



Tax authorities get a global grip on tax evaders

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International data exchange – a norm

In the strife against tax avoidance and tax evasion the automatic exchange of fiscal data is progressively becoming specific, both on an EU level and on a worldwide scale. In 2005, after 14 years of negotiations, the European Union Savings Directive (**EUSD**) was adopted, the 'Council Directive 2003/48/EC of 3 June 2003 relating to taxation on savings income in the form of interest payments'. Subsequently the international data exchange accelerated on a worldwide scale due to the adoption of the Foreign Account Tax Compliance Act (**FATCA**) by American Congress in 2010. Thereafter the G20 countries having agreed by way of the Common Reporting Standard (**CRS**) in September 2013, to exchange fiscal data worldwide as from 2016. At the end of October 2014, 48 countries signed a Multilateral Competent Authority Agreement (**MCAA**) on Automatic Exchange of Financial Account Information as 'early adaptors'. In this Agreement they pronounce the intention to exchange data in view of the Common Reporting Standard as from the tax year 2016. The other countries followed a year later, so that by tax year 2017 almost 100 countries with an MCAA will exchange data internationally. In the countries that form part of the **OECD**¹ legislation is or will be coming into force to make the international data exchange possible and to counteract tax avoidance and tax evasion. The effect of this legislation and these treaties is that the banking secrecy disappears worldwide and the tax gap seriously reduces in the forthcoming years².

FATCA provides two options to exchange data with the USA:

- **Model 1 IGA**³: financial institutions provide financial data to the Tax Authority in their country and the Tax Authority submits all the fiscal data for all the financial institutions to the United States based on the IGA. On these grounds the Internal Revenue Service (IRS) also provides fiscal data about the residents of the particular contract country;
- **Model 2**: financial institutions submit data directly to the IRS. In this case there is no question of reciprocity.

CRS has a **single model for data exchange** between MCAA countries, in which the financial institutions submit data to the Tax Authority in their country and the tax authorities of MCAA countries mutually exchange this data. This model corresponds to Model 1 IGA of FATCA.

For the exchange of data among FATCA, CRS and EUSD a conceptual model⁴ **IEOD-TA**[®] was developed, which places financial institutions in a position to submit all data for FATCA, CRS and EUSD in a single message to the Tax Authority in their country and which places the Tax Authority in

¹ OECD stands for **O**rganisation for **E**conomic **C**ooperation and **D**evelopment.

² Tax gap is defined as the difference between the tax liability to be paid and what taxes have been paid.

³ IGA stands for **I**nter**G**overnmental **A**greement, an agreement between the Ministries of Finance of the USA and another country for the exchange of FATCA data.

⁴ IEOD-TA stands for **I**nternational **E**xchange **O**f **D**ata performed by a **T**ax **A**uthority by collecting, sending and receiving data.

a position to automatically exchange the data respectively with the IRS, MCAA countries and EU countries (submitting and receiving) and to transfer the data to the Tax Authority itself to be utilised for the common fiscal processes for Levying and Monitoring.

IEOD-TA[®] comprises:

- an approach;
- a described process for the Tax Authority;
- a software application for international data exchange;
- an interface with the own tax system to enable the transfer of data received;
- an international FATCA CRS EUSD operating guide for financial institutions, provided with an XML scheme;
- an overview of the modifications which financial institutions must implement.

The approach consists of a fact finding mission in which the situation in a country is analysed and it is determined what must still happen to enable implementation of IEOD-TA[®].

Dependent on the situation in the relevant country, a (supplement to the) legal basis is required to enable the complete data exchange. The treaties alone are inadequate.

It is further of importance to inform financial institutions early about what they must do to make international data exchange possible. Communication is of vital importance. A significant success factor is that the governance of the project to implement IEOD-TA[®] lies with the Tax Authority itself.

Benefits of IEOD-TA[®]

- ✓ IEOD-TA[®] is powerful in its simplicity and can be applied in every country (large and small) and can be implemented at relatively low costs;
- ✓ IEOD-TA[®] as a generic process and application, is 'separate' from the fiscal processes and the existing data management. The manner of use of received data in the common fiscal processes for levying and monitoring taxes is specific for each country;
- ✓ IEOD-TA[®] contains documentation for financial institutions about which preparations they must put into effect to be able to submit data via IEOD-TA[®] for international data exchange;
- ✓ IEOD-TA[®] contains a process description with working instructions for the carrying out of IDE tasks (IGU) by the Tax Authority, an international operating manual provided with message specification for financial institutions and a software application for the execution of the IDE tasks by the Tax Authority;
- ✓ IEOD-TA[®] complies with the conditions in respect of managing data in a confidential and careful manner by only transferring data destined for use in the common fiscal processes for levying and monitoring taxes. Data for international exchange is screened from unauthorised access;
- ✓ IEOD-TA[®] is prepared for exchanges for CRS and provides for exchange for FATCA and for EUSD.

In this article we first present a picture of the developed concept, followed by an explanation of the processes, the organisation structure and the software application at the Tax office, which are required to place the Tax Authority and financial institutions in a position to exchange annual data internationally in a controlled manner using IEOD-TA[®]. The article ends with the introduction of the IEOD-TA[®] concept in Curaçao.

The IEOD-TA[®] concept

For FATCA and CRS (and EUSD) together, the international data exchange progresses as follows: financial institutions in country X transmit data destined for the agreed countries to the Tax Authority of country X and the Tax Authority submits the data to the IRS and to MCAA countries. On the basis of reciprocity the IRS and MCAA countries submit data about residents of country X to the Tax Authority of country X, who can use this data at the Levies and Monitoring departments in country X. The receiver of data assesses the message and sends notifications with an approval or with error messages. Errors are corrected and the data is resubmitted to the IRS and MCAA countries (if corrections of data originate from country X) or resubmitted to country X (if corrections of data originate either from the United States or one or more MCAA countries).

Figure 1 shows IEOD-TA[®] as the light blue outer ring. The dark blue core is the Tax Authority with the normal fiscal processes and its data management.

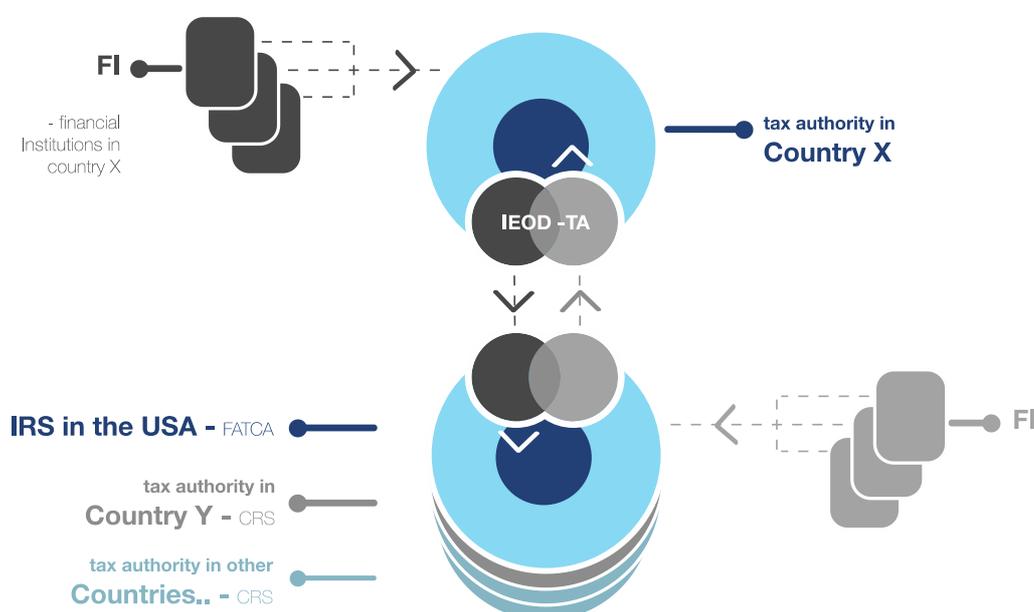


Figure 1: Submission of data by financial institutions, the processing & supply by the Tax Authority to the USA and MCAA countries (dark grey process chain) and receipt of data from the USA and from MCAA countries and the transfer of that data to the internal data management for use in the common processes for levying and monitoring taxes (light grey process chain).

The process of international data exchange for country X is dealt with in the grey circles in figure 1. Data in view of the international exchange stays 'outside' the data management of the Tax Authority itself and only data about residents from country X is transferred to the data management in the dark blue core to be used in the common fiscal processes for levying and monitoring taxes.

Some tax authorities obtain contra-information about their own residents, which is not presented in figure 1. IEOD-TA[®] specifically differentiates between international data exchange and contra-information to be able to meet the requirements stipulated in the treaties and the legislation, where it concerns use and inspection of data.

International data exchange in figure 1 is distinguished in the supply by country X of financial data from country X to the USA and to MCAA countries and the receipt by country X of data from the USA and of MCAA countries:

SUPPLY BY COUNTRY X OF FINANCIAL DATA TO THE USA AND TO MCAA-COUNTRIES

Supply of data by financial institutions in country X to the Tax Authority

- Registration by financial institutions (FI) of foreign financial institutions (FFI) registered at the IRS, for which data is submitted to the Tax Authority;
- Testing against the required XML scheme of test messages;
- Supply of data destined for countries, with whom the Tax Authority has agreed to international data exchange;
- Processing of alerts and notifications and possibly supplying corrections.

Supply of data to the USA and to MCAA countries by the Tax Authority of country X

- Obtaining data submissions from financial institutions and registration of same;
- Checking for accuracy and completeness and sending alerts/notifications to FIs;
- Collecting and supplying data to the USA and to MCAA countries;
- Processing of alerts/notifications and supplying corrections for message notification;
- Grouping and sending of notifications regarding data to financial institutions;
- Obtaining correction submissions from financial institutions and registration of same;
- Checking for accuracy and completeness and sending alerts/notifications to FIs;
- Collecting of corrections and submitting to the USA and MCAA countries.

RECEIPT BY COUNTRY X OF FINANCIAL DATA FROM THE USA AND FROM MCAA-COUNTRIES

Receipt of data from the USA and from MCAA countries by the Tax Authority of country X

- Receipt of data from the USA and from MCAA countries and registration of same;
- Checking for accuracy and completeness and sending alerts/notifications to the USA and MCAA countries;
- Receipt of corrections from the USA and from MCAA countries and registration of same;
- Checking for accuracy and completeness of corrections and sending alerts/notifications to the USA and MCAA countries;
- Collecting and transferring of data about residents of country X to the internal data management of the Tax Authority for the common fiscal processes for levying and monitoring taxes.

An operating manual has been drawn up for financial institutions, '*Manual for International supply of data for FATCA CRS EUSD*' with the '*XML scheme FATCA CRS EUSD*' as an appendix for their data submissions for FATCA, CRS and EUSD in a single XML message.

The processes to be carried out by the Tax Authority - provided with a link to processes at financial institutions and at the IRS and at MCAA countries - are described in a process concept '*process description and administrative organisation of international data exchange FATCA CRS EUSD*'. An '*Annual activities calendar*' forms part of this.

In order to keep costs low for submissions by financial institutions, a single XML schema for FATCA CRS EUSD has been drawn up. This XML scheme has been drawn up from the specifications of the XML schemes for FACTA, for CRS and for EUSD separately⁵.

⁵ The exchange of EUSD data, in due time, will be integrated in the exchange of CRS data.

The IEOD-TA[®] application supports financial institutions in country X with the registration, the testing against the required XML scheme and the actual supply of data. The IEOD-TA[®] application supports the Tax Authority in country X in obtaining the data, the checking on accuracy and completeness of registration and submissions at the financial institution level, collecting and composing of data and the supply of data to the USA and to MCAA countries. The IEOD-TA[®] application supports both the Tax Authority in country X and the financial institutions in country X in the processing of alerts and notifications as well as making corrections. The IEOD-TA[®] application also supports the Tax Authority in country X in the receipt of data about residents of country X from the USA and from MCAA countries, and in the transferring of that data to its own data management for the common fiscal processes for levying and monitoring taxes, and in the giving of alerts and notifications about the received data to the IRS and to the MCAA countries who supplied the data. Finally, the IEOD-TA[®] supports the Tax Authority of country X in the generation of overviews for administrative and management information.

IEOD-TA[®] concept put into practice in Curaçao

In September 2014 the authors were requested to provide recommendations to Curaçao in the preparation of the FATCA data exchange over tax year 2014, which must be completed in conformity with an IGA clause with the USA by 30 September 2015. The preparation consisted of two phases: an initiation phase and a realisation phase.

Initiation phase – a fact finding mission

During the fact finding mission in Curaçao the existing situation was analysed and, on the basis of the IEOD-TA[®] concept it was established which measures would have to be taken to make the international data exchange possible.

The analysis revealed that (1) Curaçao was intending to sign 'model 1 IGA' with the USA for the exchange of FATCA data, that (2) Curaçao had no history and experience in the field of international data exchange, that (3) no data was supplied by financial institutions as contra-information for the fiscal process, that (4) legislation was absent for obtaining contra-information or exchanging data internationally, that (5) the Director of Fiscal Affairs had already been appointed as the responsible authority for the realisation of the international data exchange and that (6) the Curaçao Tax Authority had less experience with a project-specific approach.

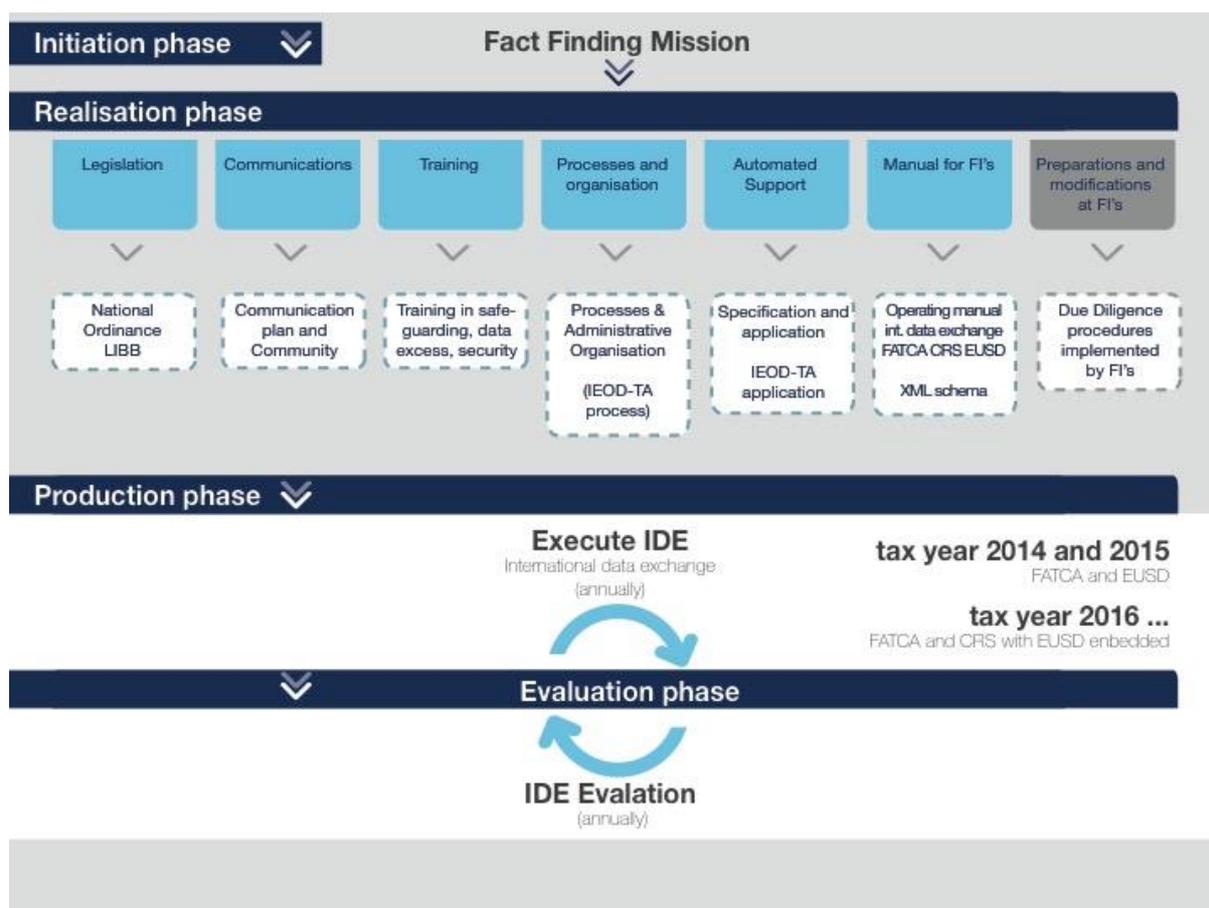


Figure 2: Plan of action for the introduction of IEOD-TA[®] – the initiation phase and realisation phase (of a number of products) and then an annual cycle of production and evaluation consisting of a production phase and an evaluation phase.

On the basis of the abovementioned findings a schedule was created in Curaçao for the realisation phase, consisting of:

- the structuring of the governance for the responsibility, preparation and implementation with, on the one hand, the structuring of a steering group and a project group with its sub-committees such as communications, legislation and IT assistance, and on the other hand, the structuring of managerial and technical consultations with financial institutions, including the FATCA/CRS Commission;
- answering the questions on the basis of the IRS Workbook;
- initiating a legislative procedure, with a legal basis for the international data exchange as the envisaged result on 1 August 2015;
- designing and implementing the process and the administrative organisation for international data exchange;
- designing and realising of a IEOD-TA application as a web portal;
- compiling an international data exchange operating manual incorporating an XML scheme for the financial institutions in Curaçao;
- drawing up a Training programme for employees at the Tax Authority;
- drawing up a Communication plan for internal and external communications.

Realisation phase – legislation, process, assistance, preparations at FIs

At the beginning of October 2014 – immediately after the fact finding mission – the implementation of the activities for the realisation phase was initiated.

A steering group started in October 2014 and was followed by working groups for legislation, administrative organisation, training, communications and IT assistance. The FATCA/CRS

Commission meetings and technical consultations also take place monthly and, taking the high attendance into consideration, provides for the financial institutions' need for information.

December 2014 is the situation in Curaçao regarding all the parts of the FATCA data exchange, described in the document '*International Data Safeguards & Infrastructure Workbook Responses Curaçao*'.

The legislative procedure was initiated, and existing legislation from countries who have also signed a model 1 IGA with the USA, are used to enforce necessary legislation in a good and timely manner; the '*National Ordinance of International Assistance for the Levying of Taxes (LIBB)*'.

The implementation of the communication plan is enthusiastically taken up by the Communications working group. Information is shared with citizens and businesses about international data exchange on the public site of the Tax Authority and the government of Curaçao's public page. A separate community has also been set up for international data exchange. Financial institutions, foreign financial institutions and other stakeholders can register for access to the '*IDE community*'.

The processing and administrative organisation for international data exchange and the transferring of received data to the internal data management for the common fiscal processes for levying and monitoring taxes have been designed and finally completed. Implementation of the process for international data exchange requires circa 0.1 FTE on an annual basis with peaks during the annual data exchange and the evaluation period. It is wise to have a dual occupancy of this task.

The *specifications for the Financial Data Exchange Portal (PFGU)* have been drawn up in close cooperation between the Tax Authority and the software application supplier. The portal will be completed in two phases. The completion of the PFGU is on track.

The first phase of the IEOD-TA application comprises:

Functionality for the financial institutions to relate foreign financial institutions (FFI) to submitting financial institutions; a financial institution submits for itself and/or for a number of FFIs.

Functionality for the Tax Authority to check whether the registration of relationships between submitting financial institutions and foreign financial institutions is complete.

A testing service for financial institutions to be able to test messages from financial institutions for the XML scheme.

The second phase of IEOD-TA application comprises:

Functionality for financial institutions to be able to submit data to the Tax Authority, including the processing of alerts and notifications and submitting corrections.

Functionality for the Tax Authority to be able to collect and process data for sending data to the USA and MCAA countries (yet for 2014 and 2015 only EU countries), including the processing of alerts, notifications and corrections.

Functionality for the Tax Authority to receive data and corrections from the USA and MCAA countries about residents of Curaçao, including giving alerts and notifications.

Functionality for the Tax Authority to transfer the received data to the internal data management for use in the common fiscal processes for levying and monitoring taxes.

Functionality for administrative and management information for the Tax Authority in the form of BI (business intelligence) overviews.

The *international FATCA CRS EUSD operating manual with the XML scheme* as an appendix for the data transmission by financial institutions, is compiled and discussed with those involved and has finally been completed.

The financial institutions are making preparations by embedding the due diligence⁶ procedures in their organisation, adapting the administration for the submission of data from their administrations and by developing the functionality to submit messages in conformity with the agreed FATCA CRS EUSD XML scheme to the Tax Authority.

Annual cycle of production and evaluation - production phase

Financial institutions in Curaçao will be submitting financial data about US persons (FATCA) and about EU residents (EUSD) for the tax year 2014 to the Tax Authority as from mid-August 2015. The Tax Authority checks on completeness and prior to 30 September 2015, submits the agreed to data to the USA and to EU countries.

On the basis of reciprocity, prior to 30 September 2015 the Tax Authority receives agreed to data about residents of Curaçao for the tax year 2014 from the USA and from the EU countries.

A schedule with production activities is incorporated in the FATCA CRS EUSD International Data Exchange operating manual for the financial institutions and an expanded version in the process description and administrative organisation of the FATCA CRS EUSD international data exchange for the Tax Authority in Curaçao.

Annual cycle of production and evaluation - evaluation phase

After the data exchange has been concluded in Curaçao the international data exchange for tax year 2014 will be evaluated, and an inventory of improvement actions will be drawn up in the documentation and action plan for the international data exchange in the following tax year. During the evaluation a schedule of the production activities for the following tax year will be drawn up.

In conclusion

The IEOD-TA[®] concept offers every country the opportunity to accomplish international data exchange within a year. The approach and implementation will hardly be determined by the local situation and circumstances. A legislative procedure may not be absent and communications and consultations with financial institutions are significant success factors during the implementation.

In the model case of Curaçao it appears that the IEOD-TA[®] can easily be applied. The experience in Curaçao has learn that (the introduction of) international data exchange is more than simply the advice originally requested: "the implementation of an application". The total framework of approach, process, application and manual and XML schema for FIs is necessary for a controlled implementation and a robust (annual) data exchange with the IRS and MCAA countries.

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⁶ *Due diligence literally stands for 'appropriate carefulness' and concerns the carefulness with which financial institutions establish and register whether someone or an organisation is a US person (in the case of FATCA) or that a person has his jurisdiction or residence in a certain country (in the case of CRS).*