia, which has resulted in the more advanced implementation of certain procedures in Slovenia as opposed to Croatia.

The comparison of the data on the exchange of VAT information brings us to the conclusion that Slovenia has had more exchanges overall than Croatia (see Tables 1 and 5). Slovenian authorities received between 322 and 432 pieces of VAT information upon request, and 28 to 64 pieces of information annually through spontaneous exchange. The amount of received information was at its peak in 2017. Croatian tax authorities received between 252 and 348 pieces of VAT information annually upon request, and between 37 and 78 pieces of information through spontaneous exchange. The amount of information exchanged on request has decreased steadily since 2017, while the amount referring to spontaneous exchange grew in 2018, decreased in 2019, and increased again in 2020.

The amount of sent VAT information on request in Slovenia recorded a steady growth from 2017 to 2019 (from 393 to 617 pieces of sent information) and then decreased in 2020 to 448 pieces of sent information on request. In Croatia, the amount of information sent on request is somewhat lower. It grew from 2017 to 2019 (from 250 to 434) and then fell in 2020 to 389 pieces of sent information. Data on spontaneous exchange of VAT information reflects similar results in both countries, with the highest numbers recorded in 2017. The comparison is presented in Graph 1 below.

Tables 2 and 6 contain data on FATCA exchanges of information. Slovenia sent around 1,100 pieces of information in 2019 and 2020. It received twice as much information: 1,720 pieces in 2019 and 2,063 in 2020. The data show a steady growth. The data for Croatia relate to the period 2014–2019. The amount of information sent to the USA is much higher than the amount of data received from the USA, which indicates a higher

Graph 1: VAT exchange of information in Slovenia and Croatia, 2017–2020

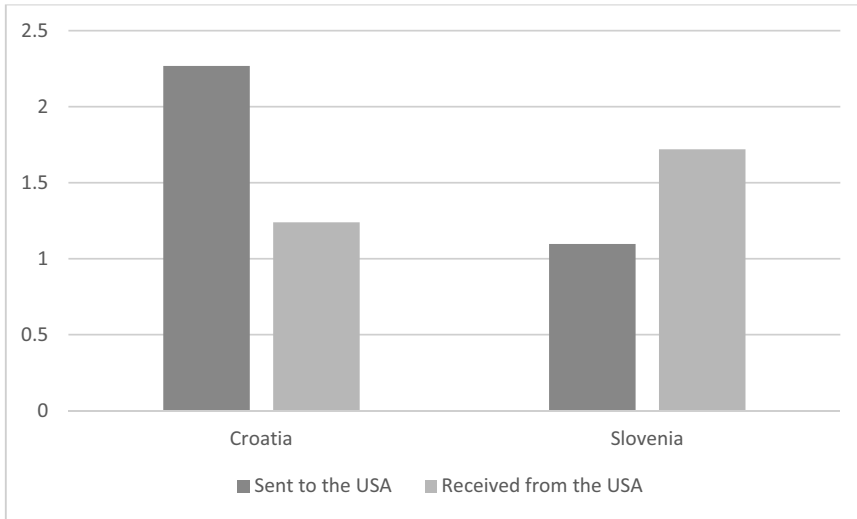


Source: Authors, based on information obtained by the Croatian Tax Administration upon requests and published in *Finančna uprava Republike Slovenije* (2020; 2021; 2022).

level of economic activity of US citizens in Croatia who keep a bank account there, than the level of economic activity of Croatian tax residents in the US. There was a rise in numbers from 2014 to 2017, when information on almost 17,000 accounts was sent to the USA. The numbers decreased afterwards, and amounted to information on 4,576 accounts sent in 2019. As for the information received from the USA, the numbers are much lower in comparison with Slovenia, and were on the rise in the observed period, reaching a peak of 1,400 accounts in 2019. The exchanges are performed automatically for a pre-defined list of items, so the tax administrations only forward the information received from financial institutions, without influencing the volume of exchange.

Table 6 additionally contains data on Slovenian automatic exchanges of information based on OECD Model, DAC 1, DAC 2, and DAC 4. As the table shows, Slovenia is receiving more information than it is sending. The numbers of automatic exchanges based on CRS/DAC 2 are the highest, reaching 183,510 pieces of information received and almost 70,000 pieces of information received from other EU countries in 2020. As Croatian tax authorities are reluctant to share statistical data on information exchanges, the only available information from OECD publications relate to on request and spontaneous exchanges, which are relatively low and only avail-

Graph 2: FATCA exchange of information in Croatia and Slovenia, 2019



Source: Authors, based on information obtained by the Croatian Tax Administration on request and published in *Finančna uprava Republike Slovenije* (2020; 2021; 2022).

ble for the period 2015–2017 (see Tables 3 and 4). Unfortunately, no data on automatic exchange of information were published or available upon formal request, so no conclusions can be drawn regarding the quality of the performed exchanges or the monetary or non-monetary effects thereof. As regards the monetary value of the performed procedures, Slovenian tax authorities have claimed publicly that the exchange of information has made it possible for them to collect an additional 2.5 million euros annually. Unfortunately, as no corresponding information has been published for Croatia, a comparison of monetary effects is not possible.

7. Conclusion

Both countries evaluated in the research are EU member states and active members of the international community, which means that they follow the same regulatory framework and have adopted the same international conventions and standards. Therefore, their legislative frameworks are comparable. Because our emphasis is on transparency and a comparison between the two countries, we can conclude the data for Slovenia are

easily obtained, while for Croatia most data are published in occasional international reports and some were obtained by means of a special request directed at the Croatian Tax Administration, but only a few were received. Transparency of data on exchange of information can be evaluated as high or excellent in the case of Slovenia and quite low in the case of Croatia. This is difficult to understand and explain, because reporting to international and EU institutions is a regular obligation for EU member states and information does not need to be collected separately for publication. However, the conclusion on the quality of performed exchanges of information is only partial due to the absence of certain information.

A comparison of the data on exchange of information indicates a more ambitious approach to information exchange by the Slovenian Tax Administration, despite a larger population and more companies present in Croatia. Croatian data show greater information exchange under the FATCA regime. The Slovenian Tax Administration seems to be more active in exchange of information, which is the result of a great effort to combat tax evasion over the past decade. Transparent data announcement can be of great importance as an indication that information is being exchanged and that cooperation with several jurisdictions is an active part of its operation, and can improve tax compliance by taxpayers. Impacts of higher numbers lead us to the conclusion that in Slovenia the effects are more noticeable, especially in terms of collecting additional tax revenues. Increased transparency can raise awareness among taxpayers, which can further influence the effectiveness of information exchange. A lack of awareness has also been detected by the European Commission; therefore, the Croatian approach to data disclosure may have an impact on increased transparency.

References

- Ahrens, L., & Bothner, F. (2020). The Big Bang: Tax evasion after automatic exchange of information under FATCA and CRS. *New Political Economy*, 25(6), 849–864, <https://doi.org/10.1080/13563467.2019.1639651>
- Ahrens, L., Hakelberg, L., & Rixen, T. (2020). A victim of regulatory arbitrage? Automatic exchange of information and the use of golden visas and corporate shells. *Regulation & Governance*, 16, 653–672, <https://doi.org/10.1111/rego.12363>
- Baker, A., & Murphy, R. (2021). Creating a race to the top in global tax governance: The political case for tax spillover assessments. *Globalizations*, 18(1), 22–38, <https://doi.org/10.1080/14747731.2020.1774324>

- De Simone, L., Lester, R., & Merkle, K. (2020). Transparency and tax evasion: Evidence from the Foreign Account Tax Compliance Act (FATCA). *Journal of Accounting Research*, 58(1), 105–153, <https://doi.org/10.1111/1475-679X.12293>
- Eckl, P., & Sambur, J. (2012). The impact of the US Foreign Account Tax Compliance Act (FATCA) on European entities. *European Taxation*, 52(1), 37–41.
- European Commission (2019). *Evaluation of Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Directive 77/99/EEC*. (Commission Staff Working Document SWD (2019), No. 327). Retrieved from https://ec.europa.eu/taxation_customs/document/download/deaefb-deb8-42cf-9810-0b850ec3f298_en
- European Court of Auditors (2021). *Exchanging tax information in the EU: Solid foundation, cracks in the implementation*. (Special Report No. 3). Retrieved from https://www.eca.europa.eu/Lists/ECADocuments/SR21_03/SR_Exchange_tax_inform_EN.pdf
- Finančna uprava Republike Slovenije (2020). *Letno poročilo Finančne uprave Republike Slovenije* [Annual report of the Financial administration of the Republic of Slovenia]. Retrieved from <https://www.gov.si/assets/organi-v-sestavi/FURS/Strateski-dokumenti/Letno-porocilo-Financne-uprave-za-letno-2019.pdf>
- Finančna uprava Republike Slovenije (2021). *Letno poročilo Finančne uprave Republike Slovenije* [Annual report of the Financial administration of the Republic of Slovenia]. Retrieved from <https://www.gov.si/assets/organi-v-sestavi/FURS/Strateski-dokumenti/Letno-porocilo-Financne-uprave-za-letno-2020.pdf>
- Finančna uprava Republike Slovenije (2022). *Letno poročilo Finančne uprave Republike Slovenije* [Annual report of the Financial administration of the Republic of Slovenia]. Retrieved from <https://www.gov.si/assets/organi-v-sestavi/FURS/Strateski-dokumenti/Letno-porocilo-Financne-uprave-za-letno-2021.pdf>
- Finér, L., & Tokola, A. (2017). The revolution in automatic exchange of information: How is the information used and what are the effects? *Bulletin for International Taxation*, 71(12).
- Gadžo, S., & Klemenčič, I. (2017). Effective international information exchange as a key element of modern tax systems: Promises and pitfalls of the OECD's common reporting standard. *Public sector economics*, 41(2), 207–226, <https://doi.org/10.3326/pse.41.2.3>
- G20 (2009). *London summit: Leaders' statement 2 April 2009* [Communique]. Retrieved from https://www.imf.org/external/np/sec/pr/2009/pdf/g20_040209.pdf
- Janský, P., & Prats, A. (2015). International profit-shifting out of developing countries and the role of tax havens. *Development Policy Review*, 33(3), 271–292, <https://doi.org/10.1111/dpr.12113>
- Juel Andersen, J., Johannesen, N., & Rijkers, B. (2020). Elite capture of foreign aid: Evidence from offshore bank accounts. (Policy Research Working Paper No. 9150). Washington, DC: Retrieved from <http://documents.worldbank.org/curated/en/493201582052636710/pdf/Elite-Capture-of-Foreign-Aid-Evidence-from-Offshore-Bank-Accounts.pdf>

- Lips, W. (2019). Great powers in global tax governance: A comparison of the US role in the CRS and BEPS. *Globalizations*, 16(1), 104–119, <https://doi.org/10.1080/14747731.2018.1496558>
- Meinzer, M. (2019). *Countering cross-border tax evasion and avoidance: An assessment of OECD policy design from 2008 to 2018*. Utrecht, the Netherlands: Utrecht University.
- Noked, N. (2018). FATCA, CRS, and the wrong choice of who to regulate. *Florida Tax Review*, 22(1), 77–119. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3143663, <https://doi.org/10.5744/ptr.2018.1016>
- Oberson, X. (2018). *International exchange of information in tax matters: Towards global transparency*. Cheltenham, United Kingdom: Edward Elgar Publishing.
- OECD (2014a). *Model competent authority agreement*. Paris, France: OECD. Retrieved from <https://www.oecd-ilibrary.org/docserver/9789264216525-4-en.pdf?expires=1631392875&id=id&accname=guest&checksum=EACE07278BBAC8E40525842A96F8AAFC>
- OECD (2014b). *Standard for automatic exchange of financial account information in tax matters*. Paris, France: OECD. Retrieved from <https://www.oecd.org/ctp/exchange-of-tax-information/standard-for-automatic-exchange-of-financial-account-information-for-tax-matters-9789264216525-en.htm>
- OECD (2017). *Model tax convention on income and on capital: Condensed version 2017*. Paris, France: OECD. Retrieved from <https://www.oecd.org/ctp/treaties/model-tax-convention-on-income-and-on-capital-condensed-version-20745419.htm>
- OECD (2018). *Standard for automatic exchange of financial information in tax matters* (2nd ed.) [Implementation handbook]. Paris, France: OECD. Retrieved from <http://www.oecd.org/tax/exchange-of-tax-information/implementation-handbook-standard-for-automatic-exchange-of-financial-account-information-in-tax-matters.htm>
- OECD (2019a). *Global forum on transparency and exchange of information for tax purposes: Croatia 2019 (second round): Peer review report on the exchange of information on request*. Paris, France: OECD. Retrieved from https://www.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-croatia-2019-second-round_ccacbc7-en
- OECD (2019b). *Model tax convention on income and on capital 2017 (full version)*. Paris, France: OECD.
- OECD (2019c). *The 2019 AEOI implementation report*. Paris, France: OECD. Retrieved from <https://www.oecd.org/tax/transparency/AEOI-implementation-report-2019.pdf>
- OECD (2020). *Global forum annual report 2020*. Paris, France: OECD. Retrieved from <https://www.oecd.org/tax/transparency/documents/global-forum-annual-report-2020.pdf>
- OECD (2021a). *Peer review of the automatic exchange of financial account information 2021*. Paris, France: OECD. Retrieved from https://www.oecd-ilibrary.org/taxation/peer-review-of-the-automatic-exchange-of-financial-account-information-2021_b64f5e60-en

- OECD (2021b). *Reinforcing multilateral co-operation in tax matters for a fair and inclusive recovery: 2021 Global forum annual report*. Paris, France: OECD. Retrieved from https://www.oecd.org/tax/transparency/documents/global-forum-annual-report-2021.pdf?utm_source=Adestra&utm_medium=email&utm_content=Read%20more&utm_campaign=Tax%20News%20Alert%2018-11-2021&utm_term=ctp
- Parada, L. (2015). Intergovernmental agreements and the implementation of FATCA in Europe. *World Tax Journal*, 7(2).
- Somare, M., & Wöhrer, V. (2014). Two different FATCA model intergovernmental agreements: Which is preferable? *Bulletin for International Taxation*, 68(8), 395–403.
- Tello, C.P. (2014). FATCA: Catalyst for global cooperation on exchange of tax information. *Bulletin for International Taxation*, 68(2), 88–102.
- Traversa, E., & Cannas, F. (2015). Exchange of information (Art. 26 OECD model convention). In M. Lang, P. Pistone, A. Rust, J. Schuch, C. Staringer, C. & A. Storck (Eds.), *The OECD-model-convention and its update 2014* (pp. 147–174). Vienna, Austria: Linde Verlag.
- van Brederode, R. F. (2020). Countermeasures to tax fraud, evasion and avoidance: A critical review. In R. van Brederode (Ed.), *Ethics and Taxation*. Singapore: Springer. 323–358, https://doi.org/10.1007/978-981-15-0089-3_13

Legal sources:

- Council Directive 2003/48/EC on taxation of savings income in the form of interest payments, OJ L 157 of 26 June 2003
- Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, OJ L 64 of 11 March 2011
- Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums, OJ L 336 of 27 December 1999
- Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax, OJ L 268 12.10.2010, p. 1
- Decision on the approval of the Memorandum of Understanding between the Financial Administration of the Republic of Slovenia and the Netherlands Tax Administration regarding the exchange of information in direct tax matters. Official Gazette of the Republic of Slovenia – International Treaties no. 3/21
- General Tax Act, Official Gazette of the Republic of Croatia, 147/08, 18/11, 73/13, 44/16.
- Right of Access to Information Act, Official Gazette of the Republic of Croatia, 25/13, 85/15
- Tax Procedure Act, Official Gazette of the Republic of Slovenia, no. 117/06 with changes. Available at <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4703>

Act on Administrative Cooperation in Tax Matters, Official Gazette of the Republic of Croatia, 115/16, 130/17, 106/18, 121/19.

EXCHANGE OF INFORMATION IN TAX MATTERS: EXPERIENCES FROM CROATIA AND SLOVENIA

Summary

Globalisation and cross-border movement of persons and capital have placed new challenges before national tax systems as well as international taxation. Over the past 20 years there has been an unprecedented development of exchange of information, a previously ancillary instrument which has developed into a widely accepted global means of fighting tax evasion. Exchange of information has evolved from an instrument of limited scope used for the implementation of tax treaty provisions to a sophisticated system of automatic information exchange encompassing a vast majority of countries, including infamous tax havens. The notions of tax secrecy and tax transparency have undergone a re-evaluation process, resulting in new global paradigms directed at unveiling previously secret transactions. Banking secrecy has been abolished even in countries with a strong tradition thereof. As some time has passed since the introduction of the latest global standard of the automatic exchange of information, this paper reflects on the most important aspects of exchange of information, regulated by tax treaties: the OECD's CRS, EU's DAC, and FATCA. Following a theoretical introduction, which provides a historical and comparative overview of information exchange instruments, the paper presents the practical results of the implementation. Findings of the evaluation of the instrument conducted by key international stakeholders are accompanied by available statistical information, depicting to what extent it has been helpful in preventing tax evasion in Croatia and Slovenia and in recovering lost public revenues. The paper results in identifying the shortcomings of national applications, based on best global practices and statistical data as well as providing tax authorities with recommendations for the improvement of exchanging information. As the system is still in a rather early stage of implementation, the paper presents the current tax administration involvement in exchanging information, which will enable further evaluations in future stages of implementation of the instrument.

Keywords: exchange of information, tax transparency, tax evasion, Croatia, Slovenia

RAZMJENA INFORMACIJA U POREZNIM STVARIMA: ISKUSTVA IZ HRVATSKE I SLOVENIJE

Sažetak

Globalizacija i prekogranično kretanje osoba i kapitala donijeli su nove izazove s kojima se nacionalni porezni sustavi kao i međunarodno porezno pravo suočavaju. Tijekom posljednjih 20 godina dogodio se nezapamćen razvoj razmjene informacija, instrumenta koji je prije imao sporednu ulogu, a potom se razvio u široko prihvaćeno sredstvo usmjereno na borbu protiv porezne evazije. Razmjena informacija razvila se od instrumenta ograničenog dosega koji se koristio samo s ciljem provedbe poreznih ugovora u sofisticirani sustav automatske razmjene informacija koji primjenjuje većina država, uključujući i ozloglašene porezne oaze. Pojmovi porezne tajnosti i porezne transparentnosti stoga su poprimili novo značenje kroz novu paradigmu usmjerenu otkrivanju transakcija koje su prije bile obavijene velom tajnosti. Bankarska tajnost više nije prepreka razmjeni informacija čak ni u državama koje su tradicionalno njegovale visoku razinu tajnosti. Kako je od uvođenja najnovijega globalnog standarda automatske razmjene informacija, uređene poreznim ugovorima, OECD-ovim CRS-om, EU-ovim DAC direktivama te FATCA-om, proteklo nešto vremena, ovaj se rad osvrće na najvažnije aspekte razmjene informacija u poreznim stvarima. Nakon uvodnog dijela koji se fokusira na teorijske postavke, povijesni i komparativni pregled instrumenata razmjene informacija, u radu se opisuju rezultati praktične primjene tog instrumenta. Nalazi o evaluaciji instrumenta koje su objavile vodeće međunarodne organizacije popraćeni su dostupnim statističkim podacima koji prikazuju koliko je instrument bio koristan u sprječavanju porezne evazije u Hrvatskoj i Sloveniji te koliko je javnih prihoda naplaćeno. U radu autorice identificiraju nedostatke nacionalnih praksi, temeljene na globalnim najboljim praksama i statističkim podacima. Osim toga, pružaju poreznim vlastima preporuke za poboljšanje provedbe razmjene informacija. Sustav je još nov, stoga rad prikazuje trenutačnu situaciju primjene razmjene informacija, što će omogućiti daljnju evaluaciju u kasnijim fazama primjene tog instrumenta.

Ključne riječi: razmjena informacija, porezna transparentnost, porezna evazija, Hrvatska, Slovenija