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## Cross-Border Tax Transparency: A Study of Recent Policy Developments in Turkey

Leyla Ateş  
*Altinbas University, Faculty of Law*

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*Transnational tax information cooperation has the crucial role of empowering tax administrations to collect tax revenues in full and on time, thereby narrowing the tax gap created by international evasion and avoidance. However, the adequacy of established transnational tax information exchange systems in combatting international tax evasion and avoidance has been severely criticized and a new wave of progress on transparency has started after the 2008 global economic crisis. In this direction, Turkey set cross-border tax transparency high on its political agenda. Though, Turkey has operationalized new transnational tax cooperation agreements very slowly. Furthermore, Turkey's approach to exchanging information has displayed important deficiencies. This article demonstrates the reasons for the Turkish government's lack of urgency in making its cross-border tax affairs more transparent. It shows the ways in which cross-border tax transparency might be raised in the Turkish political agenda. The article concludes that the universal, rapid and consistent implementation of a coordinated response to cross-border tax evasion and avoidance through transparency efforts is bound by domestic public support and thus can only be obtained by the government in tandem with a popular mandate.*

*La coopération transnationale en matière d'information fiscale a pour rôle crucial de donner aux administrations fiscales les moyens de percevoir les recettes fiscales dans leur intégralité et en temps voulu, réduisant ainsi le fossé créé par la fraude et l'évasion fiscales à l'échelle internationale. Cependant, l'adéquation des systèmes d'échange d'informations fiscales transnationaux établis pour lutter contre la fraude et l'évasion fiscales internationales a été sévèrement critiquée et une nouvelle vague de progrès en matière de transparence a débuté après la crise économique mondiale de 2008. Dans cette optique, la Turquie a fait de la transparence fiscale transfrontalière une priorité de son programme politique. Cependant, la Turquie a mis en œuvre très lentement les nouveaux accords de coopération fiscale transnationale. En outre, l'approche de la Turquie en matière d'échange d'informations présente d'importantes lacunes. Dans le présent article, nous démontrons les raisons du manque d'urgence du gouvernement turc à rendre ses affaires fiscales transfrontalières plus transparentes. Nous montrons comment la transparence fiscale transfrontalière pourrait être inscrite à l'agenda politique turc. L'article conclut que la mise en œuvre universelle, rapide et cohérente d'une réponse coordonnée à la fraude et à l'évasion fiscales transfrontalières par des efforts de transparence est liée au soutien de l'opinion publique nationale et ne peut donc être obtenue par le gouvernement qu'en tandem avec un mandat populaire.*

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\* Altinbas University Faculty of Law (leyla.ates@altinbas.edu.tr).

*Introduction*

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*Introduction*

Under Turkish income taxation, based on the universality principle also implemented in many domestic tax law systems,<sup>1</sup> resident taxpayers (*tam mukellefler*) are exposed to Turkish taxation on their worldwide income. This means taxpayers must inform the Turkish tax authority about domestic-sourced as well as foreign-sourced income earned during the fiscal year. However, the capacity of the tax administration to enforce the worldwide income taxation depends on its ability to obtain cross-border tax information.<sup>2</sup> Although the Turkish tax administration, like many others, is legally entitled to access such data,<sup>3</sup> to do so requires the reach of the tax administration to extend beyond national borders.<sup>4</sup>

The Turkish tax administration may also need to access cross-border tax information involving non-resident taxpayers (*dar mukellefler*) deriving income from sources within Turkey, based on the principle of territoriality. Even if Turkey takes no account of the foreign income of non-resident taxpayers, the Turkish tax administration may need to receive information from the jurisdiction of residency about relevant legal conditions in order to correctly implement tax laws.<sup>5</sup> Thus, transnational tax cooperation has the crucial role of empowering tax administrations to collect tax revenues

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1. See Michael Lang, *Introduction to the Law of Double Taxation Conventions* (Wien: Linde Verlag, 2013) at 27.

2. See Steven Dean, "The Incomplete Global Market for Tax Information" (2008) 49 Boston College L Rev 612 at 607; Miranda Stewart, "Transnational Tax Information Exchange Networks: Steps towards a Globalized, Legitimate Tax Administration" (2012) 4:2 World Tax J 152 at 152.

3. For several jurisdictions' general legal framework on tax information collection including Turkey see Eleonor Kristoffersson et al, eds, *Tax Secrecy and Transparency: The Relevance of Confidentiality in Tax Law* (Frankfurt & Main & PL Academic Research, 2013); Giuseppe Marino, ed, *New Exchange of Information versus Tax Solutions of Equivalent Effect* (Istanbul: IBFD, 2015).

4. Stewart, *supra* note 2 at 152.

5. See Ana Paula Dourado, "Exchange of Information" in Ekkehart Reimer & Alexander Rust, eds, *Klausur Vogel on Double Taxation Conventions*, 4th ed (The Netherlands: Wolters Kluwer, 2015) at 1859.

in full and on time, thereby narrowing the tax gap created by international evasion and avoidance.<sup>6</sup>

Double tax treaties have historically laid the legal basis for cross-border tax information exchange through articles pertaining to the exchange of information.<sup>7</sup> In this regard, Turkey began to develop its transnational tax information network by signing its first double tax treaty with Austria in 1970.<sup>8</sup> The initial expansion of the world's tax treaty networks was gradual,<sup>9</sup> and Turkey added only one more such agreement during this decade, followed by a further 11 in the 1980s.<sup>10</sup> When transnational tax information networks expanded more rapidly after the 1990s,<sup>11</sup> Turkey followed suit, signing an increased number of treaties, with the result that, as of 10 February 2021, there were 91 double tax treaties ratified in Turkey.<sup>12</sup> However, the adequacy of established transnational tax information exchange systems in combatting international income tax evasion and avoidance has been severely criticized, especially after the 2008 global economic crisis, widely seen as the catalyst for recent progress on transparency and cross-border tax information exchange.<sup>13</sup>

Turkey was among the countries most affected by the 2008 global economic crisis.<sup>14</sup> Thus, it can be rightly assumed that at the London

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6. OECD, *Tax Transparency 2018: Report on Progress, Global Forum on Transparency and Exchange of Information for Tax Purposes* (2018), online (pdf): <[www.oecd.org/tax/transparency/global-forum-annual-report-2018.pdf](http://www.oecd.org/tax/transparency/global-forum-annual-report-2018.pdf)> [perma.cc/3UZU-MGX3].

7. Stewart, *supra* note 2 at 159.

8. The Organisation for Economic Cooperation and Development (OECD) and the United Nations (UN) have published treaty models that countries imitate when concluding bilateral tax conventions. Turkey mainly follows the OECD Model for its tax treaties, even if it deviates from it time to time in certain articles towards the UN Model Convention; Billur Yalti, "Turkey" in Yavir Brauner & Pasquale Pistone, eds, *BRICS and The Emergence of International Tax Coordination* (IBFD Online, 2015) at 9.1.4. For the current version of both models see, *OECD, Model Tax Convention on Income and on Capital* (Paris: OECD Publishing, 2017) [OECD Model]; UN, *Model Double Taxation Convention between Developed and Developing Countries* (New York: United Nations, 2017). The agreement between Turkey and Austria came into force in 1974 so some Turkish scholars labelled that year as the start of international exchange of information mechanisms, see Cihat Oner, *Uluslararası Alanda Vergi İdareleri Arası Bilgi Değişimi* (Ankara: Yetkin, 2010) at 26.

9. Stewart, *supra* note 2 at 159.

10. See Yalti, *supra* note 8 at 9.1.2.

11. Stewart, *supra* note 2 at 159.

12. Turkey, Gelir İdaresi Başkanlığı, "Yururlukte Bulunan Cifte Vergilendirmeyi Onleme Anlasmaları" (2019), online: <[www.gib.gov.tr/sites/default/files/uluslararası\\_mevzuat/VERGIANLASMALIST.htm](http://www.gib.gov.tr/sites/default/files/uluslararası_mevzuat/VERGIANLASMALIST.htm)> [perma.cc/82VS-7TMD]; Türkiye Büyük Millet Meclisi, Kanun Sorgu Sonuçları (2021), online: <[www.tbmm.gov.tr/develop/owa/kanunlar\\_sd.sorgu\\_yonlendirme?Kanun\\_no=&k\\_Baslangic\\_Tarihi=&k\\_Bitis\\_Tarihi=&r\\_Baslangic\\_Tarihi=&r\\_Bitis\\_Tarihi=&sorgu\\_kelime=%E7ifte+vergilendirmeyi+%F6nleme](http://www.tbmm.gov.tr/develop/owa/kanunlar_sd.sorgu_yonlendirme?Kanun_no=&k_Baslangic_Tarihi=&k_Bitis_Tarihi=&r_Baslangic_Tarihi=&r_Bitis_Tarihi=&sorgu_kelime=%E7ifte+vergilendirmeyi+%F6nleme)>.

13. Pascal Saint-Amans, "Global tax and transparency: We have the tools, now we must make them work" OECD (2016), online: <[www.oecd.org/tax/automatic-exchange/news/global-tax-transparency-we-have-the-tools.htm](http://www.oecd.org/tax/automatic-exchange/news/global-tax-transparency-we-have-the-tools.htm)> [perma.cc/M3XL-SGGK].

14. Hasan Comert & Esra Nur Ugurlu, "The Impacts of the 2008 Global Financial Crisis on

Summit on 2 April 2009, when the leaders of the Group of 20 (G20)<sup>15</sup> declared that “(t)he era of banking secrecy is over” and underscored the importance of inclusive international tax cooperation,<sup>16</sup> Turkey—a member of the G20—set cross-border tax transparency high on its political agenda. In this direction, recent moves to increase the robustness of the OECD Article and Commentary pertaining to exchange of information<sup>17</sup> has been reflected in the signing of new treaties and alterations to some existing Turkish double tax treaties through protocols.<sup>18</sup> Moreover, Turkey has signed five tax information exchange agreements since 2010<sup>19</sup> as well as the Multilateral Convention on Mutual Administrative Assistance on 3 November 2011 (*Multilateral Convention*), instruments aiming to incorporate both tax haven jurisdictions and developing countries into transnational tax information networks.<sup>20</sup>

Despite signing numerous tax exchange agreements, Turkey has operationalized such agreements very slowly. There was an average interval of four years between the signing of tax information exchange agreements and their full ratification. For example, Parliamentary ratification of the Multilateral Convention took place on 3 May 2017,<sup>21</sup> with the Council of Ministers’ ratification accompanied by reservations and declarations

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Developing Countries: The Case of the 15 Most Affected Countries” (2015) 15:19 ERC-Economic Research Center Working Paper 3, online (pdf): <erc.metu.edu.tr/en/system/files/menu/series15/1509.pdf> [perma.cc/44HT-MQ43]; Ozlem Hic Birol, “The Effects of the Global Economic Crisis on Turkey’s Economy and the Recent Tilt in Her International Relations” (2011) 3:2 Intl J Business and Management Studies 227.

15. The G20 is an international network of 19 countries and the European Union. Those individual member countries other than Turkey are Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, Republic of Korea, Russia, Saudi Arabia, South Africa, the United Kingdom, and the United States, G20, “G20 Participants,” “About the G20,” online: <www.g20.org/about-the-g20.html>. Regarding the emergence of the G20 as a tax policy forum in global economic crisis. See Allison Christians, “Taxation in a Time of Crisis: Policy Leadership from the OECD to the G-20” (2010) 5 Nw JL & Social Policy 19 at 19.

16. See OECD, *G20 Leaders’ Declaration*, London (2 April 2009) at para 15, online (pdf): <www.oecd.org/g20/summits/london/G20-Action-Plan-Recovery-Reform.pdf> [perma.cc/B29G-GA5T].

17. For the latest updates to the exchange of information article of the OECD Model, see, OECD, *Update to Article 26 of the OECD Model Tax Convention and Its Commentary* (17 July 2012), online: <www.oecd.org/ctp/exchange-of-tax-information/120718\_Article%2026-ENG\_no%20cover%20(2).pdf>. These updates to the exchange of information article were translated into the UN Model Convention as well.

18. Yalti, *supra* note 8 at 9.2.6.1.

19. See Turkey, Gelir Idaresi Başkanlığı, *Yurulukte Bulunan Vergi Konularında Bilgi Degisim Anlasmalari* (19 March 2018), online: <www.gib.gov.tr/uluslararası\_mevzuat>.

20. Stewart, *supra* note 2 at 161, 163.

21. *Vergi Konularında Karşılıklı İdari Yardımlaşma Sözleşmesinin Onaylanmasının Uygun Bulunduğuna Dair Kanun* [Mutual Administrative Assistance Agreement in Tax Matters] Law No 7018, Resmî Gazete [Official Gazette], 20 May 2017, No 30071, online: <resmigazete.gov.tr/eskiler/2017/05/20170520-2.htm> [perma.cc/5G4R-CF9M].

made on 30 October 2017.<sup>22</sup> Eventually, the agreement came into effect at international level as of 1 July 2018, almost seven years after the initial signature in 2011.<sup>23</sup>

Furthermore, Turkey's approach to exchanging information has displayed important deficiencies which will be discussed in Part I of this article. Even the European Union (EU), by far Turkey's largest trading partner,<sup>24</sup> has grey-listed the country as a result of these deficiencies.<sup>25</sup> Since December 2017, the EU has classified countries as 'black' or 'grey' in relation to<sup>26</sup> the risk indicators of preferential regimes, zero or no corporate income tax and transparency and exchange of information.<sup>27</sup> The European Union's executive body, the European Council (EC), takes tax and non-tax countermeasures against the blacklisted jurisdictions.<sup>28</sup> It moves grey-listed jurisdictions to the black list if they fail to make sufficient progress in addressing the highlighted areas of risk.<sup>29</sup> In all three lists published to date, Turkey has been grey-listed owing to deficiencies in relation to requests for exchange of information and ineffective implementation of the automatic exchange of information. While the 2020 list notes some developments in the area of automatic exchange of information, it emphasizes that Turkey will be relegated to the blacklist in subsequent updates if it fails to take the required actions.<sup>30</sup> Considering

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22. *Vergi Konularında Karşılıklı İdari Yardımlaşma Sözleşmesinin İlişik Çekince ve Beyanlarla Birlikte Onaylanması Hakkında Karar* [Decision on the Approval of the Mutual Administrative Assistance Agreement in Tax Matters with the Related Reservations and Declarations] Law No 2017/10969, Resmî Gazete [Official Gazette], 26 November 2017, No 30252, online (pdf): <resmigazete.gov.tr/eskiler/2017/11/20171126-12.pdf> [perma.cc/C7LS-3MG8].

23. See OECD, *Jurisdictions Participating in the Convention on Mutual Administrative Assistance in Tax Matters Status* (19 February 2020), online (pdf): <www.oecd.org/tax/exchange-of-tax-information/Status\_of\_convention.pdf> [perma.cc/6JU5-AX6U].

24. European Commission, "Trade, Policy, Countries and regions: Turkey" (23 April 2020), online: <ec.europa.eu/trade/policy/countries-and-regions/countries/turkey/> [perma.cc/WM4B-2U4Q].

25. See, European Commission, "Evolution of the EU list of Tax Havens" (18 February 2020), online (pdf): <ec.europa.eu/taxation\_customs/sites/taxation/files/eu\_list\_update\_18\_02\_2020\_en.pdf> [perma.cc/RS7L-9UUK].

26. For the criticism of the listing approach, see Markus Meinzer, "Towards a Common Yardstick to Identify Tax Havens and to Facilitate Reform" in P Dietsch & Thomas Rixen, eds, *Global Tax Governance—What is Wrong with It, and How to Fix It* (United Kingdom: ECPR Press, 2016); Wouter Lips & Alex Cobham, "Who will feature on the common EU blacklist of non-cooperative tax jurisdictions?" (2018), Open Data for Tax Justice; Irma Johanna Mosquera Valderrama, "The EU Standard of Good Governance in Tax Matters for Third (Non-EU) Countries" (2019) 47 *Intertax*, 454 at 464.

27. Ana Paula Dourado & Petter Wattel, "Third States and External Tax Retentions" in Peter Wattel, Otto Marres & Hein Vermeulen, eds, *European Tax Law: General Topics and Direct Taxation* (Deventer: Kluwer, 2018) at 214.

28. *Ibid.*

29. *Ibid.*

30. Council of the European Union, Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes, 6129/20 (18 February 2020) at 4.

the economic ties between Turkey and the EU, and the EC's defensive measures against blacklisted jurisdictions, this will likely have important consequences for the Turkish economy.

In addition, the world is facing the unprecedented global health and economic crisis of COVID-19, which has led to an additional revenue gap in states' coffers. In reassessing their medium-to-longer-term fiscal strategies as a result of the pandemic<sup>31</sup>, countries are likely to seek both new sources of revenue and the effective enforcement of existing tax laws. In view of the magnitude of transnational tax cooperation, incorporating 47 million offshore accounts since 2018 and accounting for additional revenue of 95 billion Euros over the 2009-2019 period,<sup>32</sup> cross-border tax cooperation is likely to become a focus of tax policy, as occurred in the aftermath of the 2008 economic crisis.<sup>33</sup>

Thus, this article aims to detail the reasons for the Turkish government's lack of urgency in making its cross-border tax affairs more transparent. To this end, Part II examines possible reasons for Turkey's apparent reluctance to enforce the exchange of tax information. Part III analyzes the ways in which cross-border tax transparency might be raised in the Turkish political agenda. The article concludes that the universal, rapid and consistent implementation of a coordinated response to cross-border tax evasion and avoidance through transparency efforts is bound by domestic public support and thus can only be obtained by the government in tandem with a popular mandate. To establish the will of the people, careful attention will need to be devoted to keeping accountability forums open.

### I. *Tracking deficiencies in Turkish cross-border tax transparency policy*

The OECD has led transnational tax collaboration efforts since the 1960s.<sup>34</sup> In 2000, it formed the Global Forum on Transparency and Exchange of Information for Tax Purposes (*Global Forum*) as a multilateral framework

31. Pascal Saint-Amans, "Tax in the time of COVID-19" The Forum Network (23 March 2020), online: <[www.oecd-forum.org/users/369395-pascal-saint-amans/posts/63721-tax-in-the-time-of-covid-19](http://www.oecd-forum.org/users/369395-pascal-saint-amans/posts/63721-tax-in-the-time-of-covid-19)> [perma.cc/2RCN-5ZPS].

32. OECD, *Implementation of tax transparency initiative delivering concrete and impressive results* (07 June 2019), online: <[www.oecd.org/tax/automatic-exchange/news/implementation-of-tax-transparency-initiative-delivering-concrete-and-impressive-results.htm](http://www.oecd.org/tax/automatic-exchange/news/implementation-of-tax-transparency-initiative-delivering-concrete-and-impressive-results.htm)> [perma.cc/58L8-GUDQ].

33. Civil society organizations have already started to create a discussion around this topic. See, The Financial Transparency Coalition, The Independent Commission for Reform of International Corporate Taxation, Oxfam and Public Services International, "Health versus Wealth?: Tax and Transparency in the Age of COVID-19" (12 May 2020), online: <[financialtransparency.org/health-versus-wealth-tax-transparency-age-covid-19/](http://financialtransparency.org/health-versus-wealth-tax-transparency-age-covid-19/)> [perma.cc/43BT-UM48].

34. Allison Christians, "Networks, Norms, and National Tax Policy" (2010) 9:1 Wash U Global Studies L Rev 14.



for member and non-member countries to initiate and implement tax regimes of greater transparency and exchange information for tax purposes.<sup>35</sup> Since then, the Global Forum has developed two internationally agreed standards for tax purposes: the exchange of information on request (EOIR) and the automatic exchange of financial account information (AEOI). As an OECD country,<sup>36</sup> Turkey is an original member of the Global Forum.<sup>37</sup> Thus, it is possible to track recent developments in Turkish cross-border tax transparency policy through the Global Forum's monitoring and peer review activities for the implementation of the standards.

### 1. *The EOIR standard*

The Global Forum has conducted peer reviews to assess its members' adherence to the EOIR standard since 2010.<sup>38</sup> Peer review is "an examination of one state's performance or practices in a particular area by other states."<sup>39</sup> It is a cooperation tool and one of the key processes of the OECD.<sup>40</sup> The aim of these peer reviews is to act as a disciplining measure to ensure that countries to effectively implement the standards<sup>41</sup> in order to advance their universal, rapid and consistent implementation.<sup>42</sup> Peer reviews accomplish this goal by publicizing noncompliance with the reviewed standard and/or helping governments obtaining domestic public support for challenging policy changes.<sup>43</sup> The Global Forum completed

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35. OECD, "About the Global Forum" (2018), online: <[www.oecd.org/tax/transparency/about-the-global-forum/](http://www.oecd.org/tax/transparency/about-the-global-forum/)> [perma.cc/YAK3-FF7X]. For the structural analysis of the Global Forum, see Allison Christians & Laurens van Apeldoorn, "The OECD Inclusive Framework" (2018) 72:4 *Bulletin for International Taxation* at 229-230.

36. Although Turkey is a developing country, it is a founding member and its founding membership status in a rich man's club is based on cold-war politics, see Leyla Ateş, "Domestic Political Legitimacy of Tax Reform in Developing Countries: A Case Study of Turkey" (2012) 30:3 *Wis Intl LJ* 706 at 709.

37. The Global Forum included six non-member jurisdictions (Bermuda, Cayman Islands, Cyprus, Malta, Mauritius and San Marino) other than OECD countries in its establishment, OECD, *Tax Co-operation Towards a Level Playing Field: 2006 Assessment by the Global Forum on Taxation* (Paris: OECD Publishing, 2006) at 7.

38. OECD, *Launch of a Peer Review Process: Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information for Tax Purposes (2010)*, online (pdf): <[www.oecd.org/ctp/44824681.pdf](http://www.oecd.org/ctp/44824681.pdf)> [perma.cc/TEX-MZZ5].

39. Peter Carroll & Aynsley Kellow, *The OECD: A Study of Organisational Adaptation* (Northampton: Edward Elgar, 2011) at 31.

40. *Ibid*; OECD, *Peer Review: An OECD Tool for Co-operation and Change* (Paris: OECD Publishing, 2003) [OECD Peer Review 2003].

41. OECD, *Implementing the Tax Transparency Standards: A Handbook for Assessors and Jurisdictions*, 2nd ed (Paris: OECD Publishing, 2011) at 7 [OECD Handbook 2011].

42. *Ibid* at 75.

43. Allison Christians & Laurens van Apeldoorn, "Tax Multilateralism via the OECD," in Leyla Ateş & Joachim Englisch, eds, *The Multilateral Instrument and Its Prospective Effects on The Turkish-German Double Tax Treaty* (Istanbul: On İki Levha, 2021).



the first round of EOIR reviews in 2016.<sup>44</sup> A second round of reviews was scheduled between 2016 and 2020.<sup>45</sup>

The reviews are biphasic: Phase 1 examines the jurisdiction's legal and regulatory framework; Phase 2 looks into the implementation of this framework in practice. It was possible to combine the Phase 1 assessment and the Phase 2 assessment in the first round.<sup>46</sup> In the second round of reviews, the phases were integrated for all jurisdictions.<sup>47</sup> Turkey underwent a first combined round of reviews in 2013<sup>48</sup> and will undergo the second round in 2020.<sup>49</sup>

The Global Forum carries out EOIR peer reviews based on three core documents.<sup>50</sup> The first one is the "Terms of Reference." It defines the standard and separates it into 31 sub-elements within 10 main elements for making assessment achievable. The second one is the "Methodology" that describes the review procedure in detail such as the time, manner, and place. The third document is the "Assessment Criteria" that establishes a rating system for assessing the implementation of the standard. Upon the completion of the peer review, the reviewed jurisdiction is assigned a rating for each main element, along with an overall rating. The rating might be compliant, largely compliant, partially compliant, or non-compliant.<sup>51</sup> Based on the transparency principle, the Global Forum makes individual jurisdictions' reports and the overall ratings public via its web portal.<sup>52</sup> According to the 2013 reviews of Turkey, the overall rating for Turkey was partially compliant.<sup>53</sup> Even though Turkey made two legislative amendments in the Tax Procedure Law (TPL) in order to improve its legislative framework during the peer review process,<sup>54</sup> the overall ratings were not upgraded.

44. OECD, *Exchange of Information on Request Handbook for Peer Reviews 2016–2020* (Paris: OECD Publishing, 2016) at 5 [OECD Handbook 2016].

45. *Ibid.*

46. OECD Handbook 2011, *supra* note 41 at 13.

47. OECD Handbook 2016, *supra* note 44 at 27.

48. OECD, *Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Turkey 2013: Combined: Phase 1 + Phase 2* (Paris: OECD Publishing, 2013); OECD, *Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Turkey 2013: Combined: Phase 1 + Phase 2, incorporating Phase 2 ratings* (Paris: OECD Publishing, 2013) [OECD Peer Review of Turkey].

49. Global Forum, Exchange of Information on Request: Schedule of Reviews 2016-2023 (2016) at 2, online (pdf): <[www.oecd.org/tax/transparency/about-the-global-forum/publications/schedule-of-reviews.pdf](http://www.oecd.org/tax/transparency/about-the-global-forum/publications/schedule-of-reviews.pdf)> [perma.cc/QK2J-6H5B].

50. OECD Handbook 2011, *supra* note 41 at 19-20; OECD Handbook 2016, *supra* note 44 at 11-12.

51. OECD Handbook 2011, *supra* note 41 at 80; OECD Handbook 2016, *supra* note 44 at 81.

52. OECD Handbook 2011, *supra* note 41 at 57; OECD Handbook 2016, *supra* note 44 at 54.

53. OECD Peer Review of Turkey, *supra* note 48 at 9.

54. Turkey established a clear legal mechanism to obtain information for exchange of information purposes by adding article 152/A and made an amendment regarding the scope of professional

Since the beginning of the second round of peer reviews in 2016, several jurisdictions have made changes in their implementation that improved their overall ratings.<sup>55</sup> Currently, Turkey has been among the few countries classified as partially compliant.<sup>56</sup> In fact, in response to the peer recommendation on one partially compliant element,<sup>57</sup> another Turkish regulatory amendment, which limits the time permitted to respond to requests from other jurisdictions for tax information, came into force in 2015.<sup>58</sup> However, it is not possible to evaluate the practical implementation of this amendment before the second round of peer reviews. Nevertheless, on another element of non-compliance, that of identifying owners of bearer shares in all instances, no action has yet been taken.<sup>59</sup>

## 2. *The AEOI standard*

The AEOI standard has not been subject to peer review previous, but review is scheduled to begin in 2020.<sup>60</sup> Nonetheless, the Global Forum monitors the jurisdiction's commitment to implement the standard<sup>61</sup> and publishes the results each year in a report.<sup>62</sup> The Forum takes stock of the exchange of information on financial accounts and assets, known in OECD terminology as common reporting standard (CRS) information.<sup>63</sup> According to the 2019

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privilege in tax matters in Article 151/3 (OG: 11 June 2013; 28674).

55. OECD, *Brief on the State of Play on the international tax transparency standards* (September 2017) at 2, online (pdf): <[www.oecd.org/tax/transparency/brief-and-FAQ-on-progress-on-tax-transparency.pdf](http://www.oecd.org/tax/transparency/brief-and-FAQ-on-progress-on-tax-transparency.pdf)> [perma.cc/9ESW-8BB5].

56. OECD, *Overall rating following peer reviews against the standard of EOIR* (6 April 2020), online: <[www.oecd.org/tax/transparency/exchange-of-information-on-request/ratings/](http://www.oecd.org/tax/transparency/exchange-of-information-on-request/ratings/)> [perma.cc/2RZZ-95ZV].

57. OECD Peer Review of Turkey, *supra* note 48 at 112.

58. *Vergi İncelemelerinde Uyulacak Usul ve Esaslar Hakkında Yönetmelikte Değişiklik Yapılmasına Dair Yönetmelik* [Regulation Amending the Regulation on the Procedures and Principles to be Followed in Tax Inspections], Resmî Gazete [Official Gazette], 06 November 2015, No 29524, online: <[resmigazete.gov.tr/eskiler/2015/11/20151106-5.htm](http://resmigazete.gov.tr/eskiler/2015/11/20151106-5.htm)> [perma.cc/ME8D-SSZS].

59. Tax Justice Network, *Financial Secrecy Index 2020: Turkey (2020)* at ID172, online: <[fsi.taxjustice.net/database/dbr\\_Jurisdiction.php?Juris=TR&Per=20](http://fsi.taxjustice.net/database/dbr_Jurisdiction.php?Juris=TR&Per=20)> [perma.cc/34KV-B59E].

60. OECD, *Automatic Exchange Portal: Commitment and Monitoring Process* (2020), online: <[www.oecd.org/tax/automatic-exchange/commitment-and-monitoring-process/](http://www.oecd.org/tax/automatic-exchange/commitment-and-monitoring-process/)> [perma.cc/S524-YQRJ].

61. OECD, *Automatic Exchange of Information (AEOI): Status of Commitments* (May 2020), online (pdf): <[www.oecd.org/tax/automatic-exchange/commitment-and-monitoring-process/AEOI-commitments.pdf](http://www.oecd.org/tax/automatic-exchange/commitment-and-monitoring-process/AEOI-commitments.pdf)> [perma.cc/B9J8-Y6R7].

62. See OECD, *Automatic Exchange of Information Implementation Report* (2017), online (pdf): <[www.oecd.org/tax/transparency/reporting-on-the-implementation-of-the-AEOI-standard.pdf](http://www.oecd.org/tax/transparency/reporting-on-the-implementation-of-the-AEOI-standard.pdf)> [perma.cc/Q3KW-K3VX]; OECD, *Automatic Exchange of Information Implementation Report* (2018), online (pdf): <[www.oecd.org/tax/transparency/AEOI-Implementation-Report-2018.pdf](http://www.oecd.org/tax/transparency/AEOI-Implementation-Report-2018.pdf)> [perma.cc/TM6H-FKJ3]; OECD, *Automatic Exchange of Information Implementation Report* (2019), online (pdf): <[www.oecd.org/tax/transparency/AEOI-implementation-report-2019.pdf](http://www.oecd.org/tax/transparency/AEOI-implementation-report-2019.pdf)> [perma.cc/9PYN-BMXZ] [OECD 2019 AEOI Implementation Report].

63. OECD, *Activated Exchange Relationships for CRS Information* (February 2020), online: <[www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/exchange-relationships/](http://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/exchange-relationships/)>

AEOI Report, Turkey exchanged financial account information with only 1 partner jurisdiction in 2018 and 2 partner jurisdictions in 2019.<sup>64</sup> These numbers are clearly much lower than the other 95 listed jurisdictions in the report, which averaged 51 exchanges in 2018 and 60 in 2019.<sup>65</sup>

For cross-border automatic exchange of CRS information, a jurisdiction must first translate the reporting and due diligence procedure into domestic law. Then, the jurisdiction has to select an international legal basis for the automatic exchange of this information with other jurisdictions. In addition to the legal basis, another international agreement, namely, the Competent Authority Agreement (CAA), is required to determine the details of the information to be exchanged, as well as the manner and time this would occur. There are two principal types of CAA. The first type is based on the principles of bilateralism and reciprocity. The second one is a multilateral agreement that eludes the need to sign several bilateral agreements.

As summarized in the Introduction of this article, Turkey has several legal bases in force to facilitate cross-border information exchange, including those based on the AEOI standards.<sup>66</sup> For CAA, Turkey first signed the Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information (Multilateral CAA) on 21 April 2017, but didn't ratify it expeditiously.<sup>67</sup> Meanwhile, Turkey entered into bilateral CAAs with Latvia and Norway, on 20 and 21 December 2018 respectively.<sup>68</sup> Thus, for 2018 and 2019, Turkey was able to activate

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[perma.cc/CV3Y-A7MZ].

64. OECD 2019 AEOI Implementation Report, *supra* note 62 at 5.

65. See *ibid* at 3-5.

66. However, since Turkish tax information exchange agreements modeled the OECD's 2002 model, which provides for information exchange only upon request unless the parties did stipulate otherwise, preferring to include automatic information, the current five Turkish tax information exchange agreements can't be a legal basis for the automatic exchange of CRS information, Leyla Ates, "Legal Bases and Key Issues of Turkish-German Automatic Exchange of Information: Implementing the Standard in Turkey" in Leyla Ates & Joachim Englisch, eds, *Automatic Exchange of Information and Prospects of Turkish-German Cooperation* (Istanbul: On İki Levha, 2018) at 156.

67. News IBFD, "OECD—Multilateral Competent Authority Agreement on automatic exchange of information—signed by Turkey" (11 May 2017).

68. Agreement between the Competent Authorities of the Republic of Turkey and the Republic of Latvia on the Automatic Exchange of Financial Account Information to Improve International Tax Compliance; Agreement between the Competent Authorities of the Kingdom of Norway and the Republic of Turkey on the Automatic Exchange of Financial Account Information to Improve International Tax Compliance (OG: 30 December 2018, 30641). The shift in Turkey's political reference from multilateral towards bilateral agreements does not refer a clear logic since both jurisdictions are also signatories of the Multilateral Convention. As a matter of fact, Turkey does not have strong economic relations in terms of foreign direct and portfolio investment either with Latvia or Norway. When we look at the other treaty partners activated relationship numbers, we see that Latvia has an active relationship with 97 countries and Norway has an active relationship with 96 countries. Thus, we might come to this conclusion: this progress is not a result of the Turkish government but Latvian and Norwegian governmental efforts.

exchange relationships for CRS information with only these two countries. Following the ratification of the Multilateral CAA on 31 December 2019<sup>69</sup> and notification of the prospective partner(s), Turkey finally activated exchange relationships for CRS information with 55 jurisdictions at the beginning of 2020.<sup>70</sup>

However, in the author's opinion, there is another deficiency that eluded the peer reviewers. In order to translate financial account information collection and reporting obligations into domestic law for the purposes of the AEOI, the Turkish Parliament passed Law 7061 of 28 November 2017 that amended Article 257 bis of the TPL.<sup>71</sup> Nonetheless, the amendment only introduced an empowering provision to the Ministry of Finance to regulate the automatic reporting standard by issuing a General Communiqué on the TPL. Since then there has been no published regulation. Considering that the OECD asks for the primary legislation to be included in the scope of the obligations (i.e. due diligence and the reporting requirements),<sup>72</sup> the amended provision does not fulfill the prerequisite for domestic translation.<sup>73</sup> As a matter of fact, the peer reviews conducted for the country-by-country reporting (CbC) standard under the OECD/G20 Base Erosion and Profit Shifting (BEPS) Project found Turkey's domestic legal framework unable to automatically change CbC information. This was despite the Turkish Parliament passing another law, Law 6728 of 15 July 2016, which amended Article 13 of the Corporate Income Tax Law empowering the President to regulate the scope of CbC reporting obligations.<sup>74</sup>

## II. *Possible rationales on reluctant policy*

The examination of recent developments in Turkish transnational tax cooperation as it pertains to exchange of information displays Turkey's reluctance to implement greater transparency in cross-border taxation.

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69. Presidential Decree on the Approval of the Multilateral Competent Authority Agreement on the Automatic Exchange of Financial Account Information No. 2019/1965 (OG: 31 December 2019; 30995 [5 bis.]).

70. OECD, *Activated Exchange Relationships for CRS Information* (February 2020), online: <[www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/exchange-relationships/](http://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/exchange-relationships/)> [perma.cc/9T2U-FPT2].

71. Law 7061 on the Amendment of Some Laws (OG: 5 December 2017, 30261).

72. OECD, *Standard for Automatic Exchange of Financial Information in Tax Matters: Implementation Handbook*, 2nd ed (Paris: OECD Publishing, 2018) at 14.

73. Ates, *supra* note 66 at 147.

74. OECD, *Country-by-Country Reporting—Compilation of Peer Review Reports (Phase 1): Inclusive Framework on BEPS: Action 13, OECD/G20 Base Erosion and Profit Shifting Project* (Paris: OECD Publishing, 2018) at 711; OECD, *Country-by-Country Reporting—Compilation of Peer Review Reports (Phase 2): Inclusive Framework on BEPS: Action 13, OECD/G20 Base Erosion and Profit Shifting Project* (Paris: OECD Publishing, 2019) at 523.

The country has taken the required steps slowly at both the national and international levels. When Turkey underwent its EOIR process in 2013, reviewers flagged the period between the signature of an exchange of information agreement and the entry into force that took 24 months in many cases as too long. However, as shown above, the rate at which Turkey has enforced international tax treaties and implemented recommendations has slowed down, not accelerated. The period of time between the signature of the Multilateral Convention and its entry into force was 80 months. It subsequently took 31 months to ratify the Multilateral CAA for automatic exchange of financial account information. Furthermore, Turkey has not yet signed the Multilateral Competent Authority Agreement on the Exchange of Country-By-Country Reports that facilitate another transparency instrument, i.e. CbC reporting, in contrast to 84 countries which are now signatories of the agreement.<sup>75</sup> Moreover, Turkey has not fully met the domestic translation requirements for the exchange of CRS information and also CbC reporting.

An official Ministry of Finance press release, dated 10 January 2018, offers some clues about a possible rationale for the delay in the implementation of the AEOI standard.<sup>76</sup> The press release sought to alleviate the concerns of the millions of Turkish citizens residing in and receiving welfare payments from EU countries such as Germany.<sup>77</sup> According to several statements from the Turkish-German community, many Turkish immigrants will be affected by activated exchange relationships on CRS information. When the exchange relationship on CRS information activated, many Turkish citizens residing in Germany will be disqualified from receiving welfare payments due to their undeclared income.<sup>78</sup> For instance, Germany would both cut the social security support of those affected and seek to recover previous payments, on which interest would be charged. Furthermore, the German tax administration would reassess

75. For the current parties of the Multilateral Competent Authority Agreement see OECD, "Signatories of the Multilateral Competent Authority Agreement on the Exchange of Country-By-Country Reports (CbC MCAA) and Signing Dates" (22 December 2019), online (pdf): <<https://www.oecd.org/ctp/exchange-of-tax-information/CbC-MCAA-Signatories.pdf>> [perma.cc/R38E-X3PX].

76. Hazine ve Maliye Bakanlığı, "Agbal, 'Otomatik Bilgi Degisimi' Tartismalarina Aciklik Getirdi" (10 January 2018), online: <[www.hmb.gov.tr/haberler/agbal-otomatik-bilgi-degisimi-tartismalarina-aciklik-getirdi](http://www.hmb.gov.tr/haberler/agbal-otomatik-bilgi-degisimi-tartismalarina-aciklik-getirdi)> [perma.cc/N3M6-HG5K].

77. Sputnik, "Turkiye'de parasi bulunun gurbetciye yapilan yardim kesilecek (3 January 2018) at para 3, online: <<https://tr.sputniknews.com/turkiye/201801031031658409-turk-gurbetci-almanyayardim-ceza/>> [perma.cc/QPWS-TKXF]; Regina T. Riphahn, Monica Sander & Christoph Wunder, "The Welfare Use of Immigrants and Natives in Germany: The Case of Turkish Immigrants" (November 2010) at 1, online (pdf): <[www.laser.uni-erlangen.de/papers/upload/117.pdf](http://www.laser.uni-erlangen.de/papers/upload/117.pdf)> [perma.cc/7GG4-4U6A].

78. Sputnik, *ibid* at para 1.

the tax liabilities of these people and impose tax evasion penalties for undeclared income. While the Minister of Finance also stated that Turkey would finalize legal, administrative and technical frameworks by the end of 2019, the implementation delays clearly aimed to provide secrecy to Turkish immigrants.

This approach is problematic in two aspects. First, it clearly undermines commitment to transnational tax cooperation. Second, it overlooks the fact that the AEOI standard helps countries to narrow down the tax gap in their jurisdictions created by international evasion. In other words, the AEOI standard was created to divert revenues from private individuals or corporations to the treasuries of states. As a matter of fact, a number of well-publicized leaks of tax data have identified the offshore holdings of wealthy Turkish resident individual and corporate taxpayers, implicating various Turkish politicians and public officials.<sup>79</sup> For example, they revealed links between offshore entities and the families or close friends of the Turkish Presidents, Prime Minister and the mayor of Istanbul based on the Panama and Paradise Papers.<sup>80</sup> They illuminated an offshore tax avoidance scheme via Malta and Sweden that the Turkish President's son-in-law created in an attempt to repatriate his Dubai company's profits to Turkey tax free, and the offshore wealth of the Turkish Prime Minister's family is estimated at least 140 million USD based on the Malta Files.<sup>81</sup>

However, unlike in many other countries,<sup>82</sup> this leaked data has not spurred the Turkish government to prosecute taxpayers, sanction tax advisors, or make additional tax assessments. From the deficiencies determined in Part I.2, it is also apparent that these leaks have not induced the expeditious enactment of new laws or stimulated further agreements

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79. See The International Consortium of Investigative Journalists, "Swiss Leaks; Turkey" (2015), online: <<https://projects.icij.org/swiss-leaks/countries/tur>> [perma.cc/C6TR-65CF] (revealed more than 3.000 account information associated with Turkey from the HSBC via its Swiss subsidiary); The International Consortium of Investigative Journalists, "Offshore Leaks Database: Browse by country Turkey" (2016), online: <[offshoreleaks.icij.org/search?c=TUR&cat=1](https://offshoreleaks.icij.org/search?c=TUR&cat=1)> [perma.cc/5K94-LKV2] (revealed 105 offshore entities associated with Turkey from several sources including the Panamanian law firm Mossack Fonseca and the legal firm Appleby).

80. Pelin Unker, "Cengiz'in Turkiye'deki Gizli Sirketi Panama'da Cikti" in *Cumhuriyet* (2 July 2016); Pelin Unker, "Panama Belgeleri: Elhamdulillah off-shore'cuyum" in *Cumhuriyet* (7 July 2016); Pelin Unker, "#ParadisePapaers: Off-shore biraderler" in *Cumhuriyet* (7 November 2017); Pelin Unker, "Milyon Dolarlik Ihale Basbakan'in Ogluna" in *Cumhuriyet* (8 November 2017).

81. Craig Shaw & Zeynep Sentek, "Family business of Turkey Prime Minister heads offshore" (24 May 2017), online: <[theblacksea.eu/stories/malta-files/family-business-of-turkey-prime-minister-heads-offshore/](https://theblacksea.eu/stories/malta-files/family-business-of-turkey-prime-minister-heads-offshore/)> [perma.cc/J6V4-5DQB]; Craig Shaw & Zeynep Sentek, "Turkish President Erdogan's son-in-law in off-shore tax scheme" (19 May 2017), online: <[theblacksea.eu/stories/malta-files/turkish-president-erdogans-son-in-law-in-off-shore-tax-scheme/](https://theblacksea.eu/stories/malta-files/turkish-president-erdogans-son-in-law-in-off-shore-tax-scheme/)> perma.cc/B6AM-MYQM].

82. See Shu-Yi Oei & Diane M. Ring. "Leak-Driven Law" (2018) 65:3 *UCLA L Rev*, 532 at 536-537, 560-561.



to create greater cross-border tax transparency. The next part outlines how cross-border tax transparency may be promoted up the Turkish political agenda by considering a past tax scandal that attracted policy attention and raised public awareness.

### III. *Raising cross-border tax transparency up the agenda*

Before the recent wave of international tax scandals, Turkey became party to a cross-border tax scandal that erupted in 2000. It revealed that several Turkish immigrants invested their savings in Turkey with the help of the German Dresdner Bank but apparently didn't declare their interest revenues to the German tax authorities.

The background to this story is as follows: in the 1960s, Turkey introduced a scheme to address the deteriorating external imbalance that it had endured for a number of years.<sup>83</sup> This "Dresdner Bank Scheme" was based on a money transfer agreement between Dresdner Bank and the Turkish Central Bank that permitted savings accounts to be opened at the Turkish Central Bank through the agency of Dresdner Bank.<sup>84</sup> The latter collected private deposits of Turkish citizens living abroad and forwarded them to the Turkish Central Bank in exchange for a commission.<sup>85</sup> In the beginning of 1975, the scheme was expanded to any non-resident who wanted to benefit from it.<sup>86</sup> Since the Central Bank of Turkey offered higher interest rates than those available on the European market, it attracted a high volume of savings.<sup>87</sup>

In 1999, the German tax auditors inspected a Turkish citizen resident in Germany and identified undeclared interest income from his holdings.<sup>88</sup> The taxpayer then revealed the agreement between Turkish Central Bank and Dresdner Bank AG to the Frankfurt public prosecutor's office.<sup>89</sup> In 2000, the German tax auditors raided the liaison offices of the Turkish Central Bank in Frankfurt and Berlin, and the head office of Dresdner Bank AG under a search warrant to determine account owners.<sup>90</sup> Afterwards, the local tax offices started to send additional tax assessment and tax penalty notices to the related taxpayers.<sup>91</sup> This was alarming since

83. Richard Barth & William Hemphill, *Financial Programming and Policy: The Case of Turkey* (Washington, DC: International Monetary Fund, 2000) at 6, 387.

84. *Ibid.*

85. *Turkiye Buyuk Millet Meclisi (TBMM) Tutanak Dergisi*, 21. Donem 71:4 (11 October 2001) 364-516, at 428.

86. Bart & Hemphill, *supra* note 83 at 6.

87. *Ibid.* at 6, 414; *TBMM Tutanak Dergisi*, *supra* note 85 at 430-431.

88. *TBMM Tutanak Dergisi*, *supra* note 85 at 432.

89. *Ibid.*

90. *Ibid.*

91. *Ibid.* at 432, 438.



a large number of these taxpayers were welfare recipients, meaning they would also later be investigated for social security deception.<sup>92</sup>

This scandal was brought to the attention of the Turkish public via two channels: press and parliamentary oversight. Turkish newspapers first reported the raids to the liaison offices of the Turkish Central Bank, highlighting the possibility of tax inspections against accounts holders from the Bank.<sup>93</sup> Later on, the European edition of a Turkish newspaper published in Frankfurt revealed the presence of 7,000 tax evasion investigation files at the Frankfurt Prosecution Office and a deal between Darmstadt Tax Office and the Turkish Central Bank that supposedly would allow the total amount of associated tax fines to be collected from the Bank.<sup>94</sup> The Turkish Central Bank then sent a disclaimer to the newspaper, denying the existence of any such deal.<sup>95</sup> When parliamentary attention was drawn to the matter, an MP from the coalition of ruling parties submitted a written question to the presidency of Turkish Grand National Assembly to be referred to the Minister of State on 17 July 2001.<sup>96</sup> The presidency forwarded the question on 25 September 2001 and the Minister responded to it on 11 October 2001.<sup>97</sup> The response detailed the agreement between the Turkish Central Bank and Dresdner Bank and strongly underlined that the responsibility to declare income rested on the taxpayers and the Turkish Central Bank was not liable for the undeclared interest income of account holders.<sup>98</sup>

Neither the Turkish press nor parliamentarians took this scandal as a transparency and transnational tax cooperation issue. Apparently, the base erosion of German tax revenue was not an issue of concern for Turkey. As a matter of fact, Turkey and Germany signed their first income tax treaty in 1985. (It came into force on 30 December 1989.<sup>99</sup>) In accordance

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92. Sukru Kizilot & Mustafa Durmus, "Kriz Donemince Vergi Politikasi Nasil Olmal?" (2001) 2 Gazi Universitesi İ.İ.B.F. Dergisi 159 at 172.

93. Hurriyet, "Almanya'da Turk Merkez Bankasi'na polis baskini" (9 July 2000), online: <[www.hurriyet.com.tr/ekonomi/almanyada-turk-merkez-bankasina-polis-baskini-39166880](http://www.hurriyet.com.tr/ekonomi/almanyada-turk-merkez-bankasina-polis-baskini-39166880)>; Erkan Mumcu, "Dresdner hesabi, Merkez Bankasi'ni yipratiyor" (23 July 2000) in Hurriyet, online: <[www.hurriyet.com.tr/ercan-kumcu-dresdner-hesabi-merkez-bankasini-yipratiyor-39170089](http://www.hurriyet.com.tr/ercan-kumcu-dresdner-hesabi-merkez-bankasini-yipratiyor-39170089)>; Gungor Uras, "Almancilerin Merkez Bankasi'ndaki mevduati 10.5 milyar dolar" (11 July 2000), online: <[www.milliyet.com.tr/yazarlar/gungor-uras/almancilarin-merkez-bankasindaki-mevduati-10-5-milyar-dolar-5312444](http://www.milliyet.com.tr/yazarlar/gungor-uras/almancilarin-merkez-bankasindaki-mevduati-10-5-milyar-dolar-5312444)>.

94. TBMM Tutanak Dergisi, *supra* note 85 at 437.

95. *Ibid.*

96. *Ibid* at 419-420.

97. *Ibid* at 420.

98. *Ibid* at 420-438.

99. OG: 9 July 1986, 19159. It was repealed and another income tax treaty was signed between the parties in 2011 (OG: 24 January 2012, 28183).

with the treaty models,<sup>100</sup> Article 25 of the Treaty included an exchange of information. Thus, these responses neglected the fundamental obligation of exchange of information. Still, they informed the public about the Dresdner Bank scheme and how it was used by the Turkish government as a tool of foreign borrowing, and by Turkish citizens resident abroad as a tool of tax evasion. In this regard, the past scandal showed the importance of press and parliamentary oversight in creating public awareness of tax-related issues. It also offers insights into the recent reluctance of the Turkish government to improve cross-border tax transparency and in turn, the ways in which transparency can rise in the Turkish public agenda, since the influence of both forums (press and parliamentary scrutiny) has declined in Turkey, particularly since 2013.<sup>101</sup>

Freedom of the press is a constitutionally protected right in Turkey. Article 28 of the 1982 Constitution sets that “(t)he press is free, and shall not be censored” and requires the State “(to) take the necessary measures to ensure freedom of the press and information.”<sup>102</sup> However, severe obstruction of press freedom has been noted, with internet censorship, intimidation, attacks and murders perpetrated against journalists, civil defamation cases, media pluralism, and ownership structures, among other examples.<sup>103</sup> While some progress has occurred since 2011, Article 28 has been contravened on numerous occasions since corruption investigations were launched against the highest levels of the government on 17 December 2013.<sup>104</sup> Among other examples, Pelin Unker, a journalist who reported on the Panama and Paradise Papers in 2016 and 2017<sup>105</sup> was sued by politicians and their close family members for defamation in the criminal and civil courts.<sup>106</sup> In both cases, she was sentenced to imprisonment,

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100. See *supra* note 17.

101. Kemal Kirisci & Amanda Sloat, “The rise and fall of liberal democracy in Turkey: Implications for the West” (2019), online (pdf): <[www.brookings.edu/wp-content/uploads/2019/02/FP\\_20190226\\_turkey\\_kirisci\\_sloat.pdf](http://www.brookings.edu/wp-content/uploads/2019/02/FP_20190226_turkey_kirisci_sloat.pdf)> [perma.cc/RU25-TEL5].

102. For the full English text of the 1982 Turkish Constitution in English, see Department of Laws and Resolutions, *Constitution of the Republic of Turkey* (Ankara: GNAT Printing House, 2019).

103. Council of Europe Commissioner for Human Rights, “Memorandum on freedom of expression and media freedom in Turkey” (15 February 2017) at 2, online: <[rm.coe.int/ref/CommDH\(2017\)5](http://rm.coe.int/ref/CommDH(2017)5)>.

104. *Ibid* at 9; Freedom House Special Report, “Democracy in Crisis: Corruption, Media, and Power in Turkey” (3 February 2014) at 1, online (pdf): <[freedomhouse.org/sites/default/files/2020-02/SR\\_Corruption\\_Media\\_Power\\_Turkey\\_PDF.pdf](http://freedomhouse.org/sites/default/files/2020-02/SR_Corruption_Media_Power_Turkey_PDF.pdf)> [perma.cc/2QN7-BBPE].

105. See *supra* note 80.

106. Some countries treat defamation only as a civil wrong, others treat defamation as a criminal act as well as civil wrong. Turkey is among the latter category. Since criminal sanctions may create a chilling effect on the media, the Organization for Security and Co-operation in Europe reviews the legal systems of several countries in this regard. As stated in its 2017 version, Turkey is a highly problematic jurisdiction with the extraordinary use of criminal law to punish defamation, Organization for Security and Co-operation in Europe, “Defamation and Insult Laws in the OSCE Region: A Comparative Study” (March 2017) at 32-33, online (pdf): <<https://www.osce.org/files/f/>

but the prison sentences were overturned on appeal due to a statute of limitations.<sup>107</sup> Nevertheless, she was ordered to pay compensation by civil courts.<sup>108</sup> Pelin Unker remains the first and only journalist to investigate the recent international tax scandals inside Turkey.

Meanwhile, the President has increased his power to the detriment of Parliament as well as other government branches and state agencies.<sup>109</sup> The 2017 Constitutional Amendments ended the parliamentary system of government that had existed since the Ottoman era<sup>110</sup> and introduced a presidential form of government without strong checks and balances.<sup>111</sup> In parallel, the number of parliamentary oversight tools decreased. For example, parliamentarians can no longer use interpellation as a means of parliamentary oversight.<sup>112</sup> Although it was rarely used throughout parliamentary history,<sup>113</sup> interpellation is a powerful oversight mechanism since it enabled Parliament to vote the cabinet or its individual members out of office.<sup>114</sup> Its loss is a noteworthy sign of the weakening of Parliamentary authority,<sup>115</sup> although the effectiveness of the remaining means of parliamentary oversight have also declined in recent years. For example, after the Panama Papers mentioned not the name but the number of offshore holdings of Turkish residents at that time, an MP from the opposition party referred a question to the Minister of Finance on 5 April 2016 about what would be the government's response and whether the government would prosecute taxpayers or make additional tax assessments.<sup>116</sup> The 18 July 2016 response was vague and did not invoke Turkey's tax treaty network

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documents/b/8/303181.pdf>.

107. Expression Inter-rupt-ed!, "Who is tried: Pelin Unker" (2019), online: <[www.expressioninterrupted.com/page.php?url=pelin-unker](http://www.expressioninterrupted.com/page.php?url=pelin-unker)> [perma.cc/3FSW-8KBB].

108. *Ibid.*

109. Orcun Selcuk, "Strong presidents and weak institutions: populism in Turkey, Venezuela and Ecuador" (2016) 16:4 Southeast European and Black Sea Studies 571-589, at 584.

110. Ergun Ozbudun, *The Constitutional System of Turkey: 1876 to the Present* (New York: Palgrave Macmillan, 2011) at 3.

111. Selcuk, *supra* note 109 at 584.

112. See 1982 Turkish Constitution, Article 98. Other oversight mechanisms include oral questions, parliamentary investigations and inquiries remain.

113. See Ozbudun, *supra* note 110 at 67.

114. *Ibid.*

115. European Commission for Democracy Through Law (Venice Commission), "Turkey: Opinion on the Amendments to the Constitution Adopted by the Grand National Assembly on 21 January 2017 and to be Submitted to a National Referendum On 16 April 2017" (13 March 2017) at 12, online (pdf): <[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad\(2017\)005-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad(2017)005-e)> [perma.cc/2DQ8-HL58].

116. Yurdagul Simsek "Turkiye, Panama Belgelerini edinmek icin girisimde bulunacak mi?" (5 April 2016), online: <[tr.sputniknews.com/turkiye/201604051021962512-panama-belgeleri-turkiye-tbmm/](http://tr.sputniknews.com/turkiye/201604051021962512-panama-belgeleri-turkiye-tbmm/)> [perma.cc/B258-AWU4].

as a means of receiving information.<sup>117</sup> Moreover, when an offshore tax leak occurred domestically in 2017,<sup>118</sup> a group of opposition parliamentary members also demanded a parliamentary investigation as another way of parliamentary oversight. However, it couldn't be initiated as a result of insufficient number of votes.<sup>119</sup>

Consequently, the lack of strong parliamentary oversight and restrictions on media freedom hinders the creation of domestic support for cross-border tax transparency in Turkey. This finding is particularly important considering that the OECD mainly focuses on governmental efforts to create transparency.<sup>120</sup>

### *Conclusion*

The effectiveness of transnational cooperation efforts in the field of tax transparency needs to ensure universal, rapid and consistent implementation of the coordinated response to cross-border tax evasion and avoidance. In this regard, the Global Forum's monitoring and peer review activities help governments to obtain domestic public support for challenging policy reforms. As a matter of fact, when we look at the recent Turkish policy developments in the area of cross border tax transparency, the transformative impact of the OECD Global Forum can be observed. However, the slow pace of these developments also reveals that the effective implementation of transparency standards depends not only on governments to win support at home, but also the people of the country to create domestic support for transparency reforms. In this regard, accountability forums such as media and parliamentary oversight are crucial to establish the will of people. The lack of strong national-level accountability forums in Turkey confirms their importance in bringing international tax transparency up the agenda.

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117. Anka Haber, *Bakan Agbal Panama Sorusuna Yanit Verdi* (18 June 2016), online: <[www.ankahaber.com.tr/politika/bakan-agbal-panama-sorusuna-yanit-verdi-h23439.html](http://www.ankahaber.com.tr/politika/bakan-agbal-panama-sorusuna-yanit-verdi-h23439.html)> [perma.cc/3T7F-ZYEB].

118. The leader of main opposition party revealed SWIFT documents leaked from a national bank that showed people close to the President of Turkey had sent millions of dollars to an off-shore company in the tax haven Isle of Man in 2011 and 2012.

119. TBMM Tutanak Dergisi, 26, Donem 56:3 (29 November 2007) 181-194.

120. See OECD Peer Review 2003, *supra* note 40 (“[R]ecommendations resulting from [peer] review can...help governments win support at home for difficult measures”).