Curbing Illicit Financial Flows from Resource-rich Developing Countries: Improving Natural Resource Governance to Finance the SDGs

Working Paper No.: R4D-IFF-WP02-2023

A Study on the General Legal Environment to Curb Tax-motivated IFFs in ASEAN

December 2023

Latdaphone Banchongphanith

with inputs from

Irene Musselli

© The Authors. All rights reserved. For more details, visit the project website: https://curbing-iffs.org/
This project is funded through the Swiss Programme for Research on Global Issues for Development (www.r4d.ch) by the Swiss Agency for Development and Cooperation (SDC) and the Swiss National Science Foundation (SNSF).

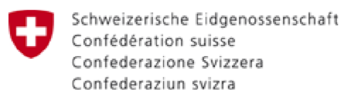

TABLE OF CONTENTS

TABLE OF ABBREVIATIONS II

TABLE OF FIGURES IV

LIST OF TABLES IV

1 INTRODUCTION 1

1.1 THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS 1

1.2 TAX-MOTIVATED ILLICIT FINANCIAL FLOWS (IFFS) 2

1.3 PURPOSE AND CONSTRUCTION OF THE WORKING PAPER 3

1.4 SOURCES OF INFORMATION AND DATA 4

2 AN OVERVIEW OF TAX-MOTIVATED IFFS IN ASEAN 5

2.1 ASEAN OVERVIEW 5

2.2 ESTIMATION OF TRADE MISINVOICING IN ASEAN 6

3 ANALYSIS OF FACTORS THAT PROMOTE TAX-MOTIVATED AND TRADE-RELATED IFFS IN ASEAN REGION 10

3.1 FINANCIAL MARKET REGULATIONS 10

3.2 GOOD GOVERNANCE AND THE RULE OF LAW 11

3.3 SECRECY AND TRANSPARENCY OF BUSINESS PERSONS 12

3.4 SOUND INSTITUTIONAL CAPACITY 14

3.5 INTERNATIONAL COOPERATION AND ACCESS TO INFORMATION 23

4 CONCLUSION 27

REFERENCES 30

TABLE OF ABBREVIATIONS

ASEAN	Association of Southeast Asian Nations
AML	Anti Money Laundering
ABIF	ASEAN Banking Integration Framework
AFMGM	ASEAN Finance Ministers and Central Bank Governors Meeting
AFT	ASEAN Forum on Taxation
AMS	ASEAN Member States
ADB	Asian Development Bank
AEOI	Automatic Exchange of Information
BEPS	Base Erosion and Profit Shifting
CFC	Controlled foreign corporation
CMAAT	Council of Europe Convention on Mutual Administrative Assistance in Tax Matters
DTAs	Double Taxation Agreements
EU	European Union
EOI	Exchange of Information
FATCA	Foreign Account Tax Compliance Act
GFI	Global Financial Integrity
GDP	Gross Domestic Product
HNWI	High-net-wealth-individual
IFFs	Illicit financial flows
IMF	International Monetary Fund
KPMG	KPMG International Limited
Lao PDR	Lao People's Democratic Republic
LME	London Metal Exchange
FHTP	OECD Forum on Harmful Tax Practices
OECD	Organization for Economic Cooperation and Development
PWC	PricewaterhouseCooper International Limited
TIEA	Tax information exchange agreement

SDGs	the Sustainable Development Goals
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNECA	United Nations Economic Commission for Africa
UNHRC	United Nations Human Rights Council
UNODC	United Nations Office on Drugs and Crime
US	United States
USD	United States Dollar
VAT	Value added tax
WB	World Bank

TABLE OF FIGURES

Figure 1: Capture ....**Fehler! Textmarke nicht definiert.**

Figure 1. Value gaps identified in trade between ASEAN countries and their global trading partners from 2015-2018 7

LIST OF TABLES

Table 1. List of government revenue administration of ASEAN member countries 4

Table 2. Macroeconomic status of ASEAN member countries 5

Table 3. Tax revenue loss and main tax abuse channel of ASEAN in 2019 8

Table 4. Vulnerable trading channel and trading partners responsible for vulnerability of AMS 9

Table 5. Good governance and the rule of law in ASEAN in 2020 12

Table 6. Secrecy score of ASEAN member states 2020 13

Table 7. General staff capacity of tax administration staff across AMS in 2019 15

Table 8. Countering tax avoidance and tax evasion legal framework development across AMS in 2019 18

Table 9. The role of the administration in investigating tax crime 20

Table 10. Implementation and use of innovative technology in AMS tax administration in 2019....... 22

Table 11. AMS participated in mutual administrative assistance in tax matters (Exchange of Information under AEOI Standard of OECD) by 2021 25

Table 12. ASEAN member states committed to FATCA Agreements and Understandings in effect .. 26

1 INTRODUCTION

1.1 THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS

The Association of Southeast Asian Nations (ASEAN) was established in 1967 by five countries of Indonesia, Malaysia, Philippines, Singapore and Thailand initially for political reasons. Presently, it has expanded to ten members with new members of Brunei Darussalam, Cambodia, Lao PDR, Myanmar, and Viet Nam, and has broadened its thrust toward greater economic cooperation. Many ASEAN Member States (AMS) have experienced uneven economic growth. There are both advanced economies such as Singapore and Brunei and middle-income economies of Malaysia and Thailand, and countries with relatively low income like Philippines, Vietnam, Lao PDR and Cambodia.

After two years of being hard hit by the COVID-19 pandemic, many AMS struggled for needing fiscal resources to rebuild their economies and continue supporting the vulnerable community to survive the economic recession that has been seen since 2022 (inflation, oil price rising, small and medium businesses go bankrupt etc.). However, the tax bases of ASEAN countries have been eroded by the long term of providing tax incentives in exchange of attracting foreign direct investment (ADB, 2018). Many member states have been warned by Asian Development Bank (ADB) about their shortage of financial resources to address areas of social protection, including income security, health and education services, and other essential goods and services, with low-income member states such as Cambodia, Lao PDR, and Myanmar having to overcome the greatest fiscal pressures if they are to meet the Sustainable Development Goals (SDGs) (ADB, 2018).

ASEAN has experienced fast economic development in the last few decades. Many AMS, particularly those heavily rely on their resource exports, tax revenue is a major financial source for supporting their national budget planning and development. However, statistics show that their average tax revenue to GDP ratios remain low as compared to many advanced economies in the world, which is below 20% [ADB, 2021][1]. Among all the factors that deplete the tax collection efforts in this region, the existence of illicit financial flows (IFFs) including tax-motivated IFFs play an important part in revenue loss.

According to the estimation performed by Global Financial Integrity (2021), in 2018, the trade value gap between ASEAN member states with their global trading partner reached more than USD 290 million [Global Financial Integrity , 2021]. However, up-to-date, most AMS are not yet fully ready to address the IFFs issues, including the tax-motivated IFFs either because their domestic legal basis is not yet comprehensive enough to handle complicated IFFs mechanisms arising along the cross-border trade. Some AMS even just started studies on developing legal and policy environment that could help with curbing IFFs issues. It seems that ASEAN is on the way to build its overall capacity to combat IFFs collaterally as each member state has its own tax regulations and trade incentives which are not well communicated at the ASEAN platform to enable the member states to have a coherent legal basis to address tax-motivated IFFs.

[1] See ADB (2021), 'A Comprehensive Assessment of Tax Capacity in Southeast Asia', page 9.

1.2 TAX-MOTIVATED ILLICIT FINANCIAL FLOWS (IFFS)

Illicit financial flows can be defined in various ways. OECD (2014) suggests IFFs are defined by methods, practices and crimes aiming to transfer financial capital out of a country in contravention of national or international laws[2]; and their definitions generally involve money laundering, bribery by international companies and tax evasion, trade mispricing [OECD, 2014]. Many recent studies conducted by United Nations bodies segregate IFFs definitions into narrow and broad categories. In a narrow sense, IFFS take in all unrecorded private financial outflows involving capital that is illegally earned, transferred, or utilized. In a broader sense IFFs also include all kinds of artificial arrangements that have been put in place for the essential purpose of circumventing the law or its spirit. The artificial arrangements also include all hidden and disguised tax frauds that intend to evade and/or avoid tax liabilities.

UNCTAD (2014) suggests the narrow definition is inadequate for describing tax-motivated IFFs for it fails to take account of these tax abuse which go against the interests of society and ultimately harm the majority of the citizens, even if they cannot be proved to be illegal. Furthermore, UNCTAD (2014) also reveals that empirical results indicate cross boarder tax-motivated IFFs take over two thirds of the total IFFs that comprises of crime, corruption and tax abuse types of IFFs (UNCTAD, 2014)[3]. Hence, this working paper will follow the broader definition of IFFs and emphasis on tax-motivated IFFs to conduct analysis and discussion.

Tax-motivated IFFs are practiced through many channels and involve a variety of methods. They could be occurring through trade (trade misinvoicing and abusive transfer pricing), but they may also occur through other profit manipulation techniques, for example through the use of debt. UNECA mentions that "The various means by which IFFs take place include, among other, abusive transfer pricing, trade mispricing, misinvoicing of services and intangibles and using unequal contracts, all for purposes of tax evasion, aggressive tax avoidance and illegal export of foreign exchange [(UNHRC, 2016)[4]; (Musselli & Bonanomi, 2020)[5]; and (Forstater, 2018)[6]].

Transfer pricing occurs when related enterprises[7] sell goods and services to each other at prices that do not approximate the prices that unrelated parties would reach ('arm's length prices'). For example, a mining enterprise might internally transfer (even just on paper) its mineral output to its trading arm in an offshore jurisdiction at below-market prices, from where it is later sold at market price, effectively shifting the sales revenue and taxable profits abroad, especially to a low-tax jurisdiction. Similarly, a related trader might charge the mine inflated service fees that, if tax deductible, will reduce its taxable income in the country of extraction – for example, a resource-rich low-income country. In these two examples, transfer pricing issues arise in relation to the traded commodity output (output side), and in relation to production inputs (input side). On the input side, transfer mispricing may complexly intertwine with aggressive tax-avoidance techniques, for example, by means of excessive payments to foreign affiliates in respect of interests, royalties,

[2] See OECD (2014), 'Illicit Financial Flows from Developing Countries: Measuring OECD Responses, on page 16.
[3] See UNCTAD (2014), 'Trade and Development Report 2014-Global Governance and Policy Space for Development', on page 173.
[4] See UN Human Right Council (2016), 'Final study on illicit financial flows, human rights and the 2030 Agenda for Sustainable Development of the Independent Experts', at Page 4.
[5] See Musselli and Bonanomi (2020), "Illicit Financial Flows: Concepts and Definition", International Development Policy | Revue internationale de politique de développement [Online], 12.1 | 2020, Online since 18 February 2020, connection on 13 September 2022. URL: http://journals.openedition.org/poldev/3296; DOI: https://doi.org/10.4000/poldev.3296.
[6] Forstater (2018) mentioned that "trade misinvoicing is a form of customs and/or tax fraud involving exporters and importers deliberately misreporting the value, quantity, or nature of goods or services in a commercial transaction". It is also a form of customs and tax fraud used for tax evasion purposes, for paying bribes and kick-backs, and to evade capital controls.
[7] Parent and subsidiary companies, or companies under common control, as defined in the law.

management and technical fees, or other service charges. Here, trade (transfer) mispricing enters the territory of the OECD Base Erosion and Profit Shifting (BEPS) practices.[8]

On the other hand, trade misinvoicing covers specific forms of trade mispricing. As summarized by Fostater (2018) "trade misinvoicing is a form of customs and/or tax fraud involving exporters and importers deliberately misreporting the value, quantity, or nature of goods or services in a commercial transaction". It is also a form of customs and tax fraud used for tax evasion purposes, for paying bribes and kick-backs, and to evade capital controls. For detailed differences between trade mispricing and trade misinvoicing in interpreting estimate trade value gap results please refer to Section 2.2.

Either way, both abovementioned forms of tax- and trade-related IFFs have long been existing and were criticized for harming developing economies by draining a significant portion of revenue to offshores, while developing countries have very limited power to stop them and reclaim them back. Two main negative implications of tax-motivated IFFs are that they reduce government revenue collection space, and they contribute to weakening of governance and institutional systems, including the rule of law, hinder transparency and accountability, and ultimately undermine the foundations of democracy and progress (UNCTAD, 2020).

To date, many efforts have been made by governments to capture and minimise the scale of tax-motivated IFFs, but many challenges remain for developing countries, which are struggling with a lack of know-how, capacity and mechanisms to detect and prevent various forms of tax abuse practices, which are becoming increasingly complex. To do so, countries need good information and broad international cooperation to monitor the channels through which cross-border trade-related tax abuses are most likely to occur, as well as concrete legal measures to increase the effectiveness of interventions and ultimately to stop the disguised and invisible tax-motivated IFFs processes, so that the saved resources and tax revenues could be used to finance domestic development programmes and infrastructure.

In order to minimise the impact of tax-motivated IFFs, some studies and reports have identified factors that make countries more likely to engage in IFFs. For example, the United Nations Economic Commission for Africa (UNECA, 2015) suggested that weak rule of law, poor business environment, complex regulatory environment and the existence of secrecy jurisdictions and/or inadequate beneficial ownership disclosure regimes contribute to creating incentives for trade mispricing. When countries deal with increasing trade volumes and more complex cross-border trade, but the underlying factors that promote efficiency and transparency in trade administration and strong law enforcement are not developed at the same pace and in the same direction, governments and their tax and customs authorities will find it difficult and lack the capacity to manage and monitor such large and complex trade volumes, and therefore tax-motivated IFFs will have room to spread to the entire trade systems.

1.3 Purpose and Construction of the Working Paper

The purpose of this working paper is to identify various aspects and factors that are considered to be conductive to tax-motivated IFFs, and to stimulate discussion on potential and efforts that low-income AMS governments could make to strengthen their institutional infrastructure to monitor and even minimize the scale of IFFs in the ASEAN region. These factors include tax related legal environment, the rule of law, good governance, capacity of tax authority, technology innovation and access to information. Through the comparison of the factors concerned, the authors seek to have a brief conclusion of lessons learned in the area of legal framework, governance, the rule of law, human resource capacity, and use of technology and

[8] The focus of the BEPS agenda is on aggressive tax planning by multinational enterprises (MNEs) whereby MNEs exploit gaps and mismatches in tax rules to artificially shift profits to low- or no-tax jurisdictions where they carry out little or no value-creating economic activity. Refer to the OCED BEPS page: http://www.oecd.org/tax/beps/about/.

access to information, and based on the lesson learned, recommendations could be drawn to pave new path to support future studies that could be used as strong references for the development of legal framework to reduce tax-motivated IFFs and policy formation by the policy makers.

In order to better understand the characteristics of various factors behind the tax-motivated IFFs in ASEAN, this working paper also exhibits data and information gathered from various sources to enable readers to see the shape of drivers enabling tax-motivated IFFs in this region as follows:

Section 2 presents data and information facts on tax-motivated IFFs in ASEAN member countries, with a focus on trade misinvoicing. The data and information presented in this section include trade value gaps, government revenue as a percentage of GDP, tax revenue as a percentage of revenue, revenue loss (including tax loss), vulnerability channel to tax-motivated IFFs, and major trading partners of each ASEAN member country that could contribute the most to their losses.

Section 3 presents the results of a factor analysis results of each of the factor proposed by leading international organizations that could facilitate the occurrence of tax-motivated IFFs embedded in trade flows. These factors include good governance, the rule of law, human resources and management capacity, use of innovative technology and access to information.

Section 4 concludes and briefly discusses the main findings from the comparison of the data and information comparison and the implications for the future study of tax-motivated IFFs in ASEAN region in the future.

1.4 Sources of information and data

Sections 2 and section 3 use data compiled from a range of publications on tax-motivated IFFs issues from Global Financial Integrity (GFI), OECD, UNCTAD, UNODC, UNEDA etc., and various academic journals, ASEAN websites and publications, and some are from the websites the tax administrations (e.g., Ministry of Finance) of each AMS. Some of the secondary source extracted directly from selected websites of the International Monetary Fund (IMF), the World Bank (WB) dealing with tax revenue collection data, the Asia Development Bank (ADB), and OECD. This working paper uses many legal related references extracted from international accounting firms' publications, e.g. KPMG ASEAN Tax Guide, Deloitte Guide to Taxation in Southeast Asia 2021, as well as the US Department of the Treasury's website and other Asian taxation websites related to the concept of oriented taxation study.

As a reference for accessible sources of financial institutions of each ASEAN financial institution, Table 1 shows a list of tax/customs websites. However, for more completed and verified data, the author would recommend using UN or IMF or WB or ASEAN Secretariat sources as a standard reference.

Table 1. List of government revenue administration of ASEAN member countries

Country	Organization	Webpage
Brunei	Ministry of Finance and Economy	https://www.mofe.gov.bn
Cambodia	General Department of Taxation	https://www.tax.gov.kh/en
Indonesia	Ministry of Finance	https://www.kemenkeu.go.id/en
Lao PDR	Ministry of Finance	www.mof.gov.la
Malaysia	Ministry of Finance	https://www.mof.gov.my/portal/en
Myanmar	Ministry of Planning and Finance	https://www.mopf.gov.mm/en/page/12549
Philippines	Department of Finance	https://www.dof.gov.ph

Singapore	Inland Revenue Authority of Singapore	https://www.iras.gov.sg
Thailand	Revenue Department of Thailand	http://www.rd.go.th/publish/index_eng.html
Vietnam	Ministry of Finance	https://mof.gov.vn

2 AN OVERVIEW OF TAX-MOTIVATED IFFS IN ASEAN

2.1 A BRIEF ON ASEAN SOCIO-ECONOMY

AMS are more diverse in terms of the stage of their level of economic and financial development as well as their political systems, and cultural backgrounds. There is a wide gap in terms of demography and levels of economic development among the AMS. In terms of demography, Indonesia and the Philippines are the most populous countries, while Brunei, Singapore and Lao PDR have relatively smaller populations. In terms of economy, however, Singapore and Brunei have the highest GDP per capita, while countries of Indonesia, Malaysia and Thailand are classified as middle-income countries, leaving Cambodia, Lao PDR, Myanmar, the Philippines and Vietnam as lower per capita income members.

From Table 2, we can see that despite the large differences in income levels, with the exception of Brunei, most of the AMS have revenue to GDP ratios below 20%, which range between 7-19% and are relatively lower than the EU average level of 33.8% in 2019 [OECD, 2021]. These figures simply reflect that except for Brunei and Singapore (which have higher income level), most of AMS need to improve their current revenue mobilization including their tax collection efficiency in order to support their government budget revenues to overcome many challenges to achieve the UN social Development Goals (SDGs), which include poverty and inequality as well as macroeconomic stability, especially after being hit hard by the covid-19 disease pandemic since 2020.

However, the existence of tax-motivated IFFs, which means that a certain amount of uncollected trade-related tax revenue each year, could cause the governments to receive less revenue that could have been used to fund their budgetary expenses.

Table 2. Macroeconomic status of ASEAN member countries

Country	*Population (million) 2020*	*GDP/capita 2020 (PPP constant 2017 International USD)*[9]	*General government revenue (% of GDP) 2019*	*Tax revenue as percentage of GDP 2019 (including social security collections)*
Brunei	0.4	62,201	32.6[10]	18.6[11]
Cambodia	15.8	4,192	19.7	9.2
Indonesia	272.2	11,445	13.6	10.2
Lao PDR	7.4	7,811	13.3	10.5

[9] Source from World Bank. Retrieved from https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.KD?locations=Z4-8S-Z7.
[10] IMF (2019). 2019 Article IV Consultation –Press release and staff report.
[11] IMF (2019). 2019 Article IV Consultation –Press release and staff report.

Malaysia	32.7	26,472	18.3	9
Myanmar	53.6	4,857	14.1	8.9
Philippines	110.2	7,954	20.4	18.0[12]
Singapore	5.9	93,397	13.3	9.2
Thailand	70.0	17,285	20.3	8.4
Vietnam	98.3	8,200	16.0	18.6

Source of data: Mainly from International Monetary Fund-Article IV report of each ASEAN Member country, World Economic Outlook Database-April 2022[13]

2.2 ESTIMATION OF TRADE MISINVOICING IN ASEAN

At present, studies estimating the scale of tax-motivated IFFs in ASEAN are still rare due to many constraints. One of the major obstacles is the lack of data and information on trade transactions by categories of goods and services. To overcome this obstacle, the GFI uses a unique technic to estimate trade misinvoicing, which is represented by value gaps of trade between a particular country and its particular trading partner, or with the rest of the world; or between a particular group of countries, or vice versa. The basic principle of this technique is to add up the gaps and discrepancies in the trade data to get the results of the volume of trade misinvoicing.

Figure 1 shows the sums of the value gap calculated by the difference between an exporting country's reported export value and its corresponding importing country's reported import value, between ASEAN and its global trading partners between 2015-2018 conducted by GFI (Global Financial Integrity , 2021). The graph clearly shows that each AMS has a moderate increase in the trade value gap from 2015 to 2018. Middle income AMS of Malaysia and Thailand have the largest value gaps, with a three-year average value gap of over USD 60,000 million. Countries with relatively high value gaps are Indonesia and the Philippines, having three-year average value gaps of over USD 40,000 and USD 25,000 million USD, respectively. With the exception of Brunei, Cambodia, Lao PDR, and Myanmar have comparatively small value gaps for their moderately small size of international trade volumes.

[12] Extracted from OECD report -Revenue Statistics in Asia and the Pacific 2021 – Singapore, retrieved online from https://www.oecd.org/tax/tax-policy/revenue-statistics-asia-and-pacific-singapore.pdf.
[13] Population and revenue data were extracted from the https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.KD?locations=Z4-8S-Z7

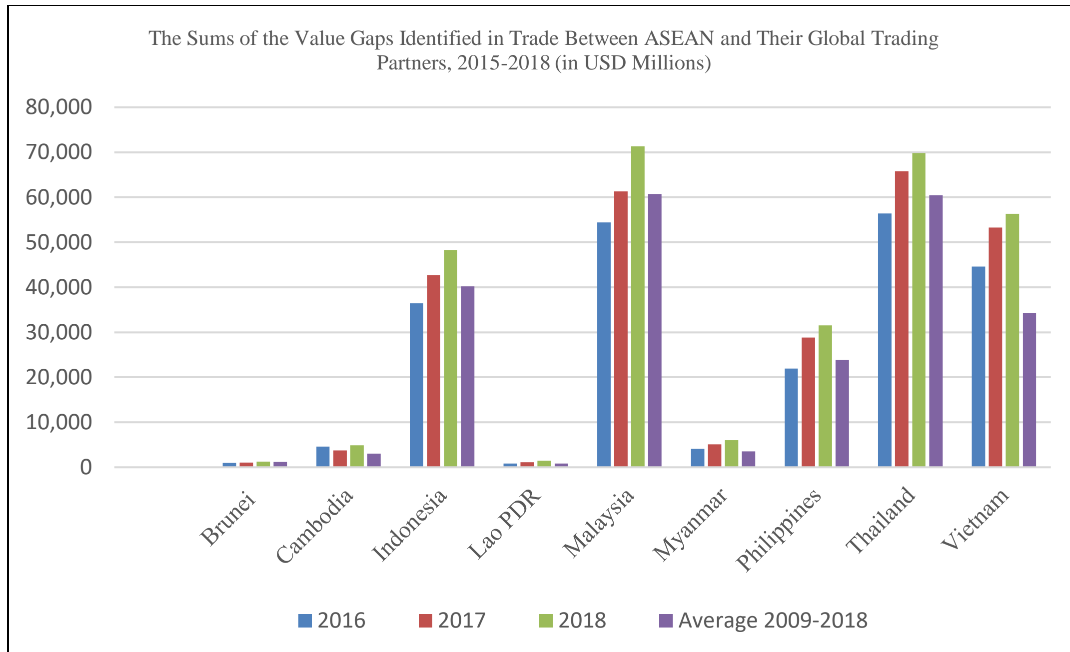

Figure 1. Value gaps identified in trade between ASEAN and their global trading partners from 2015-2018[14]

The GFI estimated the scale of trade mispricing by using the methods of accounting the volume of "trade misinvoicing" that occurs when importers and exporters deliberately falsify the declared value of goods on the invoices, they submit to their customs authorities in order to illegally transfer money across international borders, evade taxes and/or customs duties, launder the proceeds of criminal activity, circumvent currency controls, and hide profits in offshore bank accounts. To do this, exporters and importers could ultimately move wealth across international borders by hiding it within the regular payments for trade in the international trading system and it is very difficult for the customs and tax authorities to detect such transfers without specific scrutiny through the mobilization of different skills and information resources. GFI's report on trade-related illicit financial flows states that trade mis-invoicing activity poses a global challenge for customs and tax authorities around the world, particularly in developing countries. Not only does trade mis-invoicing results in the loss of billions of dollars in uncollected trade-related tax revenues each year, it also facilitates trade misinvoicing throughout the global economy [Global Financial Integrity, 2021]. And based on this report, ASEAN countries are inevitably involved in the global Trade misinvoicing process.

In recent years, a number of scholars have criticised trade misinvoicing estimates as problematic, both in terms of understanding the scale and nature of customs fraud and as an indicator of the types of structures and practices used by large firms for tax planning. Forstater (2018) points to several weaknesses in GFI's methodology. One of them is that the calculation assumes that the price and volume declared in developed countries are considered correct due to their greater capacity for customs enforcement. The other critics towards the GFI's core methodology, which uses the IMF's aggregate Direction of Trade statistics, is that it cannot distinguish between mispricing and misdeclaration of quantities; another problem worth mentioning is that Direction of Trade statistics are aggregated across all commodities and over time cannot be used to distinguish between a concentrated area of customs fraud hidden in particular shipments; also criticised is

[14] The author extracted the data from the 2021 report of 'Trade-related illicit financial flows in 134 developing countries 2009 – 2018' of Global Financial Integrity (Global Financial Integrity, 2021). Singapore data is not available in the report given its developed country status.

that the estimation methodology does not reflect the fraud practices of large multinational companies. Nevertheless, GFI's estimates are still widely used and referred to as an important reference when it is necessary to have a vision of the magnitude of trade-related IFFs (Forstater, 2018). Carbonnier and Mehrotra (2019) also reflect some of Forstater's criticisms, which they mentioned as 1) it is incorrect to assume that trade statistics in advanced economies do not show asymmetries; 2) trade costs are not captured; 3) use of aggregate annual trade statistics of exports and imports, which : Most of this literature focuses on calculating aggregate trade gaps using total annual exports and imports figures; 4) exports and imports transactions may be recorded in different years than the years in which value gaps are estimated; 5) exchange rates used for currency conversion may significantly affect the size of the estimated value gap; 6) intermediate port countries may be double counted in official data; and 7) some countries may not report trade data for certain goods and commodities for a particular year for some reason (Carbonnier & Mehrotra, 2019).

Notwithstanding the abovementioned criticisms, the GFI's estimates have been a very important reference for trade value gaps between AMS and the rest of the worlds. According to Figure 1 in Section 1.2, we notice that larger tax losses occurred in Singapore, the Philippines, and Indonesia whose trade value gaps were relatively high, while those with small trade value gaps had relatively smaller tax revenue losses. In Table 3 we also notice that tax losses relative to countries' tax bases were larger in some low-income AMS where tax revenue is crucial; those countries are the Philippines, Cambodia and Vietnam, whose total tax losses relative to GDP ratios were 1.3% and 0.7%, respectively [Global Financial Integrity, 2021]. The data also showed that a large part of the tax revenue loss was drained off through the corporate tax abuse channel, and then most of the remaining losses disappeared through offshore wealth transfer. Singapore had the highest share of offshore wealth transfer in total tax revenue loss as compared to other AMS, with more than a third of its tax loss was due to offshore wealth transfer.

Table 3. Tax revenue loss and main tax abuse channel of ASEAN in 2019

Country	*Tax revenue loss (USD million)*	*Total tax loss (% of GDP)*	*Of which corporate tax abuse (USD million)*	*Of which offshore wealth (USD million)*
Brunei	13.1	0.1	13.1	-
Cambodia	145.0	0.7	120.2	24.8
Indonesia	2,275.0	0.2	2,216.3	58.7
Lao PDR	38.1	0.2	36.7	1.4
Malaysia	1,378.7	0.4	1,048.6	330.1
Myanmar	103.4	0.2	27.6	3.5
Philippines	4,148.6	1.3	3,928.2	220.4
Singapore	4,277.8	1.3	2,492.7	1,785.1
Thailand	1,669.6	0.4	1,033.4	636.2
Vietnam	1,503.5	0.7	1,452.0	51.5

Source: The State of Tax Justice 2021[15].

[15] Secondary data extracted from the report of 'The State of Tax Justice 2021', published on the website of Tax Justice Network. Retrieved from https://taxjustice.net.

Where were the tax losses drained? The State of Tax Justice Report claims that each AMS has a different structure of cross border trade. Some countries like Lao PDR, Indonesia, Malaysia, Myanmar rely more on inward foreign direct investment, some are experienced with expanding outward foreign direct investment in other countries; likewise, inters or trade, some countries' economies rely more on imports and some have more to exports; and in the areas of capital market, some countries have attracting policy to mobilize inward portfolio. Each of the economic activity channels combined with each country's specific regulations enforced from time to time, will bring about certain risks of promoting trade mispricing. Table 4 presents a summary of revenue loss related vulnerable trading channel and countries that are mostly responsible to the vulnerability for each ASEAN member country based on each country faces in relation to eight main channels: trade (exports and imports), banking positions (claims and liabilities), foreign direct investment (outward and inward) and portfolio investment (outward and inward) [Tax Justice Network, 2021].

According to the Tax Justice Network (2021), inward direct investment plays a significant role in raising the vulnerability to revenue loss in ASEAN region. Seven out of 10 member countries, Cambodia, Indonesia, Malaysia, Myanmar, Philippines, Singapore and Thailand, were diagnosed that during 2015-2019, inward direct investment was the most vulnerable trading channel to promote Trade mispricing. In the diagnosis methods, trading partners with highest trade volume in that specific trading channels are considered to bear most responsibility for vulnerability. For instance, Singapore with the highest revenue loss and such loss is more likely to be caused by inward direct investment. The top three of its trade partners most responsible for the loss were the United States (shared 20.1% of the vulnerability), Cayman Island and British Virgin Island (shared 10.1% and 8.2% of the vulnerability, respectively).

The remaining member countries had different vulnerable trading channels. For instance, Brunei as a major oil and natural gas exporting country in ASEAN region heavily relies on import trade to supply goods and commodities to its local economy, and therefore its most vulnerable trading channel lies within import trade. The trading partners that are most responsible for its vulnerability were China, Malaysia and Singapore. Another country that heavily relies on import trade is Lao PDR, the countries that were most responsible for its vulnerability were Thailand (shared 58.9 % of the vulnerability), China (shared 21.0 % of the vulnerability) and Vietnam (shared 10.2% of the vulnerability). By knowing the major trading channels that cause the most risks to induce revenue losses, Trade mispricing, particularly the trade mispricing, countries can start to scrutinize tax-motivated IFFs routs and re-access their tax regulations and incentives to look for better balanced trade and efficient tax revenue collection.

Table 4. Vulnerable trading channel and trading partners responsible for vulnerability of AMS

Country	Revenue loss (USD million)	Most vulnerable trading channel	Trading partner most responsible for vulnerability	Trading partner second most responsible for vulnerability	Trading partner third most responsible for vulnerability
Brunei	13.1	Imports (trade inward)	China (25.9%)	Malaysia (19.2%)	Singapore (17.7%)
Cambodia	145.0	Direct investment (inward)	China (26.2%)	Vietnam (9.1%)	South Korea (7.4%)
Indonesia	2,275.0	Direct investment (inward)	Singapore (24.1%)	Netherlands (15.6%)	Japan (11.5%)
Lao PDR.	38.1	Imports (trade inward)	Thailand (58.9%)	China (21.0%)	Vietnam (10.2%)
Malaysia	1,378.7	Direct investment (inward)	Singapore (19.8%)	Japan (11.8%)	Hong Kong (10.0%)
Myanmar	103.4	Direct investment (inward)	Singapore (23.5%)	Thailand (17.2%)	China (16.9%)
Philippines	4,148.6	Direct investment (inward)	Japan (24.3%)	Netherlands (22.6%)	United States (11.9%)
Singapore	4,277.8	Direct investment (inward)	United States (20.1%)	Cayman Islands (10.1%)	British Virgin Islands (8.2%)

Thailand	1,669.6	Direct investment (outward)	Hong Kong (25.1%)	Cayman Islands (8.8%)	Singapore (8.8%)
Vietnam	1,503.5	Portfolio investment (inward)	United States (21.5%)	South Korea (14.5%)	Luxembourg (9.8%)

Source: The State of Tax Justice 2021[16].

3 Analysis of factors that promote tax-motivated IFFs in ASEAN region

The OECD has developed a simplified module or 'Toolkit' to help countries plan for, avoid, and resolve key trade-offs or policy inconsistencies and apply existing international standards in a coherent and effective manner. The Toolkit identifies factors that influence the risks that a country faces from illicit financial flows are mentioned. These factors include: a) crime; b) criminal justice; c) good governance, the rule of law and strong institutions; d) the financial sector; e) the international environment; and f) secrecy, opacity and transparency [OECD, n.d.][17]. The toolkit provides guidance for countries to strengthen and track progress on policy coherence in the implementation of the Sustainable Development Goals (SDGs). It asserts that the threats and vulnerabilities that exist in a given country will influence the extent and nature of trade mispricing, the capacity to effectively prevent and mitigate it; and the effectiveness of policies and institutions. Based on this toolkit and also on the available data and information, this section presents the main general factual analysis of the factors that determine the risk and exposure to trade mispricing among the above factors, namely (i) financial market regulation; (ii) good governance and the rule of law (iii) secrecy and transparency; (iv) financial institutional capacity; and (v) international cooperation and access to information, in order to provide readers with a better understanding of the impact of these factors on trade mispricing among AMS.

3.1 Financial market regulations

In order to facilitate ASEAN Free Trade Area scheme and to facilitate trade within the ASEAN region, the ASEAN community established the ASEAN Forum on Taxation (AFT) in 2010 as a platform to address tax-related obstacles and policies to regional economic integration and to promote regional dialogue on tax issues for regional integration. It was also expected to support the completion of the network of bilateral Double Taxation Agreements (DTAs) and address withholding tax and double taxation issues, as well as enhance information exchange and reduce opportunities for tax evasions. AMS are currently working towards the regional implementation of the OECD's Exchange of Information (EOI) and Automatic Exchange of Information (AEOI) standards. Details on the AMS's progress in implementing the EOI and AEOI procedures is provided in section 3.5.

In addition to efforts to implement the EOI and AEOI to combat money laundering and improve financial transparency in the region, the ASEAN Banking Integration Framework (ABIF) also formed a Task Force to formulate the initial milestones and timelines for financial services liberalization in the ASEAN banking sector. The initial mandate of the ABIF task force was fulfilled in December 2014 with the finalization of the ABIF Guidelines. In 2015, the ASEAN Finance Ministers and Central Bank Governors Meeting

[16] Tax Justice Network (2021). The State of Tax Justice 2021. Retrieved from https://taxjustice.net.
[17] Extracted from OECD Policy Coherence for Sustainable Development Toolkit. Retrieved from: https://www.oecd.org/governance/pcsd/toolkit/illicitfinancialflows/

(AFMGM) allowed the ABIF to continue as a working committee to focus on facilitating the implementation of banking integration and initiatives to strengthen the region's regulatory framework and financial system stability. It also developed a roadmap for enhancing regulatory transparency, standards and coherence, with a compilation of AMS practices and requirements for cross-border data sharing. However, based on Africa's experience, one of the UNCTAD reports stated that the move by governments towards greater capital account openness through the removal or easing of existing capital controls, coupled with liberalization measures that generally include the easing or removal of restrictions on the ability of non-residents to repatriate dividends, interest income and the proceeds from the sale or liquidation of investments, has left the African continent facing significant capital outflows, originating from macroeconomic reforms initiated in the 1980s and intensified in the 1990s (UNCTAD, 2020). The question is that "Will this trend happen in ASEAN region"?

As a key part of the financial sector, the banking sector has an enormously important role to play in addressing IFFs. Effective banking integration in the region requires strong political commitment from all AMS. Almekinders, et al (2015) found that the achievement of banking integration needs to be supported by sound institutional and legal frameworks. However, given the different stages of economic development among AMS face the challenge of catching up with members with advanced economies, as they need to carefully overcome various development constraints, including political and regulatory barriers in their domestic financial sector, if they are to catch up with the pace of financial sector liberalization in ASEAN. (Almekinders, Fukuda, Mourmouras, & Zhou Jianping & Zhou, 2015). In terms of progress in strengthening financial sector regulation in ASEAN, Rillo (2018) mentioned that although there has been a clear growth in regional financial integration, ASEAN economies appear to be more integrated with global financial markets than their regional neighbours due to limited risk diversification and lack of adequate liquidity in the region. Another challenge is that AMS have large gaps in regulatory quality across countries, particularly the need to harmonize or maintain minimum standards and regulations (Rillo, 2018). These findings suggest that AMS still have a long way to reach the same platform in terms of working towards fighting tax-motivated IFFs in the region.

3.2 GOOD GOVERNANCE AND THE RULE OF LAW

In order to examine the status of good governance in ASEAN member states, the author selected four indicators from the World Bank Statistics which are: "Control of corruption", which measures perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as the "capture" of the state by elites and private interests; "Government effectiveness", which measures perceptions of the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government's commitment to such policies; "Political stability and absence of violence/terrorism", which measures perceptions of the likelihood of political instability and/or politically-motivated violence, including terrorism; and "Regulatory quality", which measures the government's ability to formulate and implement sound policies and regulations that enable and promote private sector development. In addition to these indicators, the author also obtained the score for "the rule of law" from the World Bank's Statistics website, which captures perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence.

Table 5 shows the scores of ten ASM on the five selected factors mentioned above. Singapore and Brunei had the highest scores for good governance across all indicators and the rule of law. The middle-income country, Malaysia, had moderate scores on all factors. The remaining member states had negative scores on all factors for good governance and the rule of law. Overall, it is noticeable that Cambodia and Lao PDR had the lowest scores for all indicators, with the exception of Lao PDR, which had a positive score for

political stability. If the AMS are to reduce tax-motivated IFFs, good governance and the rule of law factors need to be improved to enable efficient and fair administrative and fiscal management in the country as a way to reduce avoidable tax base erosion.

Table 5. Good governance and the rule of law in ASEAN in 2020

	Good governance				The Rule of Law
	Control of corruption	**Government effectiveness**	**Political stability and absence of violence/ terrorism**	**Regulatory quality**	
Brunei	1.3	1.4	1.1	0.9	0.9
Cambodia	-1.2	-0.4	-0.2	-0.6	-0.9
Indonesia	-0.4	0.4	-0.5	0.1	-0.3
Lao PDR.	-1.1	-0.8	0.7	-0.8	-0.8
Malaysia	0.2	1.0	0.1	0.8	0.7
Myanmar	-0.7	-1.0	-1.5	-0.6	-1.2
Philippines	-0.5	0.1	-0.8	0.0	-0.6
Singapore	2.2	2.3	1.5	2.2	1.9
Thailand	-0.4	0.3	-0.6	0.2	0.1
Vietnam	-0.4	0.2	-0.1	-0.1	-0.1

Source: World Bank (2020)[18].

3.3 SECRECY AND TRANSPARENCY OF BUSINESS PERSONS

The Tax Justice Network refers to secrecy jurisdictions as countries that provide opportunities for non-residents to hide their identity and their wealth from the rule of law in order to attract an ever-increasing volume of financial assets owned by wealthy individuals. Secrecy and transparency of a country can be characterized by many factors, for example, some of the most identical characteristics are low transparency of ownership of legal entities and other forms of wealth; untraceable or barely traceable identity of owners of legal entities, especially those across the border [Tax Justice Network, 2021]. An article by Byrne (2020) reveals that authorities from the United Nations Office on Drugs and Crime (UNODC) have identified several inconsistencies in beneficial ownership and company registration systems in certain countries in the ASEAN region and the news mentioned that due to the inconsistencies, law enforcement agencies could face significant challenges in detecting and investigating suspicious cases, and financial institutions would not be able to conduct reliable due diligence on their customers (Byrne, 2020).

In this article, UNODC also reveals that such significant deficiencies have been found in the systems of the nations of Cambodia, Indonesia, Malaysia, Myanmar, the Philippines and Thailand as these countries are "considered to be very secretive when it comes to transparency of ownership of legal entities and other

[18] The author extracted the data from the World Bank website. The World Bank estimation gives the country's score on the aggregate indicator, in units of a standard normal distribution, i.e. ranging from approximately -2.5 to 2.5.

forms of wealth". The report also criticizes the fact that although the concept of beneficial ownership in these countries are generally in line with international best practice, still the criteria for qualifying as a beneficial owner still vary across borders. The author personally thinks this not only happens in those mentioned countries but throughout the ASEAN region (Byrne, 2020).

In the case of Lao PDR, according to the latest Law on Enterprises issued in 2016 (The Government of Lao PDR, 2016), all new business registrations are required to provide information of founder/shareholder of the business, the home country location of the investor as well as the shareholders, regardless of the country they reside. In general, these regulations seem to be in line with international practice; however, the law did not provide the business registration authority the guidance of how to verify the information provided by the investors and the financial source of investment, especially those from foreign countries. For this reason, in most cases the business registration authority can make little efforts to verify the true beneficiary ownership of foreign invested businesses, including verifying the legality of the financial resources brought in from abroad. The only exception is in the case of investment in the financial sector (banking, insurance and securities) and large concession contracts (natural resources exploitation investment project), where the Law on Investment and its related legal documents require the investor to have more sophisticated due diligence on the background of investors and financial sources. However, due to the lack of access to information and international cooperation on data exchange, it is still difficult for the administrative authority to verify the true identity of the information that has been cleverly layered.

Table 6 presents the secrecy score as measured by 20 Key Financial Secrecy Indicators used by the Tax Justice Network, which include rules on transparency of ownership of companies, trusts and foundations, banking secrecy regulation, public access to annual accounts, and compliance with anti-money laundering standards in 2020 [Tax Justice Network, 2021]. The results include only some AMS, namely Brunei, Indonesia, Malaysia, Singapore, Thailand and Vietnam. The score ranges from 0 to 100 with 100 being the most secretive. With the exception of Indonesia's medium score of 52, the other countries had relatively high secrecy scores, with Brunei topping the list. The results are somewhat consistent with the trend in tax losses for these countries as presented in the previous section.

Table 6. Secrecy score of ASEAN member states 2020

ASEAN member states	Secrecy score
Brunei	78
Cambodia	ND
Indonesia	52
Lao PDR.	ND
Malaysia	70
Myanmar	ND
Philippines	ND
Singapore	74
Thailand	73
Vietnam	74

Source of data: Tax Justice Network (2021).
ND: No data.

3.4 SOUND INSTITUTIONAL CAPACITY

The OECD report points out that weak tax administration is one of the key factors allowing IFFs to flourish in developing countries (OECD, 2014). Developing countries need to overcome a number of administrative constraints in order to improve revenue mobilization, and some of the most challenging barriers include a lack of skilled staff and modern infrastructure (use of modern IT systems and property registers), and law enforcement capacity [Asian Development Bank, 2021]. AMS have very divergent tax mobilization practices and capacities. This section examines institutional capacity from the angles of general capacity of tax administration staff (including tax and customs staff), the role of the administration in investigating tax crime and tax offences, the use of innovative technology in tax administration and the development of anti-tax-motivated IFFs legal frameworks, and the capacity to apply simplified transfer pricing methods and notional valuation methods, as an alternative method that is considered flexible, practical, and compliant with both trade law enforcement and tax law for low-income countries to increase tax revenues collection from cross-border trade (Musselli & Bonanomi, 2022).

- **General staff capacity of tax administration in ASEAN in 2019**

The cooperation of general staff capacity of tax administration of ASEAN member states is carried out across the number of staff in tax administration, staff education, length of service as indicator of experience, and finally the workload of tax admiration officer. Table 7 presents the information and data extracted from the IMF report [IMF, 2021]and the ADB report [Asian Development Bank, 2021]. The number of staff working in the tax administration in each country vary widely, but the data show that most countries would employ staff with at least a bachelor or high-level education, with the exception of Lao PDR, which had a very small portion of staff having bachelor or higher level of education. In Indonesia, Malaysia, Myanmar, the Philippines and Thailand, more than 50% of the staff had more than 10 years of work experience in the tax administration, with Thailand topping the ASEAN list, with around 70%. From the perspective of workload represented by two indicators of number of workers/tax staff and number of citizens/tax staff, the table shows that the countries of Cambodia, the Philippines, and Thailand have relatively more workload in terms of number of workers/tax staff and number of citizen/tax staff, while countries of Malaysia, Lao PDR, Singapore and Vietnam have relatively less workload in terms of the above two indicators.

Table 7. General staff capacity of tax administration staff across AMS in 2019

ASEAN member states	Total staff in tax administration	Staff education level		Length of service				Workload of tax authority	
		% of staff with bachelor's degree or equivalent	% of staff with master's degree or higher or equivalent	% of staff with less than 5 years of service	% of staff with 5 to 9 years of service	% of staff with 10 to 19 years of service	% of staff with 20 or more years of service	No. of labor force/tax officer	No. of citizens/tax officer
Brunei	ND	ND	ND	ND	ND	ND	ND	ND	ND
Cambodia	2,513	81.0	19.0	39.4	24.6	9.6	26.4	Over 4,500 workers/tax officer	Over 7,800 citizens/ tax member
Indonesia	46,517	34.3	13.8	32.6	12.6	29.2	25.6	Over 2,900/tax officer	Over 6,000 citizens /tax officer
Lao PDR	ND	3.2	1.9	ND	ND	ND	ND	1,415 workers/tax officer	2,633 citizens /tax officer
Malaysia	13,211	42.0	4.9	25.0	15.1	34.5	25.4	1,102 workers/tax officer	2,366 citizens /tax officer
Myanmar	5,207	96.3	3.7	29.7	20.0	23.3	27.0	ND	ND
Philippines	12,030	72.2	20.4	39.9	4.8	15.1	40.1	Over 4,000 workers/tax officer	Around 9,800 citizens /tax officer
Singapore	1,898	57.3	5.7	19.3	19.3	26.2	35.2	1,200 workers/tax officer	1,800 citizens /tax officer
Thailand	21,726	76.8	23.2	17.7	11.4	27.4	43.5	Around 2,000 workers/tax officer	Almost 4,000 citizens /tax officer
Vietnam	ND	73.2	14.7	ND	ND	ND	ND	Over 1,300 workers/tax officer	Over 2,300 citizens /tax officer

Source: IMF (2021)[19] and ADB (2021). Note: Data of Brunei are not available. ND as No data.

[19] The author extracted the data from the International Survey on Revenue Administration (ISORA) 2018 related website. Retrieved from: https://data.rafit.org/?sk=5a3bd47d-bec2-41a9-8f37-e5dbb98e3dcf&sId=1637191076670.

- **Existence of legal frameworks to address tax-motivated IFFs**

Effective measures to address tax-motivated IFFs require firm support from the domestic legal framework and efficient institutional and administrative efforts to tackle down potential enabling factors of this category of IFFs. As mentioned in section 2. Many AMS have made great efforts and some advanced Member States have even been able to achieve remarkable administrative and legal development milestones in the areas of combating IFFs, particularly those related to the commercial IFFs. These efforts include their decisions to comply with the international multilateral exchange of information in tax matters related to the international trade, and they have also strengthened their legal basis for curbing tax-motivated IFFs. Table 8 provides a summary of the status of the legal framework that conducted by the Asian Development Bank (ADB) in its report on Comprehensive Assessment on Tax Capacity in Southeast Asia. It is worth noting that there is very limited information available on Myanmar, so discussion of IFFs in Myanmar is excluded from this section.

1) **Effective anti-avoidance rules.** Singapore has developed a general anti-avoidance regime and transfer pricing rules that are in line with the OECD model. Malaysia has general or specific anti-avoidance rules exist as well as disclosure rules for foreign transactions. Vietnam has a general anti-avoidance rule and transfer pricing rules that are consistent with the OECD model. Transfer pricing reporting follows the BEPS Action 13 recommendations. Other countries of Cambodia, the Philippines and Thailand do not have general anti-avoidance rules but have developed other rules, such as transfer pricing rules, which are in line with the OECD's recommended standard. The countries of Indonesia, Myanmar and Lao PDR have not yet developed both the anti-avoidance rules and transfer pricing rules as an essential tool to disrupt tax losses through across borders wealth transfers.

2) Thin capitalization and controlled foreign corporation rules. Brunei, Cambodia, Indonesia, Malaysia, Singapore, Thailand, and Vietnam have taken both direct and indirect measures to address thin capitalization and controlled foreign corporation issues in various ways. Only the Philippines, and Lao PDR have no evidence of legal documents indicating that these two countries have taken any measures to cope with thin capitalization and controlled foreign corporation rules. Without specific measures or regulations to deal with thin capitalization and controlled foreign corporations, more businesses may be inclined to understate their taxable profits in order to avoid being taxed. Meanwhile, controlled foreign corporations are willing to leave profits in a low tax rate jurisdiction to avoid taxation in the home country of the major shareholders and cause the home country to lose potential corporate income tax.

3) Harmful tax practices. The OECD Forum on Harmful Tax Practices (FHTP) conducts reviews of preferential regimes in order to determine whether the regimes may be harmful to the tax base of other jurisdictions. The current work of the FHTP focuses on assessing whether a targeted regime may facilitate based erosion and profit shifting, and thus have the potential to unfairly affect the tax base of other jurisdictions. The ADB report shows that most of the ASEAN countries were not found to have potentially harmful practices (with the exception of Cambodia, Lao PDR and Myanmar are not included in the OECD assessment) [OECD, 2022][20].

4) **A focus on high-net-wealth-individual (HNWI) and professions.** Only Indonesia and Malaysia have regulations that focus on HNWI and high-income earners.

5) **Dealing with the shadow economy.** The shadow economy could affect the efficiency of VAT collection, so better tools and systems are needed to assist the government authority to better manage unreported transactions and identify unregistered businesses. Table 8 shows that, with the exception of Singapore and Vietnam, which have relatively small percentages of shadow economy, the shadow economy in the rest of the AMS averages more than 20% of GDP. Among them, Thailand tops the list and the percentage is estimated to be around 43% of GDP [Asian Development Bank, 2021].

Apart from the abovementioned information presented by the ADB's study**,** Musselli and Bonanomi (2020) proposed alternative practices as measures to counter tax avoidance, and harmful thin capitalization tax practice. The proposed

[20] Extracted from the OECD website on Inclusive Framework on Base Erosion and Profit shifting (BEPS). Retrieved from https://www.oecd.org/tax/beps/beps-actions/action5/.

alternatives are the use of formulaic, rule-based pricing methods, which are considered a valuable and workable option for countries with understaffed and unsophisticated tax administrations. Their study considers one approach called "the sixth method under transfer pricing law". The sixth method authorizes or requires taxpayers (when filing a tax return) and tax administrations (when auditing a taxpayer's position) to use reference prices when determine the tax value of commodity sales, particularly in the context of related-party sales. Going one step further, under administered pricing regimes, the relevant tax administration calculates the sales revenue for income tax purposes based on the basis of an administratively set price, rather than the reported sales price.

Along these lines, Norasing, Musselli & Bonanomi (2020) proposed simplified guidelines for the application of tax and customs laws that do not specify the type of benchmark indicators that tax administrations or customs authorities should use to spot suspicious transactions and adjust prices. The authors proposed the following two methods: the expanded regulatory use of tax reference prices for tax purposes, when assessing the value of commodity transactions; and the use of deemed profits in calculating the profits attributable to the Lao operations of foreign enterprises. These techniques leave little room for administrative discretion and corruption, and can be easily implemented by resource-strained tax administrations (Norasing, Musselli, & Bonanomi, 2020).

An example of the use of reference price is in Lao PDR, where the Ministry of Energy and Mines assesses copper royalties using a price formula that refers to the London Metal Exchange (LME) Official Price for copper"[21]. The LME price is adjusted for comparability purposes, to account for transport and insurance costs, contract terms, and other adjustments, based on a formula. For refined copper, "the selling price" is based on the LME spot price on the date of the calculation. For the copper ores and concentrates, the first step is to determine the copper content of the ore/concentrate (the "payable metal"). The calculated price must be approved by the Ministry of Energy and Mines (Department of Mines). The royalty rate is specified in the relevant contract/commitment, or set by the Presidential Ordinance on Royalty Rates on Natural Resources. The scheme is grounded in Article 10 of the Decision on Selling and Buying Mines [Ores] and Mining Products ("the Decision"), which requires the use of benchmark prices to calculate the selling/buying price of minerals and mining products for royalty purposes (Norasing, Musselli, & Bonanomi, 2020).

[21] For refined copper, the formula for calculating the royalty payment is Royalty value = copper content per testing results x LME Price x 6 %. For the copper ores and concentrates, the copper content of the ore/concentrate (the "payable metal") must be first determined. The LME price is multiplied by the copper percentage in the concentrate, generally assessed at 25%.

Table 8. Countering tax avoidance and tax evasion legal framework development across AMS in 2019

Countering Tax Avoidance and Evasion	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam
Effective anti-avoidance rules	No general or specific anti-avoidance rules	Transfer pricing rules that align with the recommended standards of OECD exist but there are no general or specific anti-avoidance rules.	No General anti-avoidance rules.	No general or specific anti-avoidance rules apply and there are no transfer pricing rules.	General or specific anti-avoidance rules exist as well as disclosure rules on foreign transactions.	ND	No general or specific anti-avoidance rule. The transfer pricing rules are consistent with OECD guidance.	Has a general anti-avoidance rule and transfer pricing rules that are consistent with the OECD model. A 5% additional tax is applied to transfer pricing adjustments.	No specific or general anti-avoidance rule but Transfer pricing and reporting rules apply and are consistent with the OECD guidance.	Has a general anti-avoidance rule and transfer pricing rules that are consistent with the OECD model. Transfer pricing reporting follows the BEPS Action 13 recommendations.
Thin capitalization and controlled foreign corporation rules (CFC rules)	No rules apply, and there are no disclosure requirements. transactions involving related resident and non-resident entities must be conducted on an arm's length basis.	No formal rules on thin capitalization but there is a cap on interest deductions allowed	Indonesia has a controlled foreign corporation regime. Special rules on tax deductibility of interest apply in the mining, and oil and gas sectors in accordance with the contracts.	No limits on interest deductions, no CFC rules, no rules on hybrids or on economic substance, and no disclosure requirements.	Thin capitalization rules apply but there are no rules on CFCs or hybrids.	ND	No thin cap or anti-hybrid rules, and no disclosure requirements for related party dealings.	No thin capitalization, CFC, or anti-hybrid rules but has implemented the country-by-country reporting requirements under the BEPS minimum standards.	No specific thin capitalization rules, but interest may be disallowed if it is not charged at an arm's-length rate, is not for a profit-making purpose, or does not relate to a business operation.	Thin capitalization rules exist but yet to fully follow OECD model.
Findings from OECD Forum on harmful Tax Practices (FHTP)	Pioneer services companies:	None reported	No harmful tax practice reported on reviewed industries.	No findings reported	Critical businesses were reviewed but found not harmful.	ND	Potentially harmful features are found to be addressed	No harmful features are found.	No harmful features are found.	no harmful economic effects in practice
A focus on high-net-wealth-individual (HNWI) and professions	No focus reported.	No focus reported.	A focus on wealthy Indonesians, including high income earners, commenced in 2019 as part of the midterm revenue strategy.	None reported.	Has an administrative focus on HNWI (within the Large Taxpayer Unit)	ND	None reported.	None reported.	None reported.	No focus on high-net-worth-individuals was reported
Dealing with the shadow economy	The shadow economy is estimated to be	The shadow economy is estimated to be	The shadow economy is estimated to be around 22% of	The shadow economy is estimated to be	The shadow economy is estimated to be	ND	The shadow economy is estimated to be	The shadow economy is estimated to be 9.2% of GDP	The shadow economy is estimated to be	The shadow economy is estimated to be

	around 30% of GDP.	around 34% of GDP	GDP. A focus on shadow economy and VAT commenced in 2019 as part of the midterm revenue strategy.	around 25% of GDP.	around 26% of GDP		around 28% of GDP		around 43% of GDP	14.78% of GDP

Note: ND as No data.

Source: ADB (2021).

- **The role of the administration in investigating tax crime and tax offences**

Every year all tax administrations have to deal with a certain number of detected tax crimes. These sophisticated cross border tax crimes are often facilitated by a group of highly skilled professionals such as accountants, lawyers, financial advisors and they may even collaborate with tax officials to enable the success of the crimes. Whatever the case, this investigative body should be equipped with certain quality in order to detect, and stop the occurrence of increasingly sophisticated tax crime nowadays. An OECD report conducted by the Task Force on Tax Crimes and Other Crimes has pointed out that he key elements of an effective strategy to disrupt the activities of professional crimes should include investigators with sound skills and awareness of the nature of the tax crimes; disruption strategies to prevent abusive behavior, incentivize early disclosure and whistle-blowing and taking a strong enforcement approach; cooperation among relevant authorities to maximize the availability of information, intelligence and investigative powers held by other national and international agencies; and ensure that a lead person and/or agency responsible for overseeing the implementation of the professional enablers strategy is properly appointed and supported by a sufficient legal framework developed to disrupt tax crimes **[OECD, 2021]**.

The extent to which a tax administration has the power to deal with such activities, including investigation and giving appropriate punishment according to the law, depends on the legal framework in different countries. Table 9 provides a list of the role of the administration in investigating tax crime and tax offences, and statistics on tax crimes investigated in 2019 for each AMS extracted from the International Survey on Revenue Administration Report of IMF (2021). In most AMS, the tax administration is responsible for directing and conducting tax crime investigations. For these countries, the capacity of the staff and readiness of legal framework and budget are crucial and could affect the practical efficiency of their actions to disrupt the potential tax crime, including tax-motivated IFFs. Myanmar has a different regime in which its tax administration conducts investigations under the direction or authority of another agency, such as the police or public prosecutor. Vietnam also has a similar system to Myanmar, where other agency outside of tax administration, such as the police or public prosecutor, is responsible for conducting tax crime investigations. This function may take more time and the tax administration may have less autonomy in conducting the investigation, but on the other hand the joint cooperation in conducting the investigation also allows the investigation to be carried out in a more transparent manner.

Table 9. The role of the administration in investigating tax crime

	The role of the administration in investigating tax crime
Cambodia	Tax administration has responsibility for directing and conducting tax crime investigations
Indonesia	Tax administration has responsibility for directing and conducting tax crime investigations
Lao PDR	Tax administration has responsibility for directing and conducting tax crime investigations
Malaysia	Tax administration has responsibility for directing and conducting tax crime investigations
Myanmar	Tax administration has responsibility for conducting investigations, under the direction or authority of another agency, such as the police or public prosecutor
Philippines	Tax administration has responsibility for directing and conducting tax crime investigations
Singapore	Tax administration has responsibility for directing and conducting tax crime investigations
Thailand	Tax administration has responsibility for directing and conducting tax crime investigations
Vietnam	Another agency outside of tax administration, such as the police or public prosecutor, has responsibility for conducting tax crime investigations

Source: International Survey on Revenue Administration Report of IMF (IMF, 2021).

- **Leveraging technology**

To make it easier for the taxpayers to comply with their tax obligations, many AMS have upgraded their tax payment technologies by introducing digital tax payment platforms, for example, e-filing, to facilitate a simple, smooth, low-cost and time saving tax payment process. this includes a wide range of electronic services, assists taxpayers in correctly completing their tax obligations and reduces compliance costs for both taxpayers and the tax administration.

Table 10 summarizes data on the adoption and use of innovative technologies in tax and customs administration by each AMS up to 2019, selected by the ADB report on Capacity Assessment of Tax Administration in Southeast Asia [Asian Development Bank, 2021]. Without digging too deeply into the meaning of each type of technology listed in the table, we focus on whether the countries use the technology or not, and at what stages are countries are ready to use these technologies. Of the nine listed technologies, Singapore has implemented and used eight technologies and is considered one of the most advanced tax revenue collection jurisdictions in the world. The second most advanced country in terms of use of advanced technologies is Thailand, which has both implemented and used eight out of the nine listed technologies. Other countries such as the Philippines, Malaysia, and Lao PDR have both implemented and used four or five out of the nine listed technologies. Meanwhile, the countries of Myanmar, Cambodia, Indonesia and Vietnam only implemented or used a few technologies. Myanmar is the only country in ASEAN that has not yet start implementing any suggested technology by the time of 2019.

Table 10. Implementation and use of innovative technology in AMS tax administration in 2019

ASEAN member states	Implementation and use of innovative technologies								
	Distributed ledger technology/ Blockchain	**Artificial intelligence including machine learning**	**Cloud computing**	**Data science/ analytics tools**	**Robotics Process Automation**	**Application programming interfaces**	**Whole-of-government identification systems**	**Digital identification technology (e.g., biometrics, voice identification)**	**Virtual assistants (e.g., chat-bots)**
Brunei	ND	ND	ND	ND	ND	ND	ND	ND	ND
Cambodia	No	No	No	No	No	U	No	U	No
Indonesia	No	No	IP	IP	No	IP	No	No	No
Lao PDR	IP	U	U	No	No	U	U	No	No
Malaysia	No	U	U	U	No	U	U	No	U
Myanmar	No	No	No	No	No	No	No	No	No
Philippines	No	No	U	U	No	IP	No	U	No
Singapore	No	U	U	U	U	U	U	U	U
Thailand	IP	IP	U	IP	No	U	IP	U	U
Vietnam	No	No	U	No	No	No	No	No	No

Source : Capacity Assessment of Tax Administration in Southeast Asia (ADB, 2021).

Note: ND: No data; U: technology is implemented and used; IP: Technology is in the implementation phase for future use; No: Technology is not used, including situations where the implementation has not started.

3.5 INTERNATIONAL COOPERATION AND ACCESS TO INFORMATION

A country's authorities need access to detailed ownership, bank, and accounting information in order to detect, stop and prevent potential IFFs including tax-motivated IFFs. Such information should include, at a minimum, legal and beneficial ownership information, accounting records and banking information to effectively enforce their own laws or to provide essential relevant information for the administration or enforcement of another tax authority's domestic laws. The most effective way is to exchange information with trading partners. Today, standardized exchange procedures are provided by the OECD's Exchange of Information (EOI) on request and the Automatic Exchange of Information (AEOI) standards. Exchange of information on request describes a situation in which one country's tax authority asks for particular information from another country's tax authority. The exchange is not confined to tax information narrowly defined (e.g., a tax return filed with the tax authority). It can cover ownership information (e.g. the identity of the shareholders and/or beneficial owners of a company), bank information (e.g. the activity taking place in a bank account and the account balance), or accounting and transaction-level records (e.g. commercial invoices, invoices of forwarding agents, and customs documents, if relevant).[22] There must be a legal basis to exchange information on request, such as a double tax agreement (DTA) with an EOI provision, a tax information exchange agreement (TIEA), or the joint OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters (CMAAT). The AEOI standards are banking information exchange mechanism that reveals tax matters and involves the bulk, standardized transmission of non-resident financial account information from the "offshore" (source) country to the country of residence of the account holder. The standard provides that banks and other financial institutions collect financial information for tax purposes on their clients residing abroad. This information covers all types of investment income and account balances. The information is automatically transmitted once a year to the tax authority, which transmits the data for the client to the respective tax authority abroad. For the AEOI to take place, the account holder must be resident for tax purposes in a jurisdiction with which the other country has "activated" the AEOI based on a bilateral or multilateral treaty. Tax information exchanges are a critical tool for combating cross-border tax evasion in developing countries, and OECD countries were encouraged to expand their network of EOI agreements with developing countries. At the same time, developing countries could benefit from expanding their network of agreements with relevant countries and jurisdictions, and should seek to join the Multilateral Convention. As a result, they need to proactively strengthen their institutions and systems to prevent tax-motivated IFFs, and to investigate and prosecute offenders [OECD, 2014].

Musselli and Bonanomi (2019) discuss how Switzerland's information exchanging mechanism can help with detect mispricing in commodity trade, particularly in the areas of uncovering mechanisms of export under-invoicing and abusive transfer pricing. Their report suggests that Switzerland could improve the effectiveness of the exchange mechanisms in the fight IFFs related to commodity trade by increasing the flexibility to use tax information to detect trade mispricing; by relaxing the requirements for the EOI information exchange mechanism, and by considering providing information – automatically or on request – to poor countries that do not (yet) have the administrative capacity to gather and transmit equivalent information on their side on a non-reciprocal basis; by establishing a legal basis to exchange information with lower-income countries; and by gathering expertise from Switzerland to provide administrative capacity building in poor countries through peer-to-peer knowledge transfer (Musselli & Bonanomi, 2019).

[22] The international standard for transparency and exchange of information on request for tax purposes has been set by the OECD-sponsored Global Forum on Transparency and Exchange of Information for Tax Purposes (OECD 2016a). The standard reflects major developments in tax transparency since the early 2000s. It is aligned with the 2002 OECD Model Tax Information Exchange Agreement (TIEA) and its commentary (OECD 2011b), and reflects Article 26 of the OECD Model Tax Convention and its commentary, as updated in 2017 (OECD 2017g). It also echoes Article 26 of the UN Model Tax Convention (United Nations 2011), which largely reflects the OECD Model Tax Convention.

To date, many AMS are working towards regional implementation of the Exchange of Information (EOI) for Tax Purpose under the Automatic Exchange of Information (AEOI), a standard portal that requires financial institutions to automatically disclose financial account information of non-residents to their tax authorities, who in turn exchange this information with the tax authorities of the account holders' country of residence under the globally-agreed 'Common Reporting Standard'. This information exchange mechanism is credited with significantly improving the ability of tax authorities to detect tax evasion.

In an effort to combat tax-motivated IFFs, AMSs also joint a number of international tax related conventions and treaties, such as the Forum on Transparency and Exchange of Information and the OECD's Base Erosion and Profit Shifting (BEPS) Inclusive Framework[23], as important international multilateral platform for tax reporting. Table 7 summarizes the current status of ASEAN member states participating in mutual administrative assistance in tax matters (Exchange of Information under the OECD's AEOI Standard). To date, six AMS have given signatures to join the convention for mutual exchange. They are Brunei, Indonesia, Malaysia, Philippines, Singapore and Thailand. There are four AMS that have not yet agreed to join the convention, namely Cambodia, Lao PDR, Myanmar, and Vietnam [OECD, 2022]. It is worth noting that Singapore is committed to joining most of the tax related cooperation platforms and many reports from OECD and ADB reports mention that Singapore has the best record in terms of compliance with OECD standards.

Apart from these platforms, AMS have also joined networks of double tax treaties to resolve issues involving double tax of passive and active income of each of their respective citizens. Table 11 provides a summary of the number of double tax treaties that each member state holds. The countries with the highest number of treaties are Singapore with 93 treaties, Vietnam with 81 treaties, Malaysia and Indonesia with 71 treaties each.

---

[23] Minimum standards are the BEPS recommendations that all members of the Inclusive Framework have committed to implement, covering some of the elements of: Action 5 on harmful tax practices; Action 6 on treaty abuse; action 13 on transfer pricing documentation and country-by-country reporting; and Action 14 on dispute resolution.

Table 11. AMS participated in mutual administrative assistance in tax matters (Exchange of Information under AEOI Standard of OECD) by 2021

International cooperation for countering trade mispricing	Brunei	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam
Member of Forum on Transparency and Exchange of information	Yes	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes
Signatory to the Multilateral Convention on Mutual Assistance in Tax Matters	Yes	No	In force	No	Yes	No	In force	Yes	Yes	No
Commitment to Automatic Exchange of Information (AEOI)	Yes (2018)	Not committed to a specific date	Yes (2018)	No	Yes (2018)	No	Not committed to a specific date	Yes (2018)	Yes (2023)	Not committed to a specific date
Implementation of Common Reporting Standard (CRS) and Multilateral Competent Authority Agreement	No	No	Signed	No	Yes	No	NA	Yes	No	No
Member of Base Erosion and Profit Shifting (BEPS) Inclusive Framework of OECD	Yes	No	Yes	No	Yes	No	No	Yes	Yes	Yes
Network of income tax treaties for avoidance of double taxation	18	6	71	12	71	10	48	93	61	81

Source: ADB (2021), OECD (2022), and PWC (2022).

It is also noteworthy that both Lao PDR and Myanmar are not currently members of any of the multilateral tax forums or conventions, nor have they signed any tax information exchange agreements in any forums listed in Table 11. This may be due to that fact that in order to comply with the information exchange standards, member countries need to put in place domestic legislation requiring financial institutions to carry out the due diligence procedures and to collect the information in the previous calendar year. And then, in order to meet their exchange obligations, countries need to prepare an international legal framework that allows exchanges in accordance with the AEOI standard. For many developing countries it is a matter of time before they meet the challenge of complying with the required standards. In particular, if the automatic exchange were activated, a country would only benefit from the exchange if it had the technical capacity to decrypt and process bulk data and match the decoded data against tax returns declared in the country (Musselli and Bonanomi, 2019).

Apart from the AEOI standard, in order to enhance trade cooperation with one of the ASEAN's largest trading partners such as the United Stated of America (US), some AMS have agreed to sign either the Agreement for Cooperation to Facilitate the Implementation of the Foreign Account Tax Compliance Act (FATCA) – Module 1 or the Agreement to Improve International Tax Compliance and to Implement FATC-Module 2, which generally requires that foreign financial institutions and certain other non-financial foreign entities to report on the foreign assets held by their US account holders or be subject to withholding on withholdable payments. The development of FATCA is an important effort to combat tax evasion by US persons, who hold accounts and other financial assets offshore. There are severe penalties for failure to report these financial assets (as described below). FATCA will also require certain foreign financial institutions to report directly to the Internal Revenue Service information about financial accounts held by US taxpayers or by foreign entities in which US taxpayers have a substantial ownership interest. The reporting entities will include not only banks but also other financial institutions, such as investment companies, brokers, and certain insurance companies. Some non-financial foreign entities will also be required to report certain of their US owners.

FATCA provides channels for obligated jurisdictions to seek exchange of tax and asset ownership information with the US, in a hope of preventing potential tax evasion and avoidance between hosting countries and US, as well as other persons and entities holding certain shares in in the US entities. Table 12 concludes the AMS that have committed to sign the Agreement for Cooperation to Facilitate the Implementation of the Foreign Account Tax Compliance Act (FATCA) or the Agreement to Improve International Tax Compliance and to Implement FATCA by April 2022 that was extracted from the website of the U.S Department of Treasury [U.S Department of the Treasury, 2022]. There are two models of agreements and most of the AMS signed Model 1 agreement. From the following table we can see that since 2014, these seven member states have signed the agreements for implementation of FATCA: Cambodia, Indonesia, Malaysia, the Philippines, Singapore, Thailand, and Vietnam. The AMS that have not yet signed the agreement are Brunei, Lao PDR and Myanmar.

Table 12. ASEAN member states committed to FATCA Agreements and Understandings in effect

ASEAN member states committed to FATCA	Date treated as having an Intergovernmental Agreement in effect
1. Cambodia	November 30, 2014
2. Indonesia	June 30, 2014
3. Malaysia	June 30, 2014
4. Philippines	November 30, 2014
5. Singapore	June 30, 2014
6. Thailand	June 30, 2014

7. Vietnam	July 7, 2016

Source: U.S Department of the Treasury[24].

4 CONCLUSION

Based on the previous analyses, AMS with a better legal infrastructure seem to have a better chance of tackling tax-driven IFFs, despite their increasing cross-border trade. On the contrary, there is an urgent need for Member States that are struggling to take action against tax-motivated IFFs, especially low-income and resource-exporting countries, to take immediate action and be more determined than ever to combat illicit financial flows. This means that there is more concern and demand for organisational capacity building efforts and policy formulation and implementation to address existing tax-motivated IFFs and their links to other integrity risks such as trade mispricing, trade misinvoicing and other types of tax abuse practices, although it is still debated how governments should draw a clear line to distinguish between "illegal" (against the law) and "illicit" (unethical, even if not technically +illegal) in relation to trade mispricing (Musselli & Bonanomi, 2020). The authors list a number of recommendations for policymakers to consider and for tax-motivated IFFs researchers to continue to explore in more depth in the future.

The first is that AMS need to mainstream curbing illicit financial flows into their efforts to improving tax revenue collection. Tax revenue should have become a major source of income for those with low incomes, or they should be able to have other major source of income to compensate for the low percentage of tax revenue (for example, Singapore has a very high return on government investment in government assets and this can be used to compensate for the low ratio of tax revenue to GDP). As AMS have large divergence in terms of economic development and trade structure. Different countries should consider a logical sequence of reforms aimed at institutional development of the revenue authority or follow the international general international practice. For many low-income countries and in the absence of an adequate legal framework for tax-motivated IFFs, there appears to be an urgent need to develop the administrative capacity and put in place necessary legal framework to support the process of curbing tax-motivated IFFs, for example to carry out complex audits of multinational companies or large import/export companies involving large amounts of cross-boarder financial movements. In this sense, it may seem less of a priority to push for the enforcement of complicated international guidelines, as these may be too ambitious for these countries in the early stages of developing their anti-trade mispricing strategy and policy.

Second, low-income AMS should consider implementing tax reforms that best fit to their domestic priorities and limitations. As shown in the previous sections data and information indicate that the country with the largest number of bilateral and multilateral tax treaties can significantly reduce or avoid tax loss due to tax-motivated IFFs. Therefore, instead of aggressively pursue, countries should carefully balance between the need to ensure compatibility and coordination in international tax areas such as information exchange with their ability and capacity to implement the attached requirement. Otherwise, countries may be only able to implement incomplete guidelines, which will not really do much to curb tax-motivated IFFs, but will put a lot of pressure on the tax administration to comply with these requirements, which the current legal infrastructure does not allow.

[24] The author extracts the information from the website of the U.S Department of the Treasury- FATCA Agreements and Understandings in Effect by Jurisdiction. Retrieved from: https://home.treasury.gov/policy-issues/tax-policy/foreign-account-tax-compliance-act

In this context, some of the more advanced measures to tackle tax-related illicit financial flows, such as participation in EOI and/or AEOI, may not be the best use of limited resources at a given point in time and may divert attention from building institutional capacity for tax system development. Conversely, when factors such as tax payment technology, investment promotion, and tax equity are taken into account, the same tax reforms may prove to be urgent priorities for some countries, warranting greater investment than their immediate revenue-raising potential suggests. As an example, Singapore has a relatively low ratio of tax revenue to GDP, even though it is considered to have the most efficient tax system because its investment return on investment of government assets is considerably high and can compensate for the low ratio. On the contrary, low-income AMS such as Lao PDR, Myanmar and Cambodia still have a very low volume of international trade comparing to other AMS, these countries may choose to participate in the Exchange of Information forum at a later stage when the countries have a more comprehensive domestic tax regulatory framework that are ready to support their participation in the international cooperation forums.

Third, policymakers should be aware that fighting tax-motivated IFFs, which include various forms of tax evasion and tax avoidance, means challenging elite interests and could involve invisible political challenges, as the enablers of tax-motivated IFFs could be financial advisors, lawyers, public officers and institutions that promote a particular business associated with mass cross border profit shifting and capital movement. To be able to follow and understand all these processes, the public authorities need to build institutional knowledge and recruit high-quality human resources under the condition that high-level political commitment and cooperation with the international tax community for information exchange and support for such reform is achieved. Typically, this process will take years before countries start to see implementation results, as the country is likely to gain knowledge and experience in curbing tax-motivated IFFs through a long learning-by-doing process.

Of course, although the author suggests that least developed AMS should not urgently rush to adopt the practice of the international tax community at the early stage of implementing their institutional reform, this does not mean that the countries should avoid participating in this cooperation when they are ready, or at least when they could reach an agreement on information exchange on a non-reciprocal basis, while they struggle to improve their data collection systems. The currently developed international efforts to combat tax-motivated IFFs, including the information exchange programs, such as various forums and information exchange framework initiated by the OECD, are in fact powerful tools to guide countries to disclose necessary information to assist trading partners to detect and disrupt potential IFFs process and at the same time to protect the host country from tax losses it might incur without being aware of such tax avoidance and evasion activities.

We shall recall that the currently widely implemented EOI standard could provide participating members with access to reliable and up-to-date information within the jurisdiction on ownership (legal and beneficial), accounting records, banking information, and on account holders, which could stimulate improvements or the introduction of similar reporting for resident taxpayers. Such access could greatly enhance the effectiveness of tax administrations by providing them with essential tax-relevant data and improving the exchange of information among participating members through the international EOI framework. Another reward is that the tax administration could significantly improve the digitalisation of tax administration while installing compatible information and communication technology to handle AEOI data. Meanwhile, informing the public about the participation in the AEOI framework could improve taxpayers' tax morale and tax compliance, or they could be penalized for any misconducts they commit.

Finally, given legal complexity may place an excessive burden on tax authorities and ultimately lead to ineffective practices to combat tax-motivated IFFs, leading international organizations and scholars suggest that countries fighting tax-motivated IFFs should adopt simple, easy-to-administer rules that reduce the administrative burden and leave little room for administrative discretion and corruption [Musselli, 2019]. The focus should be on locally adapted solutions that make use of existing databases and procedures and simultaneously serve multiple policy purposes such as tax enforcement, anti-money

laundering, and market surveillance.[25] It would take time and need enormous efforts to develop such a sound legal basis but it is a necessary and unavoidable way to improve the tax revenue collection to support the country's socio-economic development in the both the short and long term. Low-income resource-rich AMS may consider starting to experiment with simplified methods such as those mentioned in a Practice Note for determining the price of minerals under a transfer pricing framework prepared under a cooperation programme between the OECD and the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF). The simplified methods mentioned in this note include a potential administrative approach, which could be either the tax administration provide taxpayer guidance and safe harbour approach; or the use of the Sixth Method, which uses a publicly quoted price, such as the prices announced by LMC, as used by the Ministry of Energy and Mines to reduce the potential burden of seeking justified prices by the tax authorities (OECD/IGF, 2023).

[25] Musselli, (2019). Curbing Commodity Trade Mispricing: Simplified Methods in Host Countries. Retrieved from https://curbing-iffs.org/.

REFERENCES

ADB. (2021). A Comprehensive Tax Assessment of Tax Capacity in South East Asia. Manila.

Almekinders, G., Fukuda, S., Mourmouras, A., & Zhou Jianping & Zhou, Y. S. (2015). *ASEAN Financial Integration.* Asia and Pacific Department. International Monetary Fund. Retrieved from https://www.imf.org/external/pubs/ft/wp/2015/wp1534.pdf

Asian Development Bank . (2021). *https://www.adb.org.* Retrieved from https://www.adb.org/sites/default/files/publication/751846/assessment-tax-capacity-southeast-asia.pdf.

Asian Development Bank. (2021). *A comprehensive Assessment of Tax Capacity in Southeast Asia.* ADB.

Buehn, A., & Eichler, S. (2011). Trade Misinvoicing: The Dark Side of World Trade. *World Economy, 34*(8).

Byrne, D. (2020, October 28). *Compliance and Anti-Financial Crime.* Retrieved from AML Intelligece: https://www.amlintelligence.com/2020/10/un-finds-flaws-in-southeast-asian-aml-transparency-systems-criticises-some-countries-very-secretive-approach/.

Carbonnier, G., & Mehrotra, R. (2019). *Abnormal Pricing in International Commodity Trade: Empirical Evidence from Switzerland.* R4D-IFF Working Paper Series, R4D-IFF-WP01-2018.

Deloitte. (2020). *Global Tax Reset-Transfer Pricing Documentation Summary.* Deloitte.

Deloitte. (2020). *Guide to Taxation in Southeast Asia 2020.* Panompenh.

Dong, Y. (2016). *The Impact of Double Tax Treaties on Inward FDI in ASEAN Countries.* Singapore: Journal of Business Finance in Emerging Market.

Ernst and Yong. (2014). *Worldwide Transfer Pricing Reference Guide 2014.* Ernst and Yong.

Fisman, R., & Wei, S.-J. (2007, September). The Smuggling of Art, and the Art of Smuggling: Uncovering the Illicit Trade in Cultural Property and Antiques. *(NBER Working Paper No. 13446)*. doi:10.3386/w13446.

Forstater, M. (2018). *Illicit Financial Flows, Trade Misinvoicing, and Multinational Tax Avoidance: The Same or Differet?* Washinton DC: Center for Global Development.

Global Financial Integrity . (2021). *Trade-related Illigal Financial Flows in 134 Developing Countries 2009-2018.* Global Financial Integrity.

Government of Lao PDR. (2016). Investment Promotion Law (ammended). Vientiane .

Grant Thornton. (2022). *Transfer Pricing-Phillipines.* Grant Thornton. Retrieved from https://www.grantthornton.global/en/insights/articles/transfer-pricing-guide/transfer-pricing---Philippines/.

Grant Thornton. (2022). *Transfer Pricing-Vietnam.* Grant Thornton. Retrieved from https://www.grantthornton.global/en/insights/articles/transfer-pricing-guide/transfer-pricing---Vietnam/.

Ka, P. (2017). Tax Evasion in the Lao PDR: Evidence from Missing Imports with China and Thailand. *Journal of Economics, Business and Management, 5*(2).

KPMG. (2021). *KMPG report-Managing transfer pricing and customs risks of cross border transactions*. Retrieved from KPMG.com: http://kpmg.com/us/en/home/insights/2021/09.

KPMG. (2023). *Global Transfer Pricing Review.* KMPG .

KPMG. (2023). *Malaysia: Transfer Pricing and Advance Pricing Arrangement Rules 2023.* KPMG.

Lao Premier. (2008). Dispute Resolution in the Lao PDR. Retrieved from http://laopremier.com/dispute-resolution-in-the-lao-pdr/.

Laudage Teles, S., Riedel, N., & Strohmaier, K. (2023). *One the effect of transfer pricing regulations: a developing country perspective.* doi:http://dx.doi.org/10.2139/ssrn.4388799.

Mehrotra, R., Nolintha, V., & Sayavong, V. (2022). Commodity Trade Mispricing: Evidence from Lao PDR. *The International Trade Journal*.

Ministry of Industry and Commerce. (2021). *International Trade Statistics*. Retrieved from Lao PDR Trade Portal : http://www.laotradeportal.gov.la.

Musselli, I. (2019). *Curbing Commodity Trade Mispricing: Simplified Methods in Host Countries.* R4D-IFF Working Paper Series, R4D-IFF-WP08-2019.

Musselli, I., & Bonanomi, E. (2019). *Curbing Illicit Financial Flows in Commodity Trading: Tax Transparency.* R4D-IFF Working Paper Series, R4D-IFF-WP06-2019.

Musselli, I., & Bonanomi, E. (2020). *Illicit Financial Flows: Concepts and Definition.* R4D-IFF Working Paper Series, R4D-IFF-WP02-2020.

Musselli, I., & Bonanomi, E. (2022, September). Countering Commodity Trade Mispricing in Low-Income Countries: A Prescriptive Approach. *Journal of International Economic Law, 25*(3), 447-463. Retrieved January 2023.

Nitsch, V. (2011). Trade mispricing and illicit flows. *Darmstadt Discussion Papers in Economics, 206*. Technische Universität Darmstadt, Department of Law and Economics, Darmstadt.

Norasing, N., Musselli, I., & Bonanomi, E. (2020). *Transfer Mispricing Laws in Context: The case of Lao PDR.* R4D Working Paper Series, R4D-IFF-WP08-2019.

OECD. (2014). *Illicit Financial Flow From Developing Countries: Measuring OECD Response.* OECD.

OECD. (2021). *Ending the Shell Game: Cracking down on the Professionals who enable Tax and White Collar Crimes.* Paris: OECD.

OECD. (2021). *Revenue Statistics in Asia and the Pacific 2021 - Singapore.*

OECD. (2022). *Action 5 Harmful tax practices*. Retrieved from OECD: https://www.oecd.org/tax/beps/beps-actions/action5/.

OECD. (2022). *Automatic Exchange of Information (AEOI): Status of Commitments.* Paris: OECD.

OECD. (2022). *Automatic Exchange of Information (AEOI): Status of Commitments.* OECD.

OECD. (2022). *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax.* Paris: OECD Publishing.

OECD. (n.d.). *Policy Coherence for Sustainable Development Toolkit.* Retrieved from https://www.oecd.org/governance/pcsd/toolkit/illicitfinancialflows/ in May 2023.

OECD/IGF. (2023, November). *Determining the Price of Minerals: A Transfer Pricing Framework.* Paris: IGF, Ottawa/OECD Publishing. Retrieved from *https://doi.org/10.1787/de6ec0c5-en* in December 2023.

Patnaik, I., Sen Gupta, A., & Shah, A. (2012). Determinants of Trade Misinvoicing. *Open Economies Review, 23*(5), 891-910.

PWC. (2017). *Tax Indonesia-Trasnfer Pricing Documentation.* PWC.

PWC. (2022, 4). *Myanmar: Individual - Foreign tax relief and tax treaties.* Retrieved from World tax Summarises: https://taxsummaries.pwc.com/myanmar/individual/foreign-tax-relief-and-tax-treaties

Rillo, A. (2018, September). ASEAN Financial Integration: Opportunities, Risks, and Challenges. *Public Policy Review, Vol.14, No.5*, 921. Retrieved from https://www.mof.go.jp/english/pri/publication/pp_review/ppr14_05_04.pdf in May 2023.

Source: CIAT, IMF, IOTA, OECD. (2021). *International Survey on Revenue Administration* . Retrieved from Country level public data: https://data.rafit.org/?sk=5a3bd47d-bec2-41a9-8f37-e5dbb98e3dcf&sId=1637191076670 in May 2023.

Tax Justice Network. (2021). *State of Tax Justice Report 2021.* Tax Justice Network.

The ASEAN Secretatiat . (2021). *ASEAN Statistical Yearbook 2021.* Jakarta: The ASEAN Secretatiat .

The Government of Lao PDR. (2016). Law on Enterprises. Vientiane.

The Government of Lao PDR. (2018). Law on Economic Dispute Resolution (Ammended). Vientiane.

Thomson Reuturs . (2021, November 7). *What is transfer pricing? Documentations requirements by country*. Retrieved from https://www.thomsonreuters.com/en.html: https://tax.thomsonreuters.com/blog/transfer-pricing-documentation-by-country/ in May 2023.

U.S Department of the Treasury. (2022, 4). *U.S Department of the Treasury*. Retrieved from Foreign Account Tax Compliance Act: https://home.treasury.gov/policy-issues/tax-policy/foreign-account-tax-compliance-act in May 2023.

UNCTAD. (2014). *Trade and Development Report, 2014.* United Nations.

UNCTAD. (2016). *Trade misinvoicing in primary commodities in developing countries: The case of Chile, Côte d'Ivoire, Nigeria, South Africa and Zambia.*

UNCTAD. (2020, 12 9). *Promotion of international cooperation to combat illicit financial flows and strengthen good practices on assets return to foster sustainable development: Achievements, challenges and ways forward.* . Retrieved from https://unctad.org/system/files/official-document/webosg2021d1_en.pdf in May 2023.

UNCTAD. (2020). *The Economic Development in Africa Report 2020: Tackling Illicit Financial Flows for.* Geneva: United Nations.

UNECA. (2015). *Report of the High Level Panel on Illicit Financial Flows from Africa.*

UNECA. (2016). *UNECA IFF Report 2016.* UNECA. Retrieved from https://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en in May 2023.

UNECA. (2016). *UNECA IFF Report 2016.* UNECA. Retrieved from https://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en in May 2023.

UNHRC. (2016). *Final Study on Illicit Financial Flows, Human Rights and the 2030 Agenda for Sustainable Development of the Independent Experts.* United Nations.

United Nations. (2021). *Practical Mannual on Transfer Pricing for Developing Countries.3rd ed. P29-30.* United Nations.

USAID. (n.d.). Collecting Tax: Tax Administration. Retrieved from https://idea.usaid.gov/cd/laos/domestic-revenue-mobilization in May 2023.

VDB LOI. (2022). *LAOS Tax Booklet 2022-2023.* VDB Loi Co., Ltd. Retrieved from https://media.vdb-loi.com/wp-content/uploads/2022/09/Laos-Tax-Booklet_2022-2023.pdf in May 2023.