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MEETING DOCUMENT

From:	Presidency
To:	Delegations

Subject:	Presidency steering note
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Delegations will find attached a Presidency steering note.

Presidency steering note

WPTQ meeting (Direct Taxation – DAC)

30 MARCH 2023 (MORNING SESSION ONLY)

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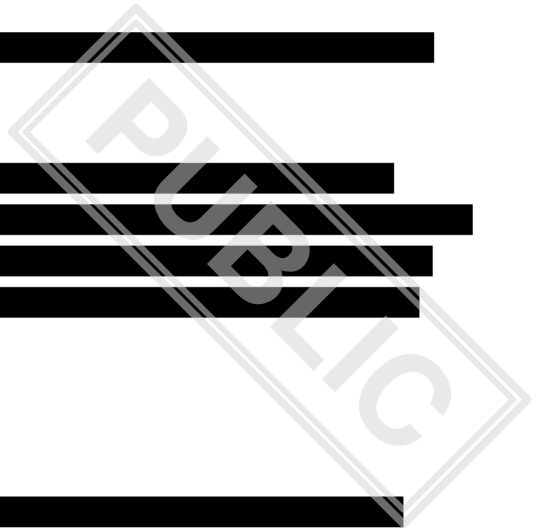
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Reference to the EDPB Guidelines 2/2020	CRS legal framework	Level of assurance (red, yellow or green), with reasons why
<u>2.1 Purpose and scope</u>	Art. 4(1) of the Convention states that the Parties shall exchange any information “<i>that is foreseeably relevant for the administration or enforcement of their domestic laws concerning the taxes covered by this Convention</i>”. Art. 6 of the Convention states that: “With respect to categories of cases and in accordance with procedures which they shall determine by mutual agreement, two or more Parties <i>shall automatically exchange the information referred to in Article 4.</i>” The preamble to the CRS MCAA specifies that the purpose of the CRS MCAA is to <i>improve international tax compliance</i> and that the CRS was developed to <i>tackle tax avoidance and evasions and improve tax compliance</i>.	

<u>2.1 Categories of personal data</u>	Section I of the CRS; Section 2.2 (a-g) of the CRS MCAA.	
<u>2.1 Types of processing</u>		
<u>2.2 Definitions</u>		
<u>2.3.1 Purpose limitation principle</u>	Art. 4(1) of the Convention states that the Parties shall exchange any information “<i>that is foreseeably relevant for the administration or enforcement of their domestic laws concerning the taxes covered by this Convention</i>”. Art. 22(2) of the Convention states that the information exchanged with a Party “<i>shall in any case be disclosed only to persons or authorities (including courts and administrative or supervisory bodies) concerned with the assessment, collection or recovery of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, taxes of that Party, or the oversight of the above. Only the persons or authorities mentioned above may use the information and then only for such purposes</i>”. Art. 22(4) of the Convention states that “<i>notwithstanding the provisions of paragraphs 1, 2 and 3, information received by a Party may be used for other purposes when such information may be used for such other purposes under the laws of the supplying Party and the competent authority of that Party authorises such use. Information provided by a Party to another Party may be transmitted by the latter to a third Party, subject to prior authorisation by the competent authority of the first-mentioned Party</i>”. Section 2.1.1 of the CRS MCAA specifies that exchanges under the CRS MCAA are subject to Art. 6 and 22 of the Convention.	

	Section 5.1 of the CRS MCAA states that “all information exchanged is subject to the confidentiality rules and other safeguards provided for in the Convention, <i>including the provisions limiting the use of the information exchanged...</i> ”.	
<u>2.3.2 Data accuracy principles</u>	Section 2.1.1 of the CRS MCAA states that the information to be exchanged must be collected “<i>subject to the applicable reporting and due diligence rules consistent</i>” with the CRS. The due diligence requirements are designed to ensure that the information exchanged is accurate. Section 4 of the CRS MCAA includes an obligation to notify and rectify incorrect or incomplete information.	
<u>2.3.2 Data minimisation principles</u>	The CRS MCAA and the CRS implementing legislation prescribe which information is to be collected and exchanged.	
<u>2.3.3 Storage limitation principle</u>		
<u>2.3.4 Security and confidentiality of data</u>	Art. 22(1) of the Convention states that “<i>any information obtained by a Party under this Convention shall be treated as secret in the same manner as information obtained under the domestic law of that Party and, to the extent needed to ensure the necessary level of protection of personal data, in accordance with the safeguards which may be specified by the Supplying Party as required under its domestic law</i>”. See also Section 5 of the CRS MCAA.	

<u>2.4.1 Right to transparency</u>		
<u>2.4.2 Rights of access, rectification, erasure, restriction of processing and to object</u>		
<u>2.4.3 Automated individual decision-making</u>		
<u>2.4.4 Right to redress (see also point 2.7 below on redress mechanisms)</u>		
<u>2.4.5 Restrictions to the rights of the data subjects</u>	(In the DAC context, please note Art. 25 of the DAC, which states that Member States shall, for the purposes of the correct application of the DAC, <i>restrict the scope of the obligations and rights</i> provided for in Art. 13 (transparency), Art. 14(1) (transparency) and Art. 15 (right of access) of the GDPR, <i>to the extent required in order to safeguard the interest referred to in point (e) of Art. 23(1) of the GDPR (important objectives of general public interest of the Union or a Member State, in particular an important economic or financial interest, including taxation).</i>)	
<u>2.5 Restrictions on onward transfers and sharing of data</u>	Art. 22(4) of the Convention (see the box related to point 2.3.1 above).	

<u>2.6 Sensitive data</u>		
<u>2.7 Redress mechanisms</u> (see also <u>point 2.4.4 above on right to redress</u>)		
<u>2.8 Supervision mechanisms (internal)</u>	Section 5(2) of the CRS MCAA (implicitly).	
<u>2.8 Supervision mechanisms (independent)</u>	Art. 24(3) of the Convention provides for a co-ordinating body consisting of representatives of competent authorities of the Parties and which monitors the implementation and development of the Convention, under the aegis of the OECD. The Global Forum on Transparency and Exchange of Information for Tax Purposes monitors and reviews the implementation of the AEOI standard. The Global Forum assesses jurisdictions against, <i>inter alia</i>, the requirement to keep the exchanged information confidential and properly safeguarded and using it in accordance with the agreement. There is a) a pre-exchange assessment, and b) an AEOI peer review.	
<u>2.9 Termination clause</u>	Section 7(4) of the CRS MCAA states that “ <i>in the event of termination, all information previously received under this Agreement will remain confidential and subject to the terms of the Convention</i> ”.	

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