Automatic Exchange of Financial Account Information

BACKGROUND INFORMATION BRIEF

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Automatic Exchange of Information

Vast amounts of money are kept abroad and go untaxed to the extent that taxpayers fail to comply with tax obligations in their home jurisdictions. Jurisdictions around the world, small and large, developing and developed, OECD and non-OECD, stand united in calling for further action to address the issues of international tax avoidance and evasion. Co-operation between tax administrations is critical in the fight against tax evasion. Co-operation is critical in winning this battle and a key aspect of that co-operation is exchange of information.

The OECD has a long history of fostering greater tax co-operation and improving all forms of exchange of information- on request, spontaneous and automatic – and the Multilateral Convention on Mutual Administrative Assistance and Article 26 of the OECD Model Tax Convention provide a basis for all forms of information exchange.

A major breakthrough towards more tax transparency was accomplished in 2009 with information exchange upon request becoming the international standard and the restructured Global Forum on Exchange of Information and Transparency for Tax Purposes starting to monitor the implementation of the standard through in-depth peer reviews.

Now there is another step change in international tax transparency. Following the commitments to automatic exchange made by the G8 leaders at their summit last June (see Annex), the G20 Leaders at their meeting in St. Petersburg, Russia in September fully endorsed the OECD proposal for a truly global model of automatic exchange and invited the OECD working with G20 countries to present such a new single standard for automatic exchange of information in time for the February 2014 meeting of the G20 Finance Ministers and Central Bank Governors (see Annex).

1. A single global standard for automatic exchange of financial account information

Under the single global standard released on 13 February jurisdictions obtain information from their financial institutions and automatically exchange that information with other jurisdictions on an annual basis. It sets out the financial account information to be exchanged, the financial institutions that need to report, the different types of accounts and taxpayers covered, as well as common due diligence procedures to be followed by financial institutions. It consists of two components: a) the **CRS**, which contains the reporting and due diligence rules to be imposed on financial institutions; and b) the Model **CAA**, which contains the detailed rules on the exchange of information.

The new Standard draws extensively on earlier work of the OECD in the area of automatic exchange of information. It incorporates progress made within the European Union, as well as global anti-money laundering standards, with the intergovernmental implementation of the US Foreign Account Tax Compliance Act (FATCA) having acted as a catalyst for the move towards automatic exchange of information in a multilateral context.

To prevent taxpayers from circumventing the CRS it is specifically designed with a broad scope across three dimensions:

- The financial information to be reported with respect to reportable accounts includes all types of **investment income** (including interest, dividends, income from certain insurance contracts and other similar types of income) but also **account balances** and **sales proceeds** from financial assets.

- The financial institutions that are required to report under the CRS do not only include **banks** and **custodians** but also other financial institutions such as **brokers, certain collective investment vehicles and certain insurance companies**.

- Reportable accounts include accounts held by **individuals** and **entities (which includes trusts and foundations),** and the standard includes a requirement to look through passive entities to report on the individuals that ultimately control these entities.

The CRS also describes **the due diligence procedures that must be followed by financial institutions to identify reportable accounts**.

The CRS will need to be translated into domestic law, whereas the CAA can be executed within existing legal frameworks such as Article 6 of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters or the equivalent of Article 26 in a bilateral tax treaty. Before entering into a reciprocal agreement to exchange information automatically with another country, it is essential that the receiving country has the legal framework and administrative capacity and processes in place to ensure the confidentiality of the information received and that such information is only used for the purposes specified in the instrument. Where this is not the case, automatic exchange is not "appropriate".

2. The next steps

The standard will be complemented by a detailed commentary as well as technical solutions to implement the actual information exchanges which are on track for delivery in time for the September G20 Finance Minister meetings. The **commentary** to the CRS and the CAA is designed to ensure a consistent application and operation of the standard. The **technical solutions** cover IT aspects, in particular the presentation of the information (including schema and user guide) and standards on the secure transmission of the information.

At the same time countries will need to change their domestic legislation to adopt the CRS, conclude CAAs with other participating countries (based on the model CAA) and let their financial institutions introduce necessary changes to their IT systems and client on-boarding procedures for implementing the CRS. They will also need to put in place the necessary administrative procedures and IT systems to exchange information with other participating countries and to process the information they will be receiving from those countries under the standard.

3. The legal basis

Different legal bases for automatic exchange of information already exist. Whilst bilateral treaties such as those based on Article 26 of the OECD Model Tax Convention permit such exchanges, it may be more efficient to establish automatic exchange relationships through a multilateral information exchange instrument.

The Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2011, is such an instrument. It provides for all possible forms of administrative co-operation between States, contains strict rules on confidentiality and proper use, and permits automatic exchange of information.

Automatic exchange under the Multilateral Convention requires a separate agreement between the competent authorities of the parties, which can be entered into by two or more parties thus allowing for a single agreement with several parties (with actual automatic exchange taking place on a bilateral basis). Such an agreement would activate and "operationalise" automatic exchange between the participating countries. It would specify the information to be exchanged and would also deal with practical issues such as the time and format of the exchange. The Model CAA serves that function and can be used within the context of the Multilateral Convention but also under bilateral treaties. It could also easily be adapted to a multilateral agreement as permitted by the Multilateral Convention.

The Multilateral Convention is now a **truly global instrument**. Following a recent signing ceremony in Indonesia, there are now **64 signatories** to the Convention, including all G20 countries, and **13 jurisdictions** are covered by way of territorial extension. Additional countries have expressed interest in signing, including Azerbaijan, Kenya, and Mauritius, and we expect further signatures in the near future

4. Political support for the standard

EU, G8 and G20

There is strong support by the EU, G8 and G20 for the work done by OECD. The G8 Presidency requested a report (*A Step Change in Tax Transparency*) from the OECD to analyze how jurisdictions could build on the recent developments to implement automatic exchange in a multilateral context which was fully endorsed by the G8 Leaders at their Lough Erne Summit. On 15 April 2013, the President of the European Commission, in his address to the General Assembly of the United Nations, provided the EU's strong support for the OECD work on automatic exchange and the interest in ensuring compatible standards for automatic exchange of information on a global basis. Further, on 22 May the EU Council unanimously agreed to give priority to efforts to extend automatic exchange of information at the EU and global level and welcomed the on-going efforts made in the G8, G20 and OECD to develop a global standard. The G20 Leaders at their meeting in St. Petersburg, Russia in September 2013 fully endorsed the OECD proposal for a truly global model of automatic exchange and invited the OECD working with G20 countries to present such a new single standard for automatic exchange of information in time for the February 2014 meeting of the G20 Finance Ministers and Central Bank Governors. See Annex for G8 and G20 statements providing support for the work.

Pilot project

In 2010 the United States enacted legislation commonly referred to as FATCA (Foreign Account Tax Compliance Act) which effectively requires foreign financial institutions around the globe to report account details of their U.S. customers to the U.S. tax administration. Recognising the important legal and cost issues of this approach the United States developed together with five other OECD (and EU) member countries (France, Germany, Italy, Spain and the United Kingdom) a model for the intergovernmental implementation of FATCA (Model FATCA IGA). The Model FATCA IGA provides for the implementation of FATCA through reporting by financial institutions to their local tax authorities, which then exchange the information on an automatic basis with the U.S. tax authorities.

The Model FATCA IGA is not only becoming a preferred route for the implementation of FATCA, it has also served as the template for the common model for automatic exchange of information. The Model FATCA IGA itself contains a commitment to work with interested countries, the OECD and where appropriate the EU on adapting the terms of the Model FATCA IGA "in the medium term to a common model for automatic exchange of information, including the development of reporting and due diligence standards." In a press release on 26 July 2012 the OECD welcomed the model agreement. The OECD Secretary-General Angel Gurría said:

> *"I warmly welcome the co-operative and multilateral approach on which the model agreement is based. We at the OECD have always stressed the need to combat offshore tax evasion while keeping compliance costs as low as possible. A proliferation of different systems is in nobody's interest. We are happy to redouble our efforts in this*

area, working closely with interested countries and stakeholders to design global solutions to global problems to the benefit of governments and business around the world."

On 9 April, the Ministers of the same five members (France, Germany, Italy, Spain and the UK) that developed the FATCA intergovernmental agreements with the United States announced their intention to exchange FATCA-type information amongst themselves in addition to exchanging information with the United States. They said:

"*An important part of the fight against international evasion and fraud is tax transparency. As you know, following the passage of the US Foreign Account Tax Compliance Act we have all been in joint discussions with the US as to the most effective way of concluding intergovernmental agreements to provide for automatic information exchange. These discussions have resulted in a model agreement which minimises burdens on business while ensuring effective and efficient reciprocal exchange of information. We believe that these agreements represent a step change in tax transparency, enabling us to clamp down further on tax evasion. We will be looking to promote these agreements as the new international standard, including through the various international fora, with the ultimate aim of agreeing a multilateral framework."*

On April 13th, Belgium, the Czech Republic, the Netherlands, Poland, and Romania also expressed interest in this approach and subsequently several other countries endorsed this approach with Mexico and Norway joining the initiative in early June. By January 2014, over 40 jurisdictions had joined this pilot group and committed to the early adoption of the standard developed by OECD. For a list of the countries, please see: http://www.oecd.org/tax/transparency/Joint%20Statement.pdf

5. EU Developments

Within the European Union member states exchange information automatically on interest income within the meaning of the Savings Directive. Only Luxembourg and Austria are still making use of the possibility to levy a withholding tax instead of exchanging information during a transitional period. Separately, Luxembourg took the decision on April 10, 2013, to apply from January 1, 2015 automatic exchange of information on savings income (on the basis of the European Savings Tax Directive currently in force). Austria is still considering the issue but has indicated a willingness to negotiate in light of Luxembourg's decision.

There is also an amending proposal to the Savings Directive which however has not yet been adopted. Separately the revised Directive on Administrative Cooperation in the Field of Taxation introduces automatic exchange of information from 1 January 2015 on five categories of income and capital based on available information (income from employment, director's fees, life insurance products not covered by other Directives, pensions, ownership of and income from immovable property).

On June 12 the European Commission adopted a legislative proposal to extend the scope of automatic exchange of information in Directive 2011/16 on administrative cooperation to new items: dividends, capital gains, account balances, *inter alia*.

6. Q&A's on the standard and on automatic exchange more generally

– What are the main differences between the standard and FATCA?

The standard consists of a fully reciprocal automatic exchange system from which US specificities have been removed. For instance, it is based on residence and unlike FATCA does not refer to citizenship. Terms, concepts and approaches have been standardised allowing countries to use the system without having to negotiate individual Annexes. Unlike FATCA the standard does not provide for thresholds for pre-existing individual accounts, but it includes a residence address test building on the EU savings directive. It also provides for a simplified indicia search for such accounts. Finally, it has special rules dealing with certain investment entities where they are based in jurisdictions that do not participate in the automatic exchange under the standard.

– When will the standard be introduced at domestic level?

The standard itself does not contain any particular timelines. However, implementation at co-ordinated timelines would bring benefits for both business and governments. Over 40 countries have already committed to early adoption of the standard.

- Will there be a review process?

Yes. The G20 has mandated the Global Forum to establish a mechanism to monitor and review the implementation of the new global standard on automatic exchange of information.

– When will the complete package be ready?

We expect the complete package, consisting of the standard with commentary and technical solutions, to be ready in time for the September G20 Finance Ministers meeting. Of course the standard is a "living system" and further work and clarifications may be needed as countries get deeper into implementation issues. Also the system may have impacts on taxpayer behaviour and hence may need to evolve over time. The OECD, working with G20 countries, will seek to ensure that the standard remains a single standard also over time and that as much as possible it continues to be interpreted and operated consistently across different jurisdictions.

– What does this mean for developing countries?

The G20 has given a mandate to the Global Forum on Exchange of information and transparency to help developing countries identify needs for technical assistance and capacity building, working together with the OECD Task Force on Tax and Development, the World Bank Group and others. Related to this mandate is the call by the G20 to its Development Working Group to deliver a roadmap by September 2014 showing how developing countries can overcome obstacles to participation in the automatic exchange standard and to assist them in meeting the standard.

– How do we ensure the confidentiality of the information exchanged?

The standard contains specific rules on the confidentiality of the information exchanged and the underlying international legal exchange instruments already contain safeguards in this regard. More detail will be contained in the Commentary that is being developed. Where these standards are not met (whether in law or in practice) countries will not exchange information automatically.

– What work has the OECD done previously in the area of automatic exchange?

Last year the OECD delivered a report, *A Step Change in Tax Transparency*, to the G8 Presidency on how jurisdictions could build on the recent developments to implement automatic exchange in a multilateral context. In 2012 the OECD presented a report to the G20 Leaders summit *Automatic Exchange of Information: What it is, How it works, Benefits, What remains to be done*. Also in 2012, the OECD released a Guide on Confidentiality, *Keeping it Safe*, which sets out best practices related to confidentiality and provides practical guidance on how to meet an adequate level of protection for all forms of information exchanged.

Highlights of earlier work include: a 1997 OECD Recommendation on the use of Tax Identification Numbers in an international context, a 2001 OECD Recommendation for the use of a Model Memorandum of Understanding for automatic exchange, and over the past 20 years the development and update of standard formats for automatic exchange taking advantage of latest technological developments (Standard Magnetic Formats and XML based Standard Transmission Formats), which have also formed the basis for the EU's work on automatic exchange.

– *What is automatic exchange of information for tax purposes?*

Automatic exchange of information involves the systematic and periodic transmission of "bulk" taxpayer information by the source country of income to the country of residence of the taxpayer concerning various categories of income or asset information (e.g. dividends, interest, royalties, salaries, pensions, etc.). The information which is exchange automatically is normally collected in the source country on a routine basis, generally through reporting of the payments by the payer (financial institution, employer, etc.).

For more background information on automatic exchange of information in general, see: *Automatic Exchange of Information: What it is, How it works, Benefits, What remains to be done*

– *What are the main benefits of automatic exchange?*

- Automatic exchange of information can provide timely information on non compliance where tax has been evaded either on an investment return or the underlying capital sum.

- It can help detect cases of non-compliance even where tax administrations have had no previous indications of non-compliance.

- It has deterrent effects, increasing voluntary compliance and encouraging taxpayers to report all relevant information.

- Automatic exchange may help educate taxpayers in their reporting obligations, increase tax revenues and thus lead to fairness – ensuring that all taxpayers pay their fair share of tax in the right place at the right time.

- In a small number of cases countries have been able to integrate the information received automatically with their own systems such that income tax returns can be prefilled.

ANNEX: G20 and G8 Support for automatic exchange of information

Support from the G20

G20 Leaders' Declaration,
St Petersburg, Russia, 6 September, 2013

> *"We commend the progress recently achieved in the area of tax transparency and we fully endorse the OECD proposal for a truly global model for multilateral and bilateral automatic exchange of information. Calling on all other jurisdictions to join us by the earliest possible date, we are committed to automatic exchange of information as the new global standard, which must ensure confidentiality and the proper use of information exchanged, and we fully support the OECD work with G20 countries aimed at presenting such a new single global standard for automatic exchange of information by February 2014 and to finalizing technical modalities of effective automatic exchange by mid-2014. In parallel, we expect to begin to exchange information automatically on tax matters among G20 members by the end of 2015. We call on all countries to join the Multilateral Convention on Mutual Administrative Assistance in Tax Matters without further delay. We look forward to the practical and full implementation of the new standard on a global scale. We encourage the Global Forum to complete the allocation of comprehensive country ratings regarding the effective implementation of information exchange upon request and ensure that the implementation of the standards are monitored on a continuous basis. We urge all jurisdictions to address the Global Forum recommendations in particular those 14 that have not yet moved to Phase 2. We invite the Global Forum to draw on the work of the FATF with respect to beneficial ownership. We also ask the Global Forum to establish a mechanism to monitor and review the implementation of the new global standard on automatic exchange of information."*

G20 Finance Ministers and Central Bank Governors' Declaration,
Moscow, Russia, 19-20 July, 2013

> *"We commend the progress recently achieved in the area of tax transparency and we fully endorse the OECD proposal for a truly global model for multilateral and bilateral automatic exchange of information. We are committed to automatic exchange of information as the new, global standard and we fully support the OECD work with G20 countries aimed at setting such a new single global standard for automatic exchange of information. We ask the OECD to prepare a progress report by our next meeting, including a timeline for completing this work in 2014. We call on all jurisdictions to commit to implement this standard. We are committed to making automatic exchange of information attainable by all countries, including low-income countries, and will seek to provide capacity building support for them. We call on all countries to join the Multilateral Convention on Mutual Administrative Assistance in Tax Matters without further delay. We look forward to the practical and full implementation of the new standard on a global scale. All countries must benefit from the new transparent environment and we call on the Global Forum on Exchange of Information for Tax Purposes to work with the OECD task force on tax and development, the World Bank Group and others to help developing countries identify their need for technical assistance and capacity building. We are looking forward to the Global Forum establishing a mechanism to monitor and review the implementation of the global standard on automatic exchange of information. We urge all jurisdictions to address the Global Forum's recommendations and especially the fourteen where the legal framework fails to comply with the standard without further delay. We ask the Global Forum to draw on the*

work of the FATF in connection with beneficial ownership, and also ask the Global Forum to achieve the allocation of overall ratings regarding the effective implementation of information exchange upon request at its November meeting and report to us at our first meeting in 2014."

G20 Finance Ministers and Central Bank Governors' Declaration,
Washington D.C., United States, 19 April, 2013

"More needs to be done to address the issues of international tax avoidance and evasion, in particular through tax havens, as well as non-cooperative jurisdictions. […] In view of the next G20 Summit, we also strongly encourage all jurisdictions to sign or express interest in signing the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and call on the OECD to report on progress. We welcome progress made towards automatic exchange of information which is expected to be the standard and urge all jurisdictions to move towards exchanging information automatically with their treaty partners, as appropriate. We look forward to the OECD working with G20 countries to report back on the progress in developing of a new multilateral standard on automatic exchange of information, taking into account country-specific characteristics. The Global Forum will be in charge of monitoring."

G20 Finance Ministers and Central Bank Governors' Declaration
Moscow, Russia, 15-16 February, 2013

"We strongly encourage all jurisdictions to sign the Multilateral Convention on Mutual Administrative Assistance. […] We reiterate our commitment to extending the practice of automatic exchange of information, as appropriate, and commend the progress made recently in this area. We support the OECD analysis for multilateral implementation in that domain."

G20 Finance Ministers and Central Bank Governors' Declaration
Mexico City, Mexico, 4-5 November 2012

"We will continue to implement practices of automatic exchange of information and call on the OECD to analyze the safeguards, mechanisms and milestones necessary to increase its use and efficient implementation in a multilateral context."

G20 Leaders' Declaration
Los Cabos, Mexico 18-19 June, 2012

"In the tax area, we reiterate our commitment to strengthen transparency and comprehensive exchange of information. […] We welcome the OECD report on the practice of automatic information exchange, where we will continue to lead by example in implementing this practice. We call on countries to join this growing practice as appropriate and strongly encourage all jurisdictions to sign the Multilateral Convention on Mutual Administrative Assistance."

G20 Finance Ministers and Central Bank Governors' Declaration
Mexico City, Mexico 25-26 February, 2012

"We call upon all countries to join the Global Forum on transparency and to sign on the Multilateral Convention on Mutual Assistance. We call for an interim report and update by the OECD on necessary steps to improve comprehensive information exchange, including automatic exchange of information and, together with the FATF, on steps taken to prevent the

misuse of corporate vehicles and improve interagency cooperation in the fight against illicit activities."

Support from the G8

G8 Final Communiqué
Lough Erne, 18 June 2013

"We commit to establish the automatic exchange of information between tax authorities as the new global standard, and will work with the Organisation for Economic Cooperation and Development (OECD) to develop rapidly a multilateral model which will make it easier for governments to find and punish tax evaders.