



COUNTERING OFFSHORE TAX EVASION

Some Questions and Answers on the Project

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What is the status of the progress report issued on 2 April?

The document was issued by the OECD Secretariat at the conclusion of the G20's London Summit. It is a progress report on the implementation of the internationally agreed tax standard that identifies (i) jurisdictions that have substantially implemented the standard, (ii) other jurisdictions that have committed to but not yet implemented the standard and tax havens that have committed to but not yet implemented the standard, and (iii) jurisdictions that have not committed to the standard.

With the commitments of Costa Rica, Malaysia, the Philippines and Uruguay, all 84 jurisdictions covered in the Global Forum's assessments have now agreed to implement the standard.

The progress report will be regularly updated as jurisdictions sign new agreements.

What is the internationally agreed tax standard?

The internationally agreed tax standard on exchange of information, as developed by the OECD and endorsed by the UN and the G20, provides for full exchange of information on request in all tax matters without regard to a domestic tax interest requirement or bank secrecy for tax purposes. It also provides for extensive safeguards to protect the confidentiality of the information exchanged.

How were the 84 jurisdictions covered by the Progress Report identified?

The 84 countries covered by the Progress Report are those which have been surveyed by the OECD's Global Forum on Taxation. The Global Forum survey covers the 30 OECD countries, countries that participate in the OECD's Committee on Fiscal Affairs as "Observer" countries (Argentina, Chile, China, Russia, South Africa), jurisdictions that met the tax haven criteria and other financial centres.

What is the basis for distinguishing between those jurisdictions that have "substantially implemented" the internationally agreed tax standard and those that have not?

There can be no "hard and fast" line on how to measure progress in the implementation of the standard. The tables in the Progress Report represent an objective assessment of the situation in the 84 countries surveyed by the Global Forum and has been guided by the work of the OECD's Committee on Fiscal Affairs and the Global Forum. These experts have suggested that at this point in time, a good indicator of progress is whether a jurisdiction has signed 12 agreements on exchange of information that meet the OECD standard. This threshold will be reviewed to take account of (i) the jurisdictions with which the agreements have been signed (a tax haven which has 12 agreements with other tax havens would not pass the threshold), (ii) the willingness of a jurisdiction to continue to sign agreements even after it has reached this threshold and (iii) the effectiveness of implementation.

How will the OECD monitor implementation?

The Global Forum has until now prepared annual assessments, which form the factual basis for the progress report. In the current environment it is clear that more timely information will be needed to respond quickly to changing developments. Going forward the Global Forum will have to review its practice for updating the assessments. The Global Forum will be examining critically jurisdictions which, despite having made commitments before 2004, still have not signed a single agreement that meets the standard.

How will the tables be updated?

The tables will be updated as new agreements meeting the internationally agreed tax standard are signed. Jurisdictions that have committed to the internationally agreed standard but have not yet substantially implemented it will be identified as having substantially implemented it once they sign 12 agreements that meet the standard.

If a jurisdiction has implemented the standard, does this mean they have no obligation to continue to negotiate information exchange agreements?

No. An inherent element of the internationally agreed tax standard is the requirement to agree to the exchange of tax information with countries that require it in order to properly administer their own tax laws. A jurisdiction that refuses to agree to the exchange of information on the grounds that it has already "substantially implemented" the standard, cannot be seen to be fully compliant with the standard.

The Progress Report distinguishes between tax havens and the other financial centres. What is the difference?

Tax havens are jurisdictions that were identified by the OECD in June 2000 as meeting its tax haven criteria. The other financial centres were not identified as meeting these criteria. However, as the objective is to achieve a level playing field, these other jurisdictions were invited to participate in the Global Forum process.

How is a tax haven identified?

In 1998 the OECD set out a number of factors for identifying tax havens. The four key factors were:

- 1) No or nominal tax on the relevant income;
- 2) Lack of effective exchange of information;
- 3) Lack of transparency;
- 4) No substantial activities.

No or nominal tax is not sufficient in itself to classify a country as a tax haven. The fourth factor above "no substantial activities" was not considered when determining whether a jurisdiction was cooperative. Thus, in order to avoid being listed as an uncooperative tax haven, jurisdictions which met the criteria were asked only to make commitments to implement the principles of transparency and exchange of information for tax purposes.

Does the OECD have a list of tax havens?

Over 40 jurisdictions were identified as meeting the tax haven criteria in June 2000. By 2007, the vast majority of these have made commitments to implement transparency and effective exchange of information and are therefore not considered to be uncooperative jurisdictions by the OECD's Committee on Fiscal Affairs.

Until recently, three jurisdictions remained on the list of unco-operative tax havens published by the OECD in 2002: Andorra, Monaco and Liechtenstein. In May, 2009, the OECD's Committee on Fiscal Affairs removed these jurisdictions from the list in light of their March 2009 statements that they intend to rapidly implement international standards and the timetable set for such implementation. It is now considered that these jurisdictions have committed to the internationally agreed tax standard but not yet substantially implemented it, as shown in the Progress Report initially issued by the OECD Secretariat on 2 April.

What does the publication of the progress report mean for the other lists that the OECD has published?

The list of tax havens published in 2000 is comprised of those jurisdictions that meet the criteria described in the OECD's 1998 Report *Harmful Tax Competition: An Emerging Global Issue*. There have been many positive changes in jurisdictions' transparency and exchange of information practices since that time. The list of unco-operative tax havens was comprised of tax havens identified by the OECD under criteria it established in 1998 and which have not made formal commitments to the OECD, after being requested to do so. Following the removal of Andorra, Liechtenstein and Monaco from the list, no jurisdiction is currently listed as an unco-operative tax haven by OECD.

While these lists are not replaced by the progress report, they should be seen in their historical context and the OECD will have to reassess their relevance in light of current developments.

Are Hong Kong, China and Macao, China tax havens?

No: they do not meet the definition of a tax haven as set out above.

Both have committed to the standards and have set out a timetable to implement them and are amongst the 84 jurisdictions surveyed by the Global Forum.

What is meant by high standards of transparency and exchange of information?

The key principles of transparency and exchange of information for tax purposes can be summarised as follows:

- Exchange of information on request where it is “foreseeably relevant” to the administration and enforcement of the domestic laws of a treaty partner.
- No restrictions on exchange caused by bank secrecy or domestic tax interest requirements.
- Availability of reliable information, particularly accounting, bank and ownership information and powers to obtain it.
- Respect for taxpayers’ rights.
- Strict confidentiality of information exchanged.

How does exchange of information on request work?

Exchange of information on request occurs where one country’s competent authority asks for particular information from another competent authority. Typically, the information requested relates to an examination, inquiry or investigation of a taxpayer’s tax liability for specified tax years. The standard prohibits fishing expeditions. Before sending a request, the requesting country should use all means available in its own territory to obtain the information except where those would give rise to disproportionate difficulties. The request should be made in writing but in urgent cases an oral request may be accepted, where permitted under the applicable laws and procedures. Requests should be as detailed as possible and contain all the relevant facts, so that the competent authority that receives the request is well aware of the needs of the applicant contracting party and can deal with the request in an efficient manner. The OECD has developed guidance¹⁰ on what could be included in a request.

Do the standards allow for the exchange of information on companies and trusts and their owners and beneficiaries?

Yes. The standards impose an obligation to exchange all types of information foreseeably relevant to the administration and enforcement of the requesting country’s domestic tax laws. This could include information on companies and trusts and their owners and beneficiaries. Moreover, a state cannot decline to provide information in response to a request for exchange of information solely because it is held by a person acting in an agency or fiduciary capacity, such as a trustee.

Who established the standards?

The principles of transparency and effective information exchange have been articulated and refined through the work of the OECD’s Global Forum on Taxation consisting of OECD and non-OECD countries and jurisdictions.

¹⁰ *Manual on the Implementation of Exchange of Information for Tax Purposes*
<http://www.oecd.org/dataoecd/15/45/36647905.pdf>

Currently the standards for exchange of information are set out in Article 26 of the OECD Model Convention¹¹ and the 2002 Model Agreement on Exchange of Information.¹² The Global Forum has also developed an availability and reliability standard for accounting records. These standards have been endorsed by the G20 and the UN Committee of Experts on International Cooperation in Tax Matters and now serve as a basis for most bilateral tax treaties as the internationally agreed standard for exchange of information.

Why exchange of information on request not automatic?

The standard for exchange of information in both cases is the same: the information must be “foreseeably relevant” to the administration or enforcement of the domestic tax laws of the country concerned or to the application of the treaty concerned but the form in which the exchange of information takes place can vary. Article 26 of the OECD Model Tax Convention provides “rules under which information may be exchanged to the widest possible extent” and includes exchange on request, automatic exchange and other forms of information exchange. Most OECD countries do engage in automatic exchange of information on a range of different types of income. In the context of the development of the 2002 Model Agreement on Exchange of Information in Tax Matters, it was agreed that for purposes of implementing the commitments made by jurisdictions identified as tax havens in 2000, exchange of information on request would be sufficient. Similarly, in the 2000 report, *Improving Access to Bank Information for Tax Purposes*, it was agreed to focus on exchange of information on request. In both cases, the decisions reflected the major step forward exchange on request would imply for the jurisdictions concerned.

What are the safeguards to protect confidentiality?

Information exchanged for tax purposes must be treated as confidential. Bilateral tax treaties and TIEAs contain rules to ensure that information is used only for authorised purposes and thereby protect taxpayer privacy rights. Confidentiality rules also apply to information exchanged pursuant to other instruments. Typically unauthorised disclosure of tax related information received from another country is a criminal offence.

What if countries want to use tax information for other purposes?

First, tax information received from another country can only be used for the purposes stated in the agreements. Second, a country is free to decline a request for information in a number of situations. One reason for declining to provide information relates to the concept of public policy/ordre public. “Public policy” generally refers to the vital interests of a country, for instance where information requested relates to a state secret. A case of “public policy” may also arise, for example, where a tax investigation in another country was motivated by racial or political persecution.

Is bank secrecy incompatible with this standard?

No. All countries have some form of bank secrecy. What is important is that it can be lifted in well defined circumstances to enable countries to enforce their own tax laws and to respond to requests for information pursuant to TIEAs or tax treaties so that treaty partners can administer their own laws.

What progress has Until recently, Austria, Belgium, Luxembourg and Switzerland had

¹¹ See http://www.oecd.org/document/53/0,3343,en_2649_33767_33614197_1_1_1_1,00.html

¹² See <http://www.oecd.org/dataoecd/15/43/2082215.pdf>

been made in getting countries to endorse and enforce these standards?

reservations about key aspects of the Article 26 standard. Now all 30 Member countries have endorsed and agreed to implement the standard. In 2000 there were more than 40 offshore financial centres that did not accept these standards. Today there are none. Also, in 1998 other major financial centres such as Hong Kong and Singapore were not prepared to endorse the standards. Today they do and they have also identified steps they will take this year so as to be able to implement the standard. So over the last ten years the OECD has succeeded in getting these standards endorsed by all major financial centres.

And has progress been made in implementing them?

Great progress has been made in improving access to bank information for tax purposes and ensuring the availability of ownership and accounting information. Progress in achieving exchange of information had been slower. Now all OECD countries accept the Article 26 standard. Hong Kong and Singapore have also stated that they will change their legislation this year so as to implement the standard. As regards the jurisdictions identified in 2000, there is now a network of about 80 Tax Information Exchange Agreements (TIEAs). Jurisdictions such as Bermuda, Jersey, Guernsey and the Isle of Man have substantially implemented the exchange of information standard. Others such as Bahrain, British Virgin Islands, Cayman Islands and the Netherlands Antilles have made good progress in signing agreements. The vast majority of these TIEAs have either only been recently ratified or are still awaiting ratification, so it is still too early to assess their effectiveness. One of the priorities of the OECD and the Global Forum will be to monitor implementation and to issue periodic report on the effectiveness of TIEAs, not just in terms of the number of agreements signed, but also in terms of the "quality" of the agreements (e.g. signed with which countries; how quickly do the agreements come into force: are they being effectively implemented). Annex II provides a summary of the situation as at 18 June 2009.

In addition to bilateral agreements, what other implementation options are available to countries?

While the vast majority of exchange agreements are entered into bilaterally through tax treaties or TIEAs, there are examples of multilateral instruments (such as the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters) that are in operation. With the recent attention paid to this issue, and a large number of jurisdictions eager to achieve a high level of compliance quickly, the possibility of extending the multilateral instruments will be explored. Multilateral instruments could be of particular use to less developed countries eager to take advantage of increased transparency and exchange of information, but which lack the resources to negotiate a series of bilateral agreements. In addition a number of countries have enacted domestic legislation that allows for exchange of information on a unilateral basis. This approach is being examined by the OECD.

What is the OECD's current position as regards potential sanctions on countries who are ultimately not considered to have substantially implemented the standards?

The OECD does not have power to impose sanctions on countries that do not implement the standards. Individual countries whether OECD or non-OECD will decide for themselves what actions they consider necessary to ensure the effective enforcement of their tax laws. The G20 has produced a list of potential measures based upon an analysis provided by the OECD. The OECD will continue to provide a forum where countries can discuss how to make these measures more effective.

For further information see "Overview of OECD's Work on International Tax Evasion" www.oecd.org/tax/evasion or contact:

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