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THIRD ANNUAL DEVELOPING COUNTRY FORUM ON SOUTH-  
SOUTH COOPERATION IN INTERNATIONAL TAX MATTERS  
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**Technical Session VI: Fugitive Economic Offenders  
and Asset Recovery**

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# Broad overview

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- ▶ Fugitive Economic Offenders – Background
- ▶ Fugitive Economic Offenders – Scoping of the work
- ▶ Whether Multilateral Tax Convention can be effective in dealing with FEOs?
- ▶ Challenges in using Multilateral Tax Convention for dealing with FEOs
- ▶ Multilateral Convention for Legal Assistance in Criminal Matters
- ▶ New multilateral agreement for Fugitive Economic Offenders?
- ▶ New multilateral agreement for FEOs – Possible scope?
- ▶ What has worked in the past?
- ▶ Challenges and way forward
- ▶ To conclude..

# Fugitive Economic Offenders (FEOs) – Background

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- ▶ Recently economic offenders in developing countries have moved to safe havens to escape consequences of law
- ▶ India enacted The Fugitive Economic Offenders Act, 2018 and also took up the matter of FEOs in G20 Anti-Corruption Working Group (ACWG)
- ▶ **G20 Leaders’ Summit, Buenos Aires (Dec. 2018)**
  - ▶ India suggested [Nine Point Agenda](#) for Action Against Fugitive Economic Offences And Asset Recovery
  - ▶ [Leaders’ Declaration](#) *“We will further explore the links between corruption and other economic crimes and ways to tackle them, including through cooperation on the return of persons sought for such offences and stolen assets, consistent with international obligations and domestic legal systems. We ask relevant international organizations to report back to us on those issues during the next presidency.”*
- ▶ **G20 Leaders’ Summit, Osaka (June 2019)**
  - ▶ Leaders looked forward to the [scoping paper on international cooperation dealing with serious economic offenders and recovery of stolen assets in relation to corruption](#)

# Fugitive Economic Offenders - Scoping of the work

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- ▶ India took up the matter on FEOs before the G20 ACWG in 2019
- ▶ It was agreed that IOs would be requested to prepare the scope report on exploring linkages between corruption and economic crimes including ways to tackle these offences through cooperation on
  - ▶ **Return of the persons** sought for such offences
  - ▶ **Return of stolen assets** through processes which are consistent with international obligations and domestic legal system
- ▶ OECD has prepared a draft scoping paper “International Co-operation dealing with Serious Economic Offenders and Recovery of Stolen Assets”
- ▶ The draft scoping paper recognizes that tax is a common link in all economic crimes
  - ▶ *Tax evasion often occurs alongside the commission of other serious economic crimes, such as bribery, corruption or money laundering*

# Whether Multilateral Tax Convention can be effective for dealing with FEOs?

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- ▶ Multilateral Convention on Mutual Administrative Assistance in Tax Matters
  - ▶ 135 participating jurisdictions including all so-called tax havens
  - ▶ Provides for exchange of information – Request, Spontaneous and Automatic
  - ▶ Tax Examination Abroad
  - ▶ Assistance in Recovery of Tax Claims including conservancy measures
  - ▶ Service of Documents
  - ▶ Wide range of taxes covered by Convention
  - ▶ Also allows for use of information for non-tax purposes based on consent of sending jurisdiction

# Whether Multilateral Tax Convention can be effective for dealing with FEOs?

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- ▶ The aim of the work of FEOs is twofold – (i) return of FEO to home country; and (ii) return of stolen assets
- ▶ Return of FEO to home country
  - ▶ Multilateral Tax Convention would have limited role
  - ▶ Spontaneous sharing of information about economic offenders entering through RBI/CBI schemes
  - ▶ Provisions of Tax Examination Abroad may be used to investigate person in the country of residence
- ▶ Return of stolen assets
  - ▶ Economic crime would invariably involve tax crime / evasion
  - ▶ Multilateral Tax Convention would be effective as it provides for conservancy as well as recovery of tax debts
- ▶ Cooperation for non-tax purposes possible within the existing legal framework

# Challenges in using Multilateral Tax Convention for dealing with FEOs

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- ▶ No assistance for return of the fugitive to home country
- ▶ Tax Examination Abroad provisions are not used frequently as international standards/ domestic legislation for its application yet to be developed
- ▶ Even though economic crime would involve tax crime, the recovery would be limited to tax debts which may not cover the entire crime proceeds
- ▶ Many countries/jurisdictions have placed reservations on provisions for Tax Recovery Assistance and Tax Examination Abroad
- ▶ Cooperation for non-tax purpose is consent-based which is sometimes a very slow process
  - ▶ JITSIC project: Wider sharing of treaty information

# Multilateral Convention for Legal Assistance in Criminal Matters

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- ▶ **European Convention on Mutual Assistance in Criminal Matters**
  - ▶ Ratified by 50 States including all 47 States of European Union
  - ▶ Chile, Israel and South Korea have also ratified
  - ▶ Parties to Convention agree for “widest measure of mutual assistance” in investigating crimes, procuring and communicating evidence in criminal proceedings, and prosecuting criminal suspects
  - ▶ Convention specifies the conditions that the requests for legal assistance or “letter rogatory” have to meet
  - ▶ Convention sets out the rules for enforcement of such letter rogatory



# Multilateral Convention for Legal Assistance in Criminal Matters (contd.)

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- ▶ **Inter-American Convention on Mutual Assistance in Criminal Matters**
  - ▶ 36 countries/ jurisdictions are party to the Convention
  - ▶ Object is to adopt common rules in the field of mutual assistance in criminal matters
  - ▶ Mutual assistance in investigations, prosecutions and proceedings that pertain to crimes over which the requesting state has jurisdiction at the time the assistance is requested
  - ▶ Provides for immobilization of property, freezing of assets, and assistance in procedures related to seizures
  - ▶ Transfer of detained persons for the purpose of the Convention

# New multilateral agreement for Fugitive Economic Offenders?

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- ▶ FEOs can be tackled, particularly for recovery of stolen assets, using enhanced cooperation under the Multilateral Tax Convention
- ▶ Extradition Treaties provide for extradition of fugitive criminals, but these may not cover all economic offenders
- ▶ Mutual Legal Assistance Treaties provide for forfeiture and recovery of assets as well as transfer of person in custody, but may not cover all cases of FEOs
- ▶ Network of Extradition Treaties / MLATs narrow
- ▶ Existing multilateral Conventions for Assistance in Criminal Matters can be expanded
- ▶ **For long-term and effective solution we may need a new multilateral Convention to deal with FEOs**

# New multilateral agreement for FEOs – Possible scope

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- ▶ A new multilateral agreement, for example, [Convention for Mutual Legal Assistance for Action Against Fugitive Economic Offenders](#), could aim at closer cooperation between countries and jurisdictions for assistance in matters related to economic crimes including
  - ▶ *Assistance in investigations, prosecutions and proceedings that pertain to economic crimes*
  - ▶ *Deny entry and safe havens to Fugitive Economic Offenders*
  - ▶ *Freeze proceeds of economic crimes and repatriate stolen assets*
  - ▶ *Repatriate the Fugitive Economic Offender to home country*
- ▶ Multilateral Convention may [avoid overlaps](#) with similar provisions of the existing conventions on Legal Assistance in Criminal Matters

# What has worked in the past?

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- ▶ 2008 financial crisis led to G20 making **tax transparency** a key component of global financial stability
- ▶ London Declaration (April 2009) - G20 Leaders
  - ▶ agreed to take action against tax havens and non-cooperative jurisdictions
  - ▶ gave call to promote tax cooperation and information exchange and declared

## **“The era of bank secrecy is over”**

- ▶ asked for continuous monitoring of the standards on tax transparency
- ▶ Formation of Multilateral body Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum)
- ▶ International standards for exchange of information on request and automatic basis framed and endorsed by G20
- ▶ G20 called for worldwide implementation of the international standards on tax transparency and mandated Global Forum to monitor the implementation of these standards

# Challenges and way forward

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- ▶ **Consensus for strong and active cooperation** across developing countries to deal comprehensively and effectively with the FEOs having due regards to the domestic laws of participating countries as well as rights and safeguards of the citizens
- ▶ **Agreement on a common definition** and common understanding for economic crimes and Fugitive Economic Offenders
- ▶ **Development of international standards** and rules for denying entry and safe havens to all FEOs, freezing and repatriation of the proceeds of economic crime; and return of the FEOs to home country
- ▶ **International consensus for a Multilateral Agreement** to deal with Fugitive Economic Offenders which avoids overlaps with existing legal framework for mutual legal assistance in criminal matters
- ▶ Need for a **multilateral body or an international task force** for implementation of the international standards

# To conclude...

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- ▶ Developing countries face the challenge of economic offenders transferring crime proceeds and leaving for safe havens to escape consequences of law
- ▶ In short run, **Multilateral Tax Convention** may be useful for recovery of stolen assets
- ▶ In long run, we may need a **new multilateral instrument** for effective action against Fugitive Economic Offenders
- ▶ Developing countries need to **build consensus** on urgent need for tackling FEOs
- ▶ **G20 may take the lead** and ask an IO to
  - ▶ Come up with a multilateral instrument for tackling with Fugitive Economic Offenders
  - ▶ Develop standards, rules and procedures for the same
- ▶ Create a multilateral body to implement standards on FEOs

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# Thank you!

## Questions??

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