The Global Rollout of CRS and AEOI and Some Practical Experiences to Date

Ivan Pelle, an expert in international taxation and Executive Director and one of the Founders at Recontam Global Network (RGN) is on a mission to make its clients and partners aware of the rollout of CRS and AEOI across Asia-Pacific and how this might affect tax planning and investment strategies. He addressed the audience at the Hubbis Asian Wealth Solutions Forum to update them on practicalities around CRS, which stands for the Common Reporting Standard, as pertaining to participating and permanent non-reciprocal jurisdictions. He talked about the practical implications of AEOI, which is the Automatic Exchange of Information. He explained the difference between territorial and worldwide income taxation. And he pointed to some practical examples from the 2018 OECD Peer review report on Singapore executed by the Global Forum about the implementation of CRS and AEOI worldwide.

PELLE FIRST OFFERED SOME BACKGROUND ON RGN, which he explained houses a specialist team of senior practitioners who craft bespoke solutions derived from a deep understanding of clients' needs and ongoing objectives.

"Whether you are a high-net-worth individual, family office or an international corporation," he explained, "our goal is to understand client priorities, now and for the future."

RGN's expertise

He reported that RGN's expertise covers multidisciplinary consultancy services for the international needs of family offices, worldwide tax planning and advisory, global residence and citizenship by investment programs, and retirement planning.

It also covers the construction and administration of structures for unique purposes (such as a company, trust, or

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Link to Content Summary page
Link to Article on website
Link to Presentation
Link to Event Homepage

foundation), and we offer support for establishing and maintaining banking relationships in Asia, the EU and non-EU countries, the Americas and help in identifying optimal financial and real estate investment strategies.

Topics for the day

He then explained that he would cover three key topics. The first is the position of participating and permanent non-reciprocal jurisdictions as this pertains to CRS and AEOI. Secondly, he would look at the mismatch of territorial and worldwide income taxation. And thirdly, he would glance at practical experiences taken from the OECD, Global Forum report of 2018 that had been executed on Singapore about the activities surrounding AEOI and of course some of the implications for HNWIs in Asia, and indeed globally.

Turning to his first topic of the day. "My mission today," Pelle he explained, "is to look at regulation concerning taxation, as this is a vital area any asset manager needs to know about in order to properly look after their clients. To do so, we need to clarify what a participating jurisdiction under CRS means, as well as what a permanent non-reciprocal jurisdiction is."

To participate...or not

A CRS participating jurisdiction is a jurisdiction with which an agreement is in place, pursuant to which there is an obligation to automatically exchange information on reportable accounts which are identified in a published OECD list. Meanwhile, a permanent non-reciprocal jurisdiction might be a country that is engaged in participating in AEOI, but that does not seek a similar reciprocal inflow of such information.

"As soon as that jurisdiction declares themselves to be a permanent non-reciprocal jurisdiction, they will supply information, but they will not seek to receive such data in return," Pelle clarified.

Normally, he elucidated, the choice to be a permanent non-reciprocal country is driven by the fact that in that jurisdiction there might be minimal or zero taxation. With that, he listed countries including Anguilla, the Bahamas, Bermuda, Bahrain, the British Virgin Islands, Kuwait, Marshall Island, Nauru, Qatar, Turks and Caicos Islands and the United Arab Emirates.

Who has signed up, with whom?

He explained that the OECD portal gives readers information on how the countries around the world have decided to sign up with other jurisdictions. "You can see, for example," he reported, "that Singapore has 65 agreements, which means that

they will send information on bankable assets, information on dividends distributed and so on to 65 countries."

But it is not always a two-way street. In the case of the United Arab Emirates, by way of example, they might automatically send information on a Swiss resident's banking in the UAE to Switzerland, but the UAE would not require information from Switzerland on a resident of the UAE who is banking in Switzerland.

"As you will appreciate," Pelle observed, "this has major implications. If the Swiss resident, for example, has not fully declared income on that foreign account the resident would likely suffer tax litigation and penalties, and possibly going back some 10 years, all unpaid taxes and interest will be requested depending on the domestic tax of each country."

Tell me, but only what I need to know

The opposite applies in the case of a resident individual in a permanent non-reciprocal jurisdiction. The UAE resident will not have their bank account information transmitted, so their Swiss bank accounts will not be exposed to the UAE authorities. "Wealthy individuals today, based on our experience, greatly value their privacy and knowing that their information will not be exchanged cross-border is very relevant indeed," Pelle observed. "The UAE is not interested in getting financial data from Switzerland, or anywhere else."

He gave delegates a practical example to highlight such a situation. A resident and taxpayer in Country A, Singapore also banks in Dubai, for this example Country B. the Dubai financial institution will provide the information to the government of the Emirates and the government of Emirates will provide the cross-border information to Singapore. So, as you can see here, it is not a matter of taxation, it is just a matter of information transmitted. "The key here," Pelle noted, "is that most wealthy clients would like, if possible, to get organised in a way where their data is well protected and of course not released cross-border."

He then offered the example with a non-participant jurisdiction involved. "We switch this round, and the resident is now from UAE Dubai banking in Singapore, but now UAE Dubai has chosen not to receive information based on the MCAA Model chosen, so the information is not transmitted cross-border from Singapore to Dubai. It is a major difference."

Territorial or WWI?

He then moved on his second topic of the day, namely territorial and worldwide income taxation. "Around the world," he noted, "countries have to choose what they really want to maximise. The three main objectives of international tax rules aim at national wealth maximisation, tax fairness, as well as economic efficiency."

He explained that this is especially relevant in relation to the capital import neutrality (CIN), or capital export neutrality (CEN) tax policies.

"Tax is claimed by tax authorities using resident-based taxation, territorial taxation, zero income taxation and citizenship-based taxation," he explained. "Resident-based taxation is, of course, the most significant worldwide, in other words taxing the people resident in a country. But nowadays, countries tend to implement tax policies mixing the CIN and CEN concepts. Capital export neutrality implies that from a tax perspective, the investor is placed on an equal footing regardless of whether they choose to invest at home or abroad."

By way of example, Mr X might invest in State S (source), pay 20% tax there, then receive a tax credit (credit method) for that 20% in State R (resident) and pay an additional 20% in State R to reach the standard 40% rate of State R his home country. "The capital export neutrality is based on the concept," says Pelle, "that Mr X will be able to invest worldwide but charged at the same level as if he were investing at home. The result from State R point of view is that State R contributed with CEN tax policy to promote investments abroad of its resident, therefore State S collects 20%, and State R collects 20% (providing also a tax credit)" On the other hand, capital import neutrality policy might be chosen by those countries that want to bring capital into their country.

Capital import neutrality (CIN) implies that Mr X, resident in State R, investing in a foreign country State S, and Mr Y resident in State S investing also in State S, should be placed on an equal footing from a tax perspective with respect to income sourced in the same State (State S). Via a full exemption method State R will not collect taxes on the foreign investments made by Mr X, but State S will collect 20% taxes from Mr X and 20% taxes from Mr Y, therefore under CIN tax policy from State R point of view, State S collects 40% of taxes and State R 0% of taxes. Therefore, for Mr X this fact of not being taxed in State R is an advantage, and for State R is an attractive tax policy.

Pelle commented that the taxpayer and asset manager of today should be fully aware of how the tax system works where they operate. "Territorial taxation is a source-based tax system," he commented, "meaning that income sourced in the country will be subject to tax, meanwhile, if sourced abroad it may not be taxed, under the CIN tax policy."

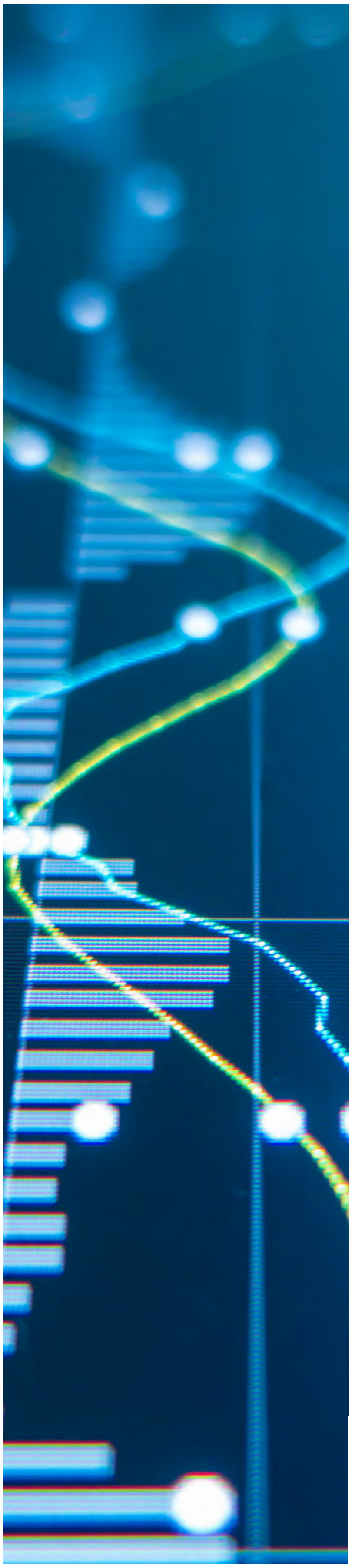
Nowadays, worldwide income taxation (CEN tax policy) is the most widely spread around the globe, because it is a residence-based tax system. "Despite this," Pelle elucidated, "the current trend of the tax policymaker is to apply both two tax policies in the local tax law."

Where are we now?

He then turned to his last topic, the 2018 OECD report, which as he had mentioned covers three years from April 2014 onwards. He explained that Singapore is entirely compliant with other countries under the AEOI and noted that in the period reviewed in the report Singapore received around 1000 requests of information from third countries about tax payments. "And as you can imagine, being so compliant under the CRS, Singapore replied to 76% of those requests within 90 days. Very impressive."

He reported that Singapore has actually evolved since the report 2013 from Largely Compliant to the new status of Compliant in 2018, so there has been an improvement.

"The only area for improvement now," he noted, "is on beneficial ownership and control, so Singapore is addressing those recommendations from the OECD, which has suggested Singapore should ensure availability of beneficial ownership information as defined under the OECD



standards. In short, we will soon face the need for more information to be disclosed and maintained."

Drawing his talk towards a close, Pelle offered some other important numbers. During the period of OECD review, the tax audit performed by Singapore totalled 34,440 which means 3% of the entities were scrutinised by the tax Singapore authorities.

"And in that same period," Pelle added, "646 requests for back information have been received by Singaporean banks. And of 1079 incoming requests for information from Singapore, as I mentioned, 827 were replied to in full within 90 days. It is also interesting to note that 17 requests were declined for valid reasons, because the request of information from other countries were not related to tax issues."

Finally, on this topic, Pelle referred to outgoing requests that Singapore had made to third countries to get information on their individual residents or companies with legal seats in Singapore. "Not many actually," he noted, "just 167 such requests in three years, but interestingly you can see that 5% of those requests needed further clarification, in other words the requests are remarkably detailed and accurate, as we would expect here from Singapore."

Ignore it at your peril

"For all those here today," he said on closing, "working in the private banking and wealth management arenas, all this whole area of CRS, AEOI, legal ownership, beneficial ownership, and overall compliance are vital topics to understand and to make your clients aware of. Play it safe and be compliant. Thank you." ■