The OECD Initiative on Tax Havens

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Summary

Since the 1990s, the Organization for Economic Cooperation and Development (OECD) has pursued the issues of bribery and tax havens, resulting in changes to certain U.S. laws. In addition, the OECD, under the direction of its member countries, spearheaded an international agreement to outlaw crimes of bribery, and it continues to coordinate efforts aimed at reducing the occurrence of money laundering, corruption, and tax havens. Also, the OECD is a pivotal player in promoting corporate codes of conduct that attempt to develop a set of standards for multinational firms that can be applied across national borders. On May 4, 2009, President Obama outlined his Administration's policy to "crack down on illegal tax evasion" and to close loopholes. In the 111th Congress, companion legislation was introduced in the House (H.R. 1265) and the Senate (S. 506) to restrict the use of tax havens. Some estimates indicate that tax havens cost the United States $100 billion each year in lost tax revenues (*The Christian Science Monitor,* Tax Havens in U.S. Cross Hairs, by David R. Francis, June 9, 2008).

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Background

The Organization for Economic Cooperation and Development (OECD) is an intergovernmental economic organization in which the 30 member countries[1] discuss, develop and analyze economic and social policy.[2] The OECD is organized around three main bodies: the Council, the Committees, and the Secretariat. Committees are comprised of representatives of all the member countries. The overriding committee is the Council, which has decision-making power. It is composed of one representative for each member country, generally at the level of Ambassador, gives guidance to the OECD, and directs its work. Since the work agenda is set by unanimous consent by the Council, a veto by a Council member removes an item from the agenda. The OECD is a strong proponent of the view that increasing world economic growth and welfare is best supported by a free and open flow of goods, services, and capital. As a result, it views its own role in this process as that of a leading proponent of the benefits of globalization and as a force for developing institutions and regulatory structures that can make these benefits available to the OECD members and to developing countries.

International flows of capital and goods and services around the world, a phenomenon referred to as globalization, have grown dramatically over the past two decades and are producing significant challenges for the OECD members, including the United States. International flows in dollars, for instance, now total over $1.9 trillion *per day*, or nearly as much as the total *annual* amount of U.S. exports and imports of goods and services. One part of these flows is foreign direct investment, or investment in businesses and real estate. The United States is the largest recipient of foreign direct investment and is the largest overseas investor in the world, owning over $2.1 trillion in direct investment abroad, or almost twice as much abroad as British investors, the next-most active overseas investors. These investments generate profits for U.S. firms, which pay taxes on those profits. In some cases, firms develop elaborate strategies to reduce their taxes, at times using the financial services offered by some foreign jurisdictions, sometimes referred to as tax havens, and some U.S. individuals engage foreign banks to hide their assets from being taxed.

Policymakers in the United States and elsewhere have addressed the issue of "tax havens" and the double taxation of businesses that operate internationally for nearly a century. Recently, however, tax havens have attracted increased attention from policymakers. In part, this attention reflects new efforts to curtail the use of tax havens for tax avoidance, combined with efforts since the terrorist attacks of September 11, 2001, to track financial flows that may be diverted to illegal activities. Also, some policymakers are targeting tax havens as part of their efforts to increase government revenues during the current economic downturn and to improve the integrity of the financial system in the wake of the financial crisis. At the G-20 Summit meeting in London in April 2009, the G-20 leaders indicated that they were adopting measures to curtail tax havens and to target "non-cooperative jurisdictions." In particular, the Summit communiqué stated that the G-20 members "stand ready to take agreed action against non-cooperative jurisdictions, including tax havens. We stand ready to deploy sanctions to protect our public finances and financial

[1] The member countries include Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, The Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey, United Kingdom, and the United States. Chile is scheduled to become the 31st member in 2010.

[2] For additional information, see CRS Report RS21128, *The Organization for Economic Cooperation and Development*, by James K. Jackson.

systems. The era of banking secrecy is over."[3] The G-20 leaders also indicated that they had agreed to support a group of measures, including:

- increased disclosure requirements on the part of taxpayers and financial institutions to report transactions involving non-cooperative jurisdictions;
- withholding taxes in respect of a wide variety of payments;
- denying deductions in respect of expense payments to payees resident in a non-cooperative jurisdiction;
- reviewing tax treaty policy;
- asking international institutions and regional development banks to review their investment policies; and
- giving extra weight to the principles of tax transparency and information exchange when designing bilateral aid programs.[4]

In addition, on May 4, 2009, President Obama announced a set of proposals to "crack down on illegal overseas tax evasion, close loopholes, and make it more profitable for companies to create jobs here in the United States."[5] The Administration's proposal reportedly is intended to ensure that the U.S. tax code does not "stack the deck against job creation" in the United States and that it reduces "the amount of taxes lost to tax havens." Within these two broad areas, the Administration proposed the following:

(1) Replacing Tax Advantages for Creating Jobs Overseas with Incentives to Create Them at Home.

- Reforming deferral rules to curb a tax advantage for investing and reinvesting overseas.
- Closing foreign tax credit loopholes.
- Using savings to make permanent the tax credit for investing in research and experimentation at home.

(2) Getting Tough on Overseas Tax Havens.

- Eliminating loopholes for "disappearing" offshore subsidiaries.
- Cracking down on the abuse of tax havens by individuals.
- Devoting new resources for IRS enforcement to help close the international tax gap.

According to the OECD, standards on transparency and exchange of information developed by the OECD were endorsed by all of the key countries, including jurisdictions which had opposed exchanging bank information. This standard has been universally accepted and endorsed by the United Nations, which has incorporated the OECD standard in the UN Model Tax Convention. In 2009, more than 300 agreements were signed by jurisdictions which previously had been

[3] *Global Plan for Recovery and Reform; the Communiqué From the London Summit*, G-20, April 2, 2009.

[4] *Declaration on Strengthening the Financial System*, G-20, April 2, 2009.

[5] *Remarks by the President on International Tax Policy Reform*, May 4, 2009.

identified by the OECD as not substantially implementing the standard.[6] In September 2009, the OECD restructured and strengthened the Global Forum on Transparency and Exchange of Information for Tax Purposes to "monitor and trigger effective exchange" of information. The Global Forum is comprised of 91 members, including all G20 members, all OECD countries and all offshore jurisdictions. It has a three year mandate to peer review all the members and other jurisdictions which may require special attention. The peer reviews will encompass two phases: Phase 1 will review the legal and regulatory frameworks while phase 2 will assess the practical implementation of the standard. The reports will include recommendations to improve the situation in the reviewed jurisdictions. The members have directed the Global Forum to:

- Be restructured to include all OECD, G20 and other jurisdictions covered by the 2009 OECD Assessment.
- Establish a self-standing dedicated Secretariat based in the OECD Center for Tax Policy and Administration.
- Carry out an in-depth monitoring and peer review of the implementation of the standards of transparency and exchange of information for tax purposes.
- Develop multilateral instruments to speed up negotiations, and
- Ensure that developing countries benefit from the new environment of transparency.

Two high-profile cases focused attention on the use of tax havens. The first case involved an investigation in 2008 in Germany involving 600-700 German citizens reportedly funneling funds into banks in Liechtenstein, taking advantage of Liechtenstein-based trusts to evade paying taxes in Germany. At that time, Andorra, the Principality of Liechtenstein, and the Principality of Monaco were the last remaining jurisdictions listed by the OECD as uncooperative tax havens. In May 2009, however, the OECD's Committee on Fiscal Affairs removed all three jurisdictions from the list as a result of commitments they each made to implement the OECD standards of transparency and effective exchange of information and the timetable they each set for implementation.

The second case involves the Union Bank of Switzerland (UBS). For more than a year, the IRS had pressured the Swiss banking firm to release the names of 52,000 Americans the agency believes have offshore accounts in Switzerland and are using Switzerland's banking secrecy laws to avoid paying taxes. So far, UBS has agreed to pay $780 million in fines and has admitted that it set up shell companies and accounts in Switzerland on behalf of U.S. citizens, that it advised U.S. citizens on the best way to hide their assets from the IRS, and that UBS employees gave U.S. clients tips on placing pricey art and jewelry in safety deposit boxes without declaring them to the IRS.[7]

UBS officials had expressed some interest in accommodating the IRS request, but Swiss regulators had instructed UBS to hand over the names of only 285 clients suspected of tax fraud. The Swiss government indicted that it was instructing UBS not to comply with the IRS summons, regardless of any outcome by a Florida court.[8] Negotiations between the Treasury Department

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[6] *Promoting Transparency and Exchange of Information for Tax Purposes: A Background Information Brief*, the Organization for Economic Cooperation and Development, February 5, 2010.

[7] Foley, Stephen, Swiss Banks' Veil of Secrecy Slips, *The Independent*, July 14, 2009. p. 40.

[8] Mijuk, Goran, Swiss Will Block UBS From Revealing Client Data, *The Wall Street Journal Europe*, July 9, 2009, p. (continued...)

and the Swiss Government eventually reached a compromise that would give the IRS the names of a substantial number of U.S. clients. The IRS had asked a court in Florida to enforce a summons that it served on UBS in February 2009, but on July 14, 2009, a federal judge granted a joint request by the U.S. and Swiss governments and UBS to delay a court hearing in a civil case to give the parties more time to reach an agreement.[9] On August 20, 2009, UBS agreed to turn over the names of 4,400 American clients who are suspected by the IRS of using Swiss bank accounts for tax evasion.[10] On June 19, 2009, Switzerland and the United States agreed to amend their long-standing income tax treaty to provide for an increased exchange of information for income tax purposes.[11]

Although not a new issue, a recurring issue for the United States and for other OECD countries is an effort to negotiate income tax treaties with Brazil. The growing prosperity of the Brazilian economy is attracting U.S. and other foreign firms to trade with and to invest in Brazil, and it is helping Brazilian firms raise their profiles as foreign investors. In May 2007, the United States and Brazil signed an information exchange agreement on taxes. The Obama Administration has expressed its support for closer trade and investment ties with Brazil, and the U.S.-Brazil CEO Forum indicated on July 22, 2009, that a bilateral tax treaty with Brazil remains a high priority for U.S. and Brazilian business leaders.[12] U.S. business leaders and policymakers have indicated that the lack of comprehensive bilateral investment treaties or income tax treaties with Brazil is inhibiting foreign firms from fully engaging with the Brazilian economy. Such a treaty, some argue, would provide a more consistent and permanent set of rules for foreign firms operating in Brazil. Even those countries that have investment treaties with Brazil are frustrated, because Brazil's complicated tax system and its business and economic practices often are difficult for foreign firms to navigate. Also, some business practices and some government policies are often viewed by foreign firms as being protectionist, which inhibits trade and commercial relations. In 2005, for instance, Germany notified Brazil that it was allowing its tax treaty with Brazil to lapse due to definitions the Brazilians used to tax entities (which differed from those used by the OECD and undermined the value of the treaty), disagreements over the way Brazil taxes imports by German firms, and changes in Brazil's economic status that rendered parts of the agreement out of date.

On July 13, 2009, the OECD released its latest progress report on jurisdictions that have agreed to comply with the internationally agreed tax standard, which was adopted by the G-20 in 2004 and the United Nations in 2008.[13] As indicated in **Table 1**, there are no jurisdictions that are listed as non-cooperative jurisdictions. For jurisdictions that have committed to the agreement, but have not yet substantially implemented the agreement, the table lists the number of agreements each

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[9] Mollenkamp, Carrick, In UBS Case, a Dogged IRS , *The Wall Street Journal Europe*, July 14, 2009, p. 1; Mollenkamp, Carrick, UBS, U.S. Ask For a Delay – Settlement Sought in Dispute Over Swiss Privacy Laws and Tax-Evasion Case, *The Wall Street Journal Europe*, July 13, 2009, p. 1.

[10] Browning, Lynnley, Names Deal Cracks Swiss Bank Secrecy, *New York Times*, August 21, 2009.

[11] *United States, Switzerland Agree to Increased Tax Information Exchange*, press release TG-177, the U.S. Department of the Treasury, June 19, 2009.

[12] *Preliminary Statement of Brazilian and U.S. CED Priorities*, U.S.-Brazil CEO Forum, June 22, 2009.

[13] The complete assessment is contained in*: Tax Cooperation: Towards a Level Playing "Field – 2008 Assessment by the Global Forum on Taxation*, the Organization for Economic Cooperation and Development, 2008.

country has signed. The standard set by the G-20 is that a jurisdiction must sign agreements with at least 12 other jurisdictions to be considered to have substantially implemented the agreement.

Table 1. Progress Report on the Jurisdictions Surveyed by the OECD Global Forum That Have Implemented the Internationally Agreed Tax Standard

Progress Made as of July 13, 2009

Jurisdictions that have substantially implemented the internationally agreed tax standard			
Argentina	France	Korea	Seychelles
Australia	Germany	Luxembourg	Slovak Republic
Bahrain	Greece	Malta	South Africa
Barbados	Guernsey	Mauritius	Spain
Bermuda	Hungary	Mexico	Sweden
Canada	Iceland	Netherlands	Turkey
China[a]	Ireland	New Zealand	United Arab Emirates
Cyprus	Isle of Man	Norway	United Kingdom
Czech Republic	Italy	Poland	United States
Denmark	Japan	Portugal	US Virgin Islands
Finland	Jersey	Russian Federation	

Jurisdictions that have committed to the internationally agreed tax standard, but have not yet substantially implemented

Jurisdiction	Year of Commitment	Number of Agreements	Jurisdiction	Year of Commitment	Number of Agreements
Tax Havens[b]					
Andorra	2009	0	Marshall Islands	2007	1
Anguilla	2002	0	Monaco	2009	1
Antigua and Barbuda	2002	7	Montserrat	2002	0
Aruba	2002	4	Nauru	2003	0
Bahamas	2002	1	Neth. Antilles	2000	7
Belize	2002	0	Niue	2002	0
British Virgin Islands	2002	11	Panama	2002	0
Cayman Islands[c]	2000	11	St Kitts and Nevis	2002	0
Cook Islands	2002	1	St Lucia	2002	0
Dominica	2002	1	St Vincent and the Grenadines	2002	0
Gibraltar	2002	2	Samoa	2002	0
Grenada	2002	1	San Marino	2000	0
Liberia	2007	0	Turks and Caicos Islands	2002	0

Jurisdiction	Year of Commitment	Number of Agreements	Jurisdiction	Year of Commitment	Number of Agreements
Liechtenstein	2009	1	Vanuatu	2003	0
			Other Financial Centers		
Austria[d]	2009	2	Malaysia	2009	0
Belgium[d]	2009	6	Philippines	2009	0
Brunei	2009	5	Singapore	2009	0
Chile	2009	0	Switzerland[d]	2009	0
Costa Rica	2009	0	Uruguay	2009	0
Guatemala	2009	0			

Jurisdictions that have not committed to the internationally agreed tax standard

Jurisdiction	Number of Agreements	Jurisdiction	Number of Agreements
All jurisdictions surveyed by the Global Forum have now committed to the internationally agreed tax standard			

Source: Organization for Economic Cooperation and Development.

Notes: The internationally agreed tax standard, which was developed by the OECD in co-operation with non-OECD countries and which was endorsed by G20 Finance Ministers at their Berlin Meeting in 2004 and by the UN Committee of Experts on International Cooperation in Tax Matters at its October 2008 Meeting, requires exchange of information on request in all tax matters for the administration and enforcement of domestic tax law 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.

a. Excluding the Special Administrative Regions, which have committed to implement the internationally agreed tax standard.

b. These jurisdictions were identified in 2000 as meeting the tax haven criteria as described in the 1998 OECD report.

c. The Cayman Islands have enacted legislation that allows them to exchange information unilaterally and have identified 12 countries with which they are prepared to do so. This approach is being reviewed by the OECD.

d. Austria, Belgium, and Switzerland withdrew their reservations to Article 26 of the OECD Model Tax Convention. Belgium has already written to more than 80 countries to propose the conclusion of protocols to update Article 26 of their existing treaties. Austria and Switzerland announced that they have started to write to their treaty partners to indicate that they are now willing to enter into renegotiations of their treaties to include the new Article 26.

"Tax Havens"

The OECD has addressed the issue of tax havens in various forms since the organization was formed in 1961. It issued its first convention on tax havens in 1963, with the *Draft Double Taxation on Income and Capital*. In 1977, the OECD issued its first major update of its Draft with the *Model Convention and Commentaries* to reflect the experience of OECD members with bilateral treaties, the increasingly sophisticated methods for tax evasion, and the development of new and more complex international business activities and relations. In 1991, the OECD again updated its tax convention to reflect the liberalization in capital markets and the globalization in business activities with the *Model Tax Convention on Income and Capital*, the forerunner to the current convention.

During the last half of the 1990s, the OECD pursued an effort to curtail the use of what it termed "harmful tax competition,"[14] which it defined as attempts by some countries to attract capital by offering tax-benefit inducements with the sole purpose of attracting foreign investment. These concerns arose from a judgment that certain kinds of competition for internationally mobile capital can threaten the tax bases of other OECD countries and can distort the worldwide allocation of capital. This issue gained increased attention with the publication in 1998 of the OECD's report, *Harmful Tax Competition: an Emerging Global Issue*. In this report, the OECD indicated that it was not focusing on any particular nation's tax structure. It stated:

> Historically, tax policies have been developed primarily to address domestic economic and social concerns. The forms and levels of taxation were established on the basis of the desired level of publicly provided goods and transfers, with regard also taken to the allocative, stabilizing, and redistributive aims thought appropriate for a country.[15]

Instead, the OECD indicated that it was attempting to curtail tax practices by countries that have, "No or only nominal taxation combined with the fact that a country offers itself as a place, or is perceived to be a place, to be used by non-residents to escape tax in their country or residence."[16] Such countries often are termed tax havens. Although there is no agreed-upon definition of a tax haven, or an agreed-upon list of countries that are tax havens, the OECD has established four basic principles it uses to determine whether a country is a tax haven. These four criteria are (1) the jurisdiction imposes no or only nominal taxes; (2) there is a lack of transparency; (3) there are laws or administrative practices that prevent the effective exchange of information for tax purposes with other governments on taxpayers who are benefiting from the no or nominal taxation; and (4) there are no requirements that the activity be substantial. In establishing these criteria, the OECD indicated that "every jurisdiction has a right to determine whether to impose direct taxes and, if so, to determine the appropriate tax rate." The OECD indicated that it was not targeting differences in tax structures between countries that may be exploited by individuals or firms, but that it was focusing on a practice that is meant specifically to reallocate investment:

> Unlike the situation of mismatching.... Here the effect is for one country to redirect capital and financial flows and the corresponding revenue from the other jurisdictions by bidding aggressively for the tax base of other countries. Some have described this effect as "poaching" as the tax base "rightly" belongs to the other country. Practices of this sort can appropriately be labeled harmful tax competition as they do not reflect different judgments about the appropriate level of taxes and public outlays or the appropriate mix of taxes in a particular country, but are, in effect, tailored to attract investment or savings originating elsewhere or to facilitate the avoidance of other countries' taxes.[17]

The Clinton Administration played a leadership role in shaping the OECD's tax competition initiative. When the initiative was publicly announced, for instance, the Clinton Administration, through Treasury Secretary Lawrence Summers, released a statement that read:

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[14] *Harmful Tax Competition: an Emerging Global Issue*. Organization for Economic Cooperation and Development, Paris, 1998.

[15] *Harmful Tax Competition*, p. 13.

[16] *Ibid*, p. 21.

[17] *Ibid.*, p. 16.

> The identification of tax havens and potentially harmful tax regimes is a crucial step in preventing distortions that could undermine the benefits of enhanced capital mobility in today's global economy.... We encourage all countries to follow the example set by the OECD member countries ... that have committed to eliminate harmful tax practices.[18]

The Bush Administration, however, led by Treasury Secretary Paul O'Neill, decided to pursue a different approach. In a statement before the Senate Committee on Governmental Affairs July 18, 2001, Secretary O'Neill voiced the Bush Administration's opposition to portions of the OECD's efforts to target tax havens. The Secretary said:

> The 1998 OECD Report[19], and a follow-up report issued in June 2000, contained rhetoric that implicated fundamental internal tax policy decisions of countries within and outside the OECD, including decisions regarding tax rates. The Reports enumerated the harms potentially caused by 'tax havens or harmful preferential regimes that drive the effective tax rate levied on income from the mobile activities significantly below rates in other countries.' Tax systems that "redirect capital and financial flows and the corresponding revenue from" other countries were condemned as 'poaching' the rightful tax base of the other countries, even though such systems provide a more attractive investment climate without facilitating noncompliance with the tax laws of any other country.[20]

As a result of the Bush Administration's efforts, the OECD backed away from its efforts to target "harmful tax practices" and shifted the scope of its efforts to improving exchanges of tax information between member countries. In his statement, Secretary O'Neill stated that he was "troubled by the notion that any country, or group of countries, should interfere in any other country's decisions about how to structure its own tax system.[21]

Financial Action Task Force

Following the terrorist attacks of September 11, 2001, the Financial Action Task Force on Money Laundering (FATF),[22] the body within the OECD that had pursued the tax haven issue, redirected its efforts to focus on terrorist financing. In addition to its two main efforts on money laundering and terrorist financing, the FATF in 2007 revised its mandate to respond to such new and emerging threats as proliferation financing and vulnerabilities in new technologies that could destabilize the international financial system.[23]

The FATF is comprised of 31 member countries and territories and two international organizations[24] and was organized to develop and promote policies to combat money laundering

[18] *Treasury Secretary Welcomes OECD Report on Harmful Tax Competition Havens*, U.S. Department of the Treasury, June 26, 2000.

[19] *Harmful Tax Competition: An Emerging Global Issue*, the Organization for Economic Cooperation and Development, 1998.

[20] Statement of Paul H. O'Neill Before the Senate Committee on Governmental Affairs Permanent Subcommittee on Investigations: OECD Harmful Tax Practices Initiative, July 18, 2001.

[21] Ibid., p. 4.

[22] For additional information, see CRS Report RS21904, *The Financial Action Task Force: An Overview*, by James K. Jackson.

[23] *FATF Annual Report: 2007-2008*, The Financial Action Task Force, June 20, 2008. P. 19.

[24] The FATF members are Argentina, Australia, Austria, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, Netherlands, New Zealand, (continued...)

and terrorist financing.[25] In 2008, China and South Korea were granted observer status, the first step in the process toward full membership in FATF. The FATF relies on a combination of annual self-assessments and periodic mutual evaluations that are completed by a team of FATF experts to provide information and to assess the compliance of its members to the FATF guidelines. FATF has no enforcement capability, but can suspend member countries that fail to comply on a timely basis with its guidelines. The FATF is housed at the headquarters of the Organization for Economic Cooperation and Development in Paris and occasionally uses some OECD staff, but the FATF is not part of the OECD. The Presidency of the FATF is a one-year appointed position, currently held by Mr. Antonio Gustavo Rodriguez of Brazil, who is to serve through June 30, 2009. The FATF has operated under a five-year mandate. At the Ministerial meeting on May 14, 2004, the member countries renewed the FATF's mandate for an unprecedented eight years.

When it was established in 1989, the FATF was charged with examining money laundering techniques and trends, reviewing the actions which had already been taken, and setting out the measures that still needed to be taken to combat money laundering. In 1990, the FATF issued a report containing a set of Forty Recommendations, which provided a comprehensive plan of action to fight against money laundering. In 2003, the FATF adopted the second revision to its original Forty Recommendations, which now apply to money laundering and terrorist financing.[26]

On October 31, 2001, the FATF issued a new set of guidelines and a set of eight Special Recommendations on terrorist financing.[27] At that time, the FATF indicated that it had broadened its mission beyond money laundering to focus on combating terrorist financing and that it was encouraging all countries to abide by the new set of guidelines. A ninth Special Recommendation was added in 2005. In 2005, the United Nations Security Council adopted Resolution 1617 urging all U.N. Member States to implement the FATF Forty Recommendations on money laundering and the Nine Special Recommendations on terrorist financing.

The FATF completed a review of its mandate and proposed changes that were adopted at the May 2004 Ministerial meeting. The new mandate provides for the following five objectives: (1) continue to establish the international standards for combating money laundering and terrorist financing; (2) support global action to combat money laundering and terrorist financing, including stronger cooperation with the IMF and the World Bank; (3) increase membership in the

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(...continued)

Norway, Portugal, Russian Federation, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States; the two international organizations are: the European Commission, and the Gulf Cooperation Council. The following organizations have observer status: Asia/Pacific Group on Money Laundering; Caribbean Financial Action Task Force; Council of Europe Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures; Eastern and Southern Africa Anti-Money Laundering Group; Financial Action Task Force on Money Laundering in South America; other international organizations including the African Development Bank; Asia Development Bank; European Central Bank; International Monetary Fund; Organization of American States, Organization for Economic Cooperation and Development; United Nations Office on Drugs and Crime; and the World Bank.

[25] To be admitted to the FATF, a country must (1) be fully committed at the political level to implement the Forty Recommendations within a reasonable time frame (three years) and to undergo annual self-assessment exercises and two rounds of mutual evaluations; (2) be a full and active member of the relevant FATF-style regional body; (3) be a strategically important country; (4) have already made the laundering of the proceeds of drug trafficking and other serious crimes a criminal offense; and (5) have already made it mandatory for financial institutions to identify their customers and to report unusual or suspicious transactions.

[26] For the Forty Recommendations, see http://www1.oecd.org/fatf/pdf/40Recs-2003_en.pdf.

[27] *FATF Cracks Down on Terrorist Financing*. Washington, FATF, October 31, 2001, p. 1.

FATF; (4) enhance relationships between FATF and regional bodies and non-member countries; and 5) intensify its study of the techniques and trends in money laundering and terrorist financing.[28]

Model Tax Convention on Income and Capital

The United States, as an OECD member country, recognizes and abides by the provisions of the OECD model tax convention. Nevertheless, the United States has its own model income tax convention, last updated in 2006, that is used as the basis for U.S. negotiations. These two models are compatible, but the United States does reserve the right to have substantive differences. According to the U.S. Department of the Treasury, the United States has reservations with the first 12 articles in the OECD model tax convention that deal with taxes on income. In general terms, the U.S. reservations focus on differences between the U.S. and OECD tax conventions with the way certain terms are identified and the way certain taxes are applied to various forms of income, such as royalties, certain types of deferred payments, taxes on branch profits, and state and local taxes among other items.

Currently, the United States has signed bilateral tax treaties with nearly 70 other countries. Tax treaties, protocols (amendments to existing treaties) and information exchange agreements that have been signed but not yet ratified by the Senate include those with France, Luxembourg, Liechtenstein, Malta, New Zealand, and Switzerland.

In general terms, the OECD's model tax convention attempts to provide a common set of rules that national tax jurisdictions can follow to avoid the double taxation of income and capital. The convention establishes the respective rights to tax of the State of source and of the State of residence for both income and capital. As a rule, the exclusive right to tax in a number of cases of items of income and capital is conferred on the State of residence. The other contracting State is thereby prevented from taxing those items.[29] The current version of the OECD's model tax convention contains 31 articles, most of which apply to taxes on income.

Article 26 of the Model Tax Convention is broadly considered to be the most widely accepted legal basis for bilateral exchanges of information for tax purposes. According to the OECD, more than 3,600 bilateral treaties are based on the Model Tax Convention. Prior to March 2009, four countries—Austria, Belgium, Luxembourg, and Switzerland—had expressed reservations about complying with Article 26. Those four countries have since notified the OECD that they were withdrawing their reservations. The Article has five provisions, which include the following:

1. The Contracting states agree to exchange such information as is "foreseeably relevant" for carrying out the provisions of the Model Tax Convention or to the administration of the domestic laws "concerning taxes of every kind and description imposed on behalf of the Contracting States."
2. Information that is received is agreed to be treated as secret in the same manner as information obtained under domestic laws.

[28] http://www1.oecd.org/fatf/pdf/PR-20040514_en.pdf.

[29] For additional information, see CRS Report R40623, *Tax Havens: International Tax Avoidance and Evasion*, by Jane G. Gravelle.

3. This Article does not obligate the Contracting States to: a) carry out administrative measures that are at variance with the laws and administrative practice of the contracting States; b) supply information which is not obtainable under the laws or in the normal course of the administration of the contracting States; c) supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information the disclosure of which would be contrary to public policy.
4. The Contracting State is obligated to use its information gathering measures to obtain the requested information, even though the State itself may not need the information.
5. The provisions of part 3 above cannot be used to permit a State to decline to supply information solely because the information is held by a bank, other financial institution, or agency because it relates to an ownership interest.

One critique of the Article is that it obligates countries to make available information that is obtained using the jurisdiction's "information gathering measures," which assumes that all jurisdictions collect the same types of data. In concept, jurisdictions could evade providing information simply by not erecting the procedures necessary to collect such data.

Global Forum on Taxation

The Global Forum on Taxation is a multilateral framework the OECD uses to engage with non-OECD economies on tax issues. As a result of the attention given by the FATF on tax practices, the Forum focused increased attention on the issue of tax havens. As a measure of its success, the OECD indicated that by 2004 all but one of the preferential tax regimes it had identified in its 1998 report on harmful tax practices had been abolished, amended, or found not to be harmful. The only outstanding tax regime was the Luxembourg 1929 holding company regime, which Luxembourg agreed to fully abolish by the end of 2010. The OECD continues to monitor developments in this area to ensure that participants comply with their stated agreements. In addition to the issue of tax havens, the OECD has also worked to build international support for a set of standards for transparency and the exchange of information in tax matters. The principles of transparency and exchange of information are believed to be essential to ensure that economic activity is conducted in a fair and transparent manner by combating tax fraud and tax evasion. Both OECD and non-OECD countries jointly produced the 2002 *Model Agreement on Exchange of Information on Tax Matters*. The standards of transparency and exchange of information that comprise the basis for the Model Agreement on Exchange of Information on Tax Matters subsequently were adopted by the G-20 Finance Ministers in 2004 and by the UN Committee of Experts on International Cooperation in Tax Matters in October 2008. The standards are the same as those specified in Article 26 of the OECD's Model Tax Convention.

Despite the progress made to date, the OECD has indicated that it will continue to focus on a number of issues relevant to transparency and exchange of information. Looking ahead, the OECD has indicated that it will focus on the following issues:

- Strengthening the Global Forum on Transparency and Exchange of Information by:
  - establishing a robust peer mechanism;

  - monitoring the implementation of the agreed tax standards;
  - expanding the countries' participation in the Global Forum, including developing countries;
  - speeding up the process of negotiating Tax Information Exchange Agreements and Tax Treaties, including developing multilateral instruments.
- Developing further its toolbox of countermeasures against non-cooperative jurisdictions and assessing their effectiveness.
- Continuing work on the design of voluntary compliance programs.
- Working together with the Financial Action Task Force to establish a coherent framework between tax and FATF transparency standards.[30]

Tax Information Exchange Agreements (TIEAS)

Tax Information Exchange Agreements (TIEAS) are agreements between members of the OECD and parties that are not members of the OECD as a way to promote international cooperation on tax matters through the exchange of information. According to the OECD, the lack of effective exchange of basic tax information is one of the key criteria it uses to determine harmful tax practices. The TIEAS were first released in 2002 and represent a non-binding agreement that contains a multilateral instrument and a model for bilateral agreements. The agreement is multilateral in the sense that it provides the basis for an integrated bundle of bilateral agreements. A party to the multilateral Agreement is bound only by the Agreement to the specific parties it wishes to be bound.

On October 30, 2008, the OECD announced that 16 new exchange of information agreements had been signed, bringing to 44 the number of such arrangements that have been put in place since 2000. In addition, OECD Secretary General Angel Gurria called for a new drive to raise standards and performance in the area of corporate governance. At the heart of this campaign were moves to strengthen implementation of the OECD Principles of Corporate Governance,[31] first launched in 1999 and adopted by the Financial Stability Forum (now the Financial Stability Board)[32] as one of its 12 core standards for sound financial systems on March 26, 2000. According to Gurria, the

[30] *Overview of the OECD's Work on Countering International Tax Evasion*, Organization for Economic Cooperation and Development, July 16, 2009, p. 6.

[31] The OECD Principles of Corporate Governance are a voluntary set of standards that were endorsed by OECD Ministers in 1999. They are a non-binding set of standards that are not intended to substitute for government, semi-government or private sector initiatives to develop more detailed "best practice" in corporate governance. The Principles are intended to assist OECD and non-OECD governments in their efforts to evaluate and improve the legal, institutional and regulatory framework for corporate governance in their countries, and to provide guidance and suggestions for stock exchanges, investors, corporations, and other parties that have a role in the process of developing good corporate governance. Available at http://www.oecd.org/DATAOECD/32/18/31557724.pdf

[32] The Financial Stability Forum is a group of about a dozen nations who participate through their central banks and financial ministries and departments, including Japan, Canada, Germany, France, Italy, the United States, the United Kingdom, and many other industrialized economies. It also includes several international economic organizations. consisting of major national financial authorities such as finance ministries, central bankers, and international financial bodies. The Forum was founded in 1999 to promote international financial stability. It facilitates discussion and cooperation in supervision and surveillance of financial institutions, transactions and events. The Financial Stability Forum was renamed the Financial Stability Board at the G-20 summit in April 2009, when its membership and its mandate were enlarged.

global financial crisis and tax evasion scandals have strengthened governments' determination to fight tax evasion and to bring increased transparency to cross-border transactions. The attention being directed at tax havens spurred a surge in TIAS being signed in 2009. In the first half of 2009, 40 more agreements had been signed, as indicated in **Table 2**, mostly by jurisdictions that are attempting to reach the important threshold of 12 signed agreements in order to be considered in compliance.

Some observers have questioned the effect of many of the recently signed agreements, since they include jurisdictions that collect minimal amounts of data on bank accounts and, therefore, may contribute little to the overall effort to improve transparency and to the exchange of information. In order to address these concerns, the G-8 heads of government agreed on July 8, 2009, to support a set of measures adopted by the G-20 that would serve as a framework to follow up on the exchange of information agreements in order to ensure that the intended benefits would be realized. The measures include the following:

- The OECD Forum on Transparency and Exchange of Information must implement a peer-review process that assesses the implementation of international standards by all jurisdictions and provides an objective and credible basis for further action.
- Since all of the countries monitored by the Global Forum on Taxation have committed to implementing the international standards on the exchange of tax information, efforts should now concentrate on implementing actual information exchange and increasing the number, quality, and relevance of the agreements that adhere to these standards.
- Participation in the Global Forum on Taxation should be expanded.
- Concrete progress needs to be made towards enabling developing countries to benefit from the new cooperative tax agreement, including through enhanced participation in the Global Forum on Taxation and the consideration of a multilateral approach for the exchange the information.
- Criteria that were used to define jurisdictions that had not yet substantially implemented the internationally agreed standards on tax information exchange and transparency should be revised as part of the peer review assessment process to ensure that there is an effective implementation of international standards.
- Participants should discuss and agree upon a toolbox of effective countermeasures they can use against countries that do not meet the international standards on tax transparency.[33]

Table 2. Bilateral Tax Information Exchange Agreements Signed in 2009

Country	Partner	Date
Netherlands	Cayman Islands	July 8, 2009
Germany	Bermuda	July 3, 2009
Ireland	Gibraltar	June 24, 2009

[33] *Countering Offshore Tax Evasion*, Organization for Economic Cooperation and Development, July 16, 2009, p. 17.

Country	Partner	Date
Ireland	Cayman Islands	June 23, 2009
France	British Virgin Islands	June 17, 2009
Australia	Jersey	June 10, 2009
Netherlands	Bermuda	June 8, 2009
Denmark	British Virgin Islands	May 19, 2009
Faroe Islands	British Virgin Islands	May 19, 2009
Finland	British Virgin Islands	May 19, 2009
Greenland	British Virgin Islands	May 19, 2009
Iceland	British Virgin Islands	May 19, 2009
Norway	British Virgin Islands	May 19, 2009
Sweden	British Virgin Islands	May 19, 2009
New Zealand	Bermuda	April 17, 2009
Denmark	Bermuda	April 16, 2009
Faroe Islands	Bermuda	April 16, 2009
Finland	Bermuda	April 16, 2009
Greenland	Bermuda	April 16, 2009
Iceland	Bermuda	April 16, 2009
Norway	Bermuda	April 16, 2009
Sweden	Bermuda	April 16, 2009
Denmark	Cayman Islands	April 1, 2009
Faroe Islands	Cayman Islands	April 1, 2009
Finland	Cayman Islands	April 1, 2009
Greenland	Cayman Islands	April 1, 2009
Iceland	Cayman Islands	April 1, 2009
Norway	Cayman Islands	April 1, 2009
Sweden	Cayman Islands	April 1, 2009
USA	Gibraltar	March 31, 2009
France	Isle of Man	March 26, 2009
Ireland	Jersey	March 26, 2009
Ireland	Guernsey	March 26, 2009
Germany	Guernsey	March 26, 2009
France	Guernsey	March 24, 2009
France	Jersey	March 23, 2009
United Kingdom	Jersey	March 10, 2009
Germany	Isle of Man	March 2, 2009
Australia	Isle of Man	January 29, 2009
United Kingdom	Guernsey	January 20, 2009

Source: Organization for Economic Cooperation and Development.

Legislation

Congress has expressed a continuing interest in the issue of tax havens. In the 111th Congress, companion bills were introduced in the House (H.R. 1265) by Representative Doggett and the Senate (S. 506) by Senator Levin. Titled the "Stop Tax Haven Abuse Act," the measures aim to restrict the use of offshore tax havens and abusive tax shelters to "inappropriately avoid Federal taxation, and for other purposes." Among other provisions, the measures would amend Internal Revenue Code provisions relating to tax shelter activities to (1) establish legal presumptions against the validity of transactions involving offshore secrecy jurisdictions (i.e., foreign tax havens identified in the act and by the Commissioner of the Internal Revenue Service); (2) impose restrictions on foreign jurisdictions, financial institutions, or international transactions that are of primary money laundering concern or that impede U.S. tax enforcement; (3) increase the period for Internal Revenue Service review of tax returns involving offshore secrecy jurisdictions; (4) require tax withholding agents and financial institutions to report certain information about beneficial owners of foreign-owned financial accounts and accounts established in offshore secrecy jurisdictions; and (5) disallow tax advisor opinions validating transactions in offshore secrecy jurisdictions.

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