

# Improving Access to Bank Information for Tax Purposes

THE 2007 PROGRESS REPORT





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# Improving Access to Bank Information for Tax Purposes: The 2007 Progress Report

## I. Introduction

1. In April 2000, the Committee on Fiscal Affairs (CFA) published a report, *Improving Access to Bank Information for Tax Purposes* (hereafter the 2000 Bank Report). The CFA agreed to monitor closely progress made in the implementation of the 2000 Bank Report and undertook a comprehensive review in 2003 of the steps taken by member countries to implement the measures set out in that report. The results of that review were published in *Improving Access to Bank Information: the 2003 Progress Report* on 1 July 2003. As part of the ongoing review of developments in this area, the CFA decided to undertake a second comprehensive review to assess progress made since 2003 and to identify where progress is still needed. The Committee also decided to include in its review the situation in the countries that have Observer status in the Committee: Argentina, Chile, China, India, the Russian Federation and South Africa. The present report therefore covers developments concerning access to bank information for tax purposes in OECD countries as well as such access in Argentina, Chile, China, India, the Russian Federation and South Africa.

2. The focus of the 2000 Bank Report was on improving exchange of information pursuant to a specific request for information related to a particular taxpayer. One of the important achievements of the 2000 Bank Report was to set out an ideal standard of access to bank information, namely, that “*all member countries should permit access to bank information, directly or indirectly, for all tax purposes so that tax authorities can fully discharge their revenue raising responsibilities and engage in effective exchange of information with their treaty partners*”.

3. The 2000 Bank Report also identified a number of measures that countries are encouraged to take to move towards that standard. They can be summarised as follows:

- Prohibition of anonymous accounts.

- Require financial institutions to identify their usual or occasional customers, as well as those persons to whose benefit a bank account is opened or a transaction is carried out.
- Review of any domestic tax interest requirement that prevents the tax authorities from obtaining information for a tax treaty partner, in the context of a specific request, with a view to ensuring that such information can be exchanged by making changes, if necessary, to their laws, regulations and administrative practices.
- Re-examine policies and practices that do not permit tax authorities to have access to bank information, directly or indirectly, for purposes of exchanging such information in tax cases involving intentional conduct which is subject to criminal tax prosecution, with a view to making changes, if necessary, to their laws, regulations and administrative practices.
- Take appropriate initiatives to achieve access for the verification of tax liabilities and other tax administration purposes, with a view to making changes, if necessary, to their laws, regulations and administrative practices.
- Improve the administrative feasibility and the capability of information systems.
- Examine how to develop a voluntary compliance strategy to enable non-compliant taxpayers to declare income and wealth that they have in the past concealed by means of taking advantage of strict bank secrecy laws in some jurisdictions.
- Encourage non-OECD economies to improve access to bank information for all tax purposes.
- Member countries with dependent or associated territories or which have special responsibilities or taxation prerogatives in respect of other territories were encouraged to promote, within the framework of their constitutional arrangements, the implementation of the above measures in those dependent, associated or other territories in the same time frame.

4. The 2003 Progress Report highlighted the following positive developments: anonymous accounts could no longer be opened in any OECD country, customer identification requirements were established in all OECD countries, and there was no longer any OECD country that required a domestic tax interest to obtain information for a tax treaty partner. It also identified two key areas where little progress had occurred. First, little



progress was made in access to bank information in criminal tax matters in countries that apply the double incrimination standard and that have a narrow definition of tax fraud. The CFA attempted to overcome this issue by developing a common understanding of tax fraud. However, Luxembourg and Switzerland could not agree to it. Second, few developments in the area of access to bank information for civil tax purposes were reported by those countries that have no access to such information in civil tax matters.

5. This report highlights the following developments since 2003:

- The process of incorporating the new Article 26 language in their tax treaties is now well underway in OECD countries and some non-OECD economies.
- Further progress in access to bank information for criminal tax purposes has been achieved by Switzerland, which has signed a number of protocols to its bilateral tax conventions in order to allow access to information including bank information, in cases of tax fraud or in case of tax fraud or the like (as defined under the laws of the requested State).
- Further progress in access to bank information for civil tax purposes was achieved in Belgium, Italy and Portugal. Belgium in particular will exchange bank information on request for both civil and criminal tax matters once its new tax treaty and protocol with the United States enter into force.
- Some countries have been successful in developing voluntary compliance strategies to encourage taxpayers having unreported funds concealed offshore to come forward wilfully and disclose the unreported income.
- A number of OECD countries have signed TIEAS and many are in the process of negotiation of TIEAs with Non-OECD Participating Partners.<sup>1</sup>

6. This report also highlights the situation in Observer countries: Argentina, Chile, China, India, the Russian Federation and South Africa do not allow the opening of anonymous accounts and have “Know Your Customer” rules. They can exchange bank information for criminal tax purposes and civil tax purposes, with some limitations in Chile and the Russian Federation.

1. OECD and non-OECD economies (collectively referred to as Participating Partners) work together under the auspices of the OECD’s Global Forum on Taxation towards a level playing field in the areas of transparency and effective exchange of information in tax matters.

## II. The New International Tax Environment

7. Since the 2000 Bank Report was issued, the trend towards increased integration of financial markets, advances in communication technologies and the closer integration of countries belonging to regional groupings has accelerated and opened up new avenues for dishonest taxpayers to illegitimately avoid complying with their tax obligations. This in turn has contributed to a greater awareness on the part of governments of the need to reinforce international cooperation in the tax area. These developments have also led to a wider acceptance of the need for better transparency and more effective exchange of information, including better access to bank information for tax authorities. The international community has responded to these challenges by taking a number of actions as set out below.

### A. *The 2002 Model Agreement on Exchange of Information in Tax Matters (the 2002 Model Agreement)*

8. The Model Agreement developed in 2002 is now being used to establish effective exchange of information in civil and criminal tax matters. It covers exchange of information on request and expressly addresses the issues of domestic tax interest and exchange of bank information. It requires that information be provided even if the country that receives the request may not need the information for its own tax purposes (i.e. no domestic tax interest). It also requires the contracting parties to agree that their competent authorities must be able to obtain and provide information held by banks, other financial institutions, and persons acting in an agency or fiduciary capacity, and to obtain and provide information regarding the ownership of persons. A number of OECD countries and non-OECD Participating Partners have already entered into information exchange agreements on the basis of the 2002 Model Agreement and others are in the course of negotiating such arrangements on the basis of the principles found in the Model Agreement,<sup>2</sup> which has been endorsed by other fora such as the European Union and the G20.<sup>3</sup> OECD countries are also working towards improving access to information held in their dependencies.

2. See Table A1 of the Report *Tax Co-operation: Towards a Level Playing Field – 2006 Assessment by the Global Forum on Taxation*.

3. The G20 includes the following countries: Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, the Russian Federation, Saudi Arabia, South Africa, South Korea, Turkey, the United Kingdom and the United States of America. Another member is the European Union, represented by the Council presidency and President of the European Central Bank.

## **B. The new Article 26 on Exchange of Information of the OECD Model Tax Convention on Income and Capital**

9. The Committee on Fiscal Affairs undertook a comprehensive review of Article 26 on Exchange of Information of the OECD Model Tax Convention on Income and on Capital and adopted in July 2004 a revised Article 26, which is included in the 2005 update of the OECD Model Tax Convention. The revision brings Article 26 in line with current country practices and incorporates the standard set out in the 2000 Bank Report.

10. A fourth paragraph has been added to Article 26 of the OECD Model Tax Convention to address explicitly in the text of the Article the inapplicability of domestic tax interest requirements. A domestic tax interest requirement refers to laws or practices that would prohibit the competent authority of a Contracting State from exchanging information requested by the other Contracting State unless the requested Contracting State had an interest in such information for its own tax purposes. The new paragraph clarifies that Contracting States should obtain and exchange information irrespective of whether they also need the information for their own tax purposes.

11. A fifth paragraph has been added to Article 26 of the OECD Model Tax Convention dealing with ownership information and information held by banks, financial institutions, nominees, agents and fiduciaries. This paragraph provides that a Contracting State cannot decline to provide information solely because it is held by such a person or institution or solely because it is ownership information. This is consistent with the current practice of the vast majority of OECD countries and reflects the standard also contained in the 2002 Model Agreement. The most important consequence of this change is that it is expressly stated in Article 26 that domestic bank secrecy rules by themselves can not be used as a basis for declining to provide information.

12. Apart from the four countries<sup>4</sup> that entered reservations on Paragraph 5 of the new Article 26, OECD countries are requiring the inclusion of the terms of the new Article 26 in their treaty and TIEA negotiations, as can be seen from Table 1,<sup>5</sup> below. In some cases, treaty

4. Austria, Belgium, Luxembourg and Switzerland. Note, however, that Belgium has included the terms of the new Article 26 in Article 25 of the treaty and protocol signed with the United States. These provisions are reproduced in Annex 1.

5. Table 1, however, only includes conventions and protocols that have been signed and made public but not those which are under negotiation or initialled. Further, it does not contain information on TIEAs or other administrative agreements implementing existing conventions which have been signed, initialled or are under negotiation.

Table 1.<sup>6</sup>  
At 4 July 2007

New tax convention or protocol (P) including Paragraph 5 of Article 26 or similar language concluded between:		Date of signature	Entry into force
Australia	Finland	20 November 2006	
Australia	France	21 June 2006	
Australia	New Zealand	15 November 2006 (P)	22 January 2007
Australia	Norway	8 August 2006	
Barbados	USA	14 July 2004 (P)	20 December 2004
Belgium	USA	27 November 2006 (and P) <sup>7</sup>	
Botswana	United Kingdom	9 September 2005	4 September 2006
Canada	Finland	20 July 2006	17 January 2007
Canada	Korea	5 September 2006	18 December 2006
Canada	Mexico	12 September 2006	
China	Mauritius	5 September 2006 (P)	
Croatia	Spain	19 May 2005	1 January 2007
Czech Republic	Norway	19 October 2004	1 January 2006
Czech Republic	Russian Federation	27 April 2007 (P)	
Denmark	Taiwan	30 August 2005	1 January 2006
Finland	USA	31 May 2006 (P)	
Germany	USA	1 June 2006 (P)	
Japan	France	11 January 2007 (P)	
Japan	United Kingdom	2 February 2006	12 October 2006
Japan	USA	6 November 2003	30 March 2004
Malta	Spain	8 November 2005 <sup>8</sup>	1 January 2007
Mexico	New Zealand	16 November 2006	16 June 2007
Netherlands	UAE	8 May 2007	
New Zealand	Poland	21 April 2005	18 August 2006
New Zealand	United Kingdom	4 November 2003 (P)	23 July 2004
Poland	Sweden	19 November 2004	1 January 2006
Poland	United Kingdom	20 July 2006	27 December 2006
Spain	UAE	5 March 2006	2 April 2007
United Kingdom	Faeroe Islands	20 June 2007	
United Kingdom	Republic of Macedonia	8 November 2006	
USA	Bangladesh	26 September 2004	
USA	Bulgaria	23 February 2007	

6. In addition, an exchange of notes between the United Kingdom and the United States signed at the same time as the current UK US Double Tax Convention (which was signed on 24 July 2001 and entered into force 31 March 2003) contains text with very similar language to Paragraph 5.

7. The protocol provides that in reference to Article 25 (Exchange of Information and Administrative Assistance) banking records will be exchanged only upon request. If the request does not identify both a specific taxpayer and a specific bank or financial institution, the competent authority of the requested State may decline to obtain any information that it does not already possess.

8. Paragraph 5 reads: "In no case shall the provisions of Paragraph 3, in relation to cases of tax fraud, be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person." According to the Protocol, the term "tax fraud" would be interpreted along the lines of the common understanding of the term stated in Part V letter A of the 2003 OECD Progress Report: "Improving Access to Bank Information for Tax Purposes."

negotiations are stalled due to the unwillingness of some treaty partners to agree to include the terms of Article 26. The intention to incorporate the standards found in the new Article 26 may take different forms. For example, the new US Model Tax Convention released on 15 November 2006 includes in its article on exchange of information, Paragraphs 4 and 5 of the new Article 26 of the OECD Model Tax Convention. Other countries that do not publish their model treaties have manifested their intention to adopt the new Article 26 text through the revision of existing treaties, signing of *ad hoc* protocols, TIEAs, administrative agreements, etc. Some countries are also of the view that it is unnecessary to revise existing conventions to include new language on domestic tax interest, bank secrecy, etc., if their existing conventions operate effectively to permit exchange of bank information, ownership information, etc., and neither party to the treaty requires a domestic tax interest. A number of EU countries have also entered into agreements on exchange of information based on their bilateral conventions and they specifically state in those agreements that they will refer to the new Article 26 for the implementation of their bilateral exchanges. As for Observer countries, China has already incorporated the new Article 26 in its treaty with Mauritius and India informed the Committee on Fiscal Affairs in 2006 that it has taken up the new Article 26 as a basis of some of its tax treaty negotiations.

### **C. Political support of OECD Standards of Transparency and Effective Exchange of Information**

13. On 20 November 2004, at their Berlin meeting, the G20 Finance Ministers and Central Bank Governors stated that they are committed to the high standards of transparency and exchange of information for tax purposes developed by the OECD Committee on Fiscal Affairs and in particular called on those financial centres and other jurisdictions within and outside the OECD which have not yet adopted these standards to follow our lead and take the necessary steps, in particular in allowing access to bank and ownership entity information.<sup>9</sup> These principles were reaffirmed in the G20 2005 *Communiqué* in China and again in the G20 2006 *Communiqué* in Australia where Finance Ministers and Central Bank Governors called on those countries and territories that have not yet implemented high standards of transparency and exchange of information to do so. Similarly, G8 Finance ministers called for full

9. The full text of the 2004 G20 Statement is reproduced in Annex 2.

implementation of effective exchange of information for tax purposes at their Pre-Summit meeting in St. Petersburg.<sup>10</sup>

#### **D. The EU Savings Directive**

14. Under the EU Savings Directive (2003/48/EC), which came into force on 1 July 2005, each EU member state provides information automatically to other member states on interest paid from that member state to individuals who are resident for tax purposes in those other member states.<sup>11</sup> According to Article 17(2) of the Savings Directive, the provisions of the Directive are applicable to EU Member states only to the extent that Switzerland, Liechtenstein, San Marino, Monaco and Andorra implement equivalent measures based on bilateral agreements with the European Community.

15. The European Community (EC) has entered into agreements providing for measures equivalent to those laid down in Council Directive on the taxation of savings income, with Andorra, Liechtenstein, Monaco, San Marino and Switzerland. The agreements provide that the five countries concerned will withhold tax on interest payments made by paying agents established in those countries to beneficial owners who are individuals resident in EU member states. The revenue received from the withholding tax will be shared between the withholding country and the country of the EU resident in the ratio of 25:75. The rate of withholding tax is 15% during the first three years of the agreement starting on 1 July 2005, 20% for the next three years and 35% thereafter. The agreements include a procedure which allows the beneficial owner of interest to avoid the withholding tax by authorising the paying agent to report the interest payments to the competent authority of the country in which the paying agent is established for communication to the competent authority of the

10. "Following on earlier G8 Summit declarations in support of the OECD's high standards of transparency and effective exchange of information in all tax matters, we welcome the report by the OECD's Global Forum on Taxation on progress made world-wide towards meeting these standards. We urge their full implementation everywhere they do not fully apply and look forward to the conclusion of tax information exchange agreements between OECD countries and financial centers."

11. For a transitional period, Belgium, Luxembourg and Austria are allowed to apply a withholding tax instead of providing information, at a rate of 15% for the first three years, 20% for the subsequent three years and 35% thereafter. Also, according to a statement by Minister Reynders, Belgium would switch to exchange of information before the withholding rate reaches 35 per cent under the EU Savings Directive.

country of residence of the beneficial owner. The agreements further provide for exchange of information on request on conduct constituting tax fraud or the like, under the laws of the requested state in respect of income covered by the agreement.

16. The then 25 EU member states have entered into Agreements on the Taxation of Savings Income (Savings Tax Agreements) with 10 associated and dependent territories: Anguilla, Aruba, British Virgin Islands, Cayman Islands, Guernsey, Isle of Man, Jersey, Montserrat, Netherlands Antilles and the Turks and Caicos Islands. The agreements with Guernsey, Jersey, British Virgin Islands, Isle of Man, Turks and Caicos Islands and Netherlands Antilles provide for withholding tax and revenue sharing in respect of interest payments for a transitional period on the same terms as the agreements between the EC and the European third states referred to above. The agreements with Anguilla, Aruba, the Cayman Islands and Montserrat provide for automatic exchange of information in respect of interest payments made by paying agents established in those countries to beneficial owners who are individuals resident in EU member states from 1 July 2005. In general, the agreements have a two way effect and interest payments from paying agents established in EU member states to persons resident in the associated or dependent territories are subject to automatic information exchange in most cases.

**E. Assessment of access to bank information in the OECD Report, Tax Co-operation: Towards a Level Playing Field – 2006 Assessment by the Global Forum on Taxation**

17. The OECD Global Forum on Taxation,<sup>12</sup> which includes both OECD countries and non-OECD economies, published a factual assessment of 82 OECD and non-OECD economies entitled, *Tax Co-operation: Towards a Level Playing Field – 2006 Assessment by the Global Forum on Taxation* (hereafter “Global Forum Report”). That report shows that improvements have been made to enhance transparency and exchange of information (and in particular bank information) for tax purposes.

12. The OECD carries out its dialogue on tax issues with non-OECD economies under the multilateral framework known as the “Global Forum on Taxation”. The composition of the Global Forum generally varies depending on the topics covered by the meeting. The Global Forum referred to in this report includes the countries participating in efforts to work towards a level playing field in the areas of transparency and exchange of information in tax matters (collectively referred to as Participating Partners). A different group of countries is involved in the Global Forum’s work on tax treaties and transfer pricing.

18. The Global Forum Report notes that in the past few years, many of the economies reviewed have enhanced transparency by introducing rules on customer due diligence, information gathering powers and the immobilisation of bearer shares. Most have entered into double taxation conventions and/or tax information exchange agreements based on the 2002 Model Agreement, and many are engaged in negotiations of such agreements. No OECD country and only a few non-OECD economies (Cyprus; Hong Kong, China; Malaysia; Philippines and Singapore) still make domestic tax interests a condition for responding to a treaty partner's request for information on a specific taxpayer. A few economies still limit exchange of information to counter criminal tax matters and a number continue to impose strict limits on access to bank information in civil tax matters.

### **III. Improvements Since 2003 in OECD Countries and the Situation in Observer Countries with Respect to Access to Bank Information for Tax Purposes**

#### **A. Prohibition of anonymous accounts**

19. By 2003, there was no longer any OECD country where anonymous accounts could be opened as the three OECD countries which allowed these accounts (Austria, Hungary and the Czech Republic) had made the necessary legislative changes. None of the six Observer countries allows the opening of anonymous bank accounts. As of 2006, China no longer allows the opening of anonymous bank accounts on the basis of administrative rules but there is no specific legislation prohibiting the opening of such accounts. The Russian Federation does not permit the opening of anonymous accounts. Although it is possible to open numbered accounts in the Russian Federation, the identity of the holder of the account is recorded by the Russian bank.

#### **B. Establishment of customer identification requirements**

20. Paragraph 21(a) of the 2000 Bank Report indicates that the Committee will rely on the FATF for ensuring the implementation of adequate customer identification requirements. In 2002, the FATF launched a review of its Forty Recommendations and published a Consultation Paper considering ways of improving the "Know Your Customer" rules by clarifying the obligations that apply in this area (see Paragraphs 29-33 of the Consultation Paper). The FATF published its revised Recommendations in June 2003. At that time there were "Know Your



Customer” (KYC) rules in Argentina, Chile, India, the Russian Federation and South Africa. China has recently enacted anti-money laundering legislation containing basic customer identification provisions.

### **Argentina**

21. According to the Law 25.246 of 5 May 2000, financial intermediaries are required to identify their customers on the basis of reliable documents. The reporting requirements apply *inter alia* to financial entities and private pension funds, stock brokers, companies managing investment funds, agents intervening in the purchase, rental or loan of securities, registered intermediaries in the markets of futures and options, insurance companies and brokers and public notaries.

22. When clients act on behalf of a third party, all the necessary measures will need to be taken to identify the person’s identity or people for whom they act (Article 21). This information must be filed according to the rules set by the Financial Information Unit, an agency under the Ministry of Justice and Human Rights, which leads Argentina’s anti-money laundering efforts. The tax, banking and professional secrecy rules do not apply. Failure to provide the required information is subject to fines.

### **Chile**

23. In Chile, financial institutions and stock brokers have to obtain, maintain and evaluate documentation confirming the identity of their account holders and clients. Current account holders must register a domicile within the territory of Chile and are not allowed, under any circumstance, to register a mail box as their domicile. Failure to obtain, maintain and evaluate documentation required by law is subject to penalties. See Article 69 General Banking Act (DFL 3/1997), Current Account and Cheque Law (DFL 707/1982), Articles 32, 34 and 179 Securities Market Law (Law 18.045), Chapter 2-2 and 18-5 of Banks and Financial Institutions Regulations, General Rules No. 12/82 and No. 83/99 Chilean Securities and Insurance Supervisor, Article 5 Law 19.913 (Financial Analysis Unit), Article 85 Tax Code (DL 830) and Article 101 Income Tax Law (DL 824).

### **China**

24. The People’s Bank of China (PBOC) launched a national credit-information system in early 2005. The system officially began operation in January 2006. Although still very limited, this system allows banks to have

access to information on individuals as well as on corporate entities. PBOC rules obligate financial institutions to perform customer identification and due diligence, and record keeping. However, there is currently no legislation, only administrative rules, requiring customer identification and due diligence and record keeping. On 31 October 2006, China passed anti-money laundering legislation containing basic customer identification provisions which came into effect on 1 January 2007. New administrative rules setting out more detailed requirements are expected to be issued in 2007. In the meantime, the existing regulations remain in force.

### **India**

25. Every banking company, financial institution and intermediary is obliged under Section 12(c) of the Prevention of Money Laundering Act, 2002, to verify and maintain the records of the identity of all its clients, in such manner as may be prescribed. The Prevention of Money-Laundering (Maintenance of Records of the Nature and Value of Transactions, the Procedure and Manner of Maintaining and Time for Furnishing Information and Verification and Maintenance of Records of the Identity of the Clients of the Banking Companies, Financial Institutions and Intermediaries) Rules, 2005 includes more detailed know-your-customer rules.

### **The Russian Federation**

26. According to a Financial Action Task Force (FATF) report of April 2003, "Know Your Customer" regulations in the Russian Federation were found inadequate and amendments to the banking laws were made to bring them in line with the revised FATF Forty Recommendations in spring 2004. The Federal law No. 115-F3 "Combating the Laundering of Proceeds from Crime and the Financing of Terrorism" was changed in 2004. The new Article 7.1 requires that lawyers, notaries and organisations providing legal and accounting services must undertake the following compliance steps: i) identification of the client; ii) organising of internal controls; and iii) recording and safekeeping of the documentation. These requirements apply if they prepare or fulfil on behalf, or at the request, of a client the following transactions: i) transactions with immovable property; ii) management of cash funds, securities or other property of the client; iii) management of bank accounts or securities accounts; iv) raising funds to create an organisation, to maintain its activity or to manage it; and v) creation of

organisations, maintaining their activity or management thereof, as well as the sale and purchase of organisations.

### **South Africa**

27. According to The Financial Intelligence Centre Act of 2001, banks and accountable institutions are, from 30 June 2003, obliged to verify the identity and residence of new clients before proceeding with transactions. The deadline was extended to 31 December 2004. Under the 2001 Financial Intelligence Centre Act, banks and accountable institutions are also obliged to provide such data for their existing clients. This law applies to banks and also attorneys, estate agents, financial instrument traders, management companies, persons who carry on the business of dealing in foreign exchange and persons who carry on the business of rendering investment advice or investment brokering services, including public accountants, who carry on such a business. Under Section 26 of the Act, an authorised representative of the Financial Intelligence Centre has access to any records kept. In January 2005, banks in South Africa began freezing the accounts of those customers designated as “high risk” who did not identify themselves by the 31 December 2004 deadline imposed by the Financial Intelligence Centre Act.

## **C. Domestic tax interest requirement**

### **1. Further developments since 2003 concerning the removal of the domestic tax interest requirement in OECD countries**

28. The 2000 Bank Report encouraged countries to make any necessary changes to address the domestic tax interest requirement by April 2003. The 2000 Bank Report identified Ireland, Japan, Greece, Luxembourg and the United Kingdom as requiring a domestic tax interest. The 2003 Progress Report highlighted legislative changes in Ireland and Japan that eliminated the domestic tax interest requirement and described developments in Greece, Luxembourg and the United Kingdom to remove the requirement. In 2003, the United Kingdom changed its treaty policy so as to not require a domestic tax interest where there is an express provision to that effect in the relevant tax convention or Tax Information Exchange Agreement. In addition, the United Kingdom has been providing information to EU member states without requiring a domestic tax interest under its domestic laws implementing the EC Directive on Mutual Assistance. In 2006, the United Kingdom changed its domestic legislation to remove the domestic tax interest requirement under

bilateral tax treaties that did not include an express provision to remove the domestic tax interest requirement. The change is effective from 19 July 2006. Of the 82 countries surveyed in the Global Forum Report, only five (Cyprus; Hong Kong, China; Malaysia; Philippines and Singapore) require a domestic tax interest to obtain information for exchange of information purposes in all tax matters.<sup>13</sup>

## **2. The situation in Observer countries with respect to the domestic tax interest requirement**

29. Argentina, Chile, China, India, the Russian Federation and South Africa have reported<sup>14</sup> that they do not require a domestic tax interest to provide information to their tax treaty partners.

### **D. Access to bank information for criminal tax purposes**

#### **1. Improvements in OECD countries since 2003 in access to bank information for criminal tax purposes**

30. Footnote 7 to Paragraph 21 of the 2000 Bank Report explains that some countries generally apply the principle of “double incrimination” to provide assistance in criminal investigations (including criminal tax investigations). This principle is generally not an impediment to exchange of information when the definitions of tax crimes are similar in the requesting and requested countries. When these definitions are different, it may be impossible in many cases to exchange information for criminal tax purposes. The 2000 Bank Report identified Luxembourg and Switzerland<sup>15</sup> as countries where a narrow definition of tax fraud combined with the application of the principle of “double incrimination” substantially restricts their ability to exchange information in cases that would constitute criminal tax cases in the vast majority of OECD countries. As of 2003, no change to the double incrimination standard or the definition of tax fraud was reported by either Luxembourg or Switzerland. Luxembourg will be thinking about reviewing its position on the common understanding of tax fraud set out in the 2003 Progress Report.

13. See Paragraph 160 of the Report *Tax Co-operation: Towards a Level Playing Field – 2006 Assessment by the Global Forum on Taxation*.

14. See Annex IV, Table B2, third column of the Report *Tax Co-operation: Towards a Level Playing Field – 2006 Assessment by the Global Forum on Taxation*.

15. Outside the OECD only Andorra, the Cook Islands and Samoa have reported that they apply the double incrimination principle for exchange of information (see Annex IV, Table A.5 of the Report *Tax Co-operation: Towards a Level Playing Field – 2006 Assessment by the Global Forum on Taxation*).

31. Switzerland applies both the principle of double incrimination and the principle of speciality. Under the principle of speciality, information obtained by way of judicial assistance can only be used for a criminal investigation or produced as evidence in criminal proceedings concerning an offence for which judicial assistance is authorised under Swiss law. The Federal Council, in recognition of the problem that the principle of speciality raises for foreign tax authorities, decided to pursue the approach offered by Footnote 7 to Paragraph 21 of the Report, *i.e.*, to look at bilateral globally balanced solutions in tax treaties that would allow the exchange in practice of bank information for the prevention of tax fraud and the like.

32. As stated in the 2003 Progress Report, Switzerland initiated negotiations with a number of member countries in 2001 to revise its double tax conventions. A Protocol to the Convention between Germany and Switzerland was signed on 12 March 2002 which includes a provision allowing access to information, including bank information, in cases of tax fraud which means fraudulent conduct, which is deemed by the laws of both states to be an offence against the tax laws, and is punishable by imprisonment. A Protocol to the Convention between Norway and Switzerland was signed on 12 April 2005 and produces the same result.<sup>16</sup>

33. Since 2005, the EU Savings Directive has had an impact on the extension of exchange of information by Switzerland in cases of tax fraud and the like. Under Article 10 of the Agreement between Switzerland and the European Community concerning the taxation of savings (the Agreement) signed in October 2004, Switzerland undertakes to provide administrative assistance on request to EU member states in cases of tax fraud or the like (as defined under the laws of the requested state) concerning interest payments falling within the scope of the Agreement. "The like" includes only offences with the same level of wrongfulness as is the case for tax fraud under the laws of the requested state.

16. Already on 23 January 2003, the Swiss and US competent authorities and US International Tax Counsel had reached a mutual agreement on the application of the provision concerning administrative assistance contained in the current Swiss-US double taxation convention. The Swiss-US double taxation convention provides that the states will exchange information necessary for the proper implementation of the provisions of the convention or to prevent tax fraud or the like in relation to the taxes which are the subject of the convention. The agreement contains a common understanding regarding conduct that constitutes "tax fraud or the like", as well as illustrative descriptions of situations in which fraudulent conduct is assumed.

34. The Agreement is accompanied by a Memorandum of Understanding (MoU) between Switzerland, the European Community and its member states. This MoU, *inter alia*, commits Switzerland and the EU member states to enter into bilateral negotiations with a view to including in their respective double taxation conventions provisions on exchange of information on request for cases falling within the concept of “tax fraud or the like” with respect to items of income not subject to the Agreement but covered by their respective conventions, and with a view to defining individual categories of cases falling under “the like” in accordance with the procedure of taxation applied by those countries.

35. At 4 July 2007, Switzerland has protocols to its bilateral conventions which have entered into force with Austria, Finland and Spain, and has signed protocols to its bilateral conventions with South Africa on 8 May 2007 and the United Kingdom on 26 June 2007 that provide for the exchange of information upon request in cases of tax fraud or in case of tax fraud or the like (for updates consult [www.estv.admin.ch/f/themen/dba.htm](http://www.estv.admin.ch/f/themen/dba.htm) or [www.estv.admin.ch/d/themen/dba.htm](http://www.estv.admin.ch/d/themen/dba.htm)). In addition, Switzerland has initialled revised provisions on the exchange of information with almost all those OECD member countries which had asked for an adaptation of the article.

36. The Swiss definition of tax fraud<sup>17</sup> “or the like” is, however, narrower than the common understanding of tax fraud agreed by 28 OECD countries in the 2003 Progress Report,<sup>18</sup> which reads as follows:

*“Tax fraud is understood to include, but is not limited to, the following intentional conduct:*

- *Failure to comply with legal record-keeping duties (including the preparation or use of false or incomplete records, the non-production of records, the destruction of records and the preparation and or use of forged documents).*

17. Switzerland does not distinguish between civil and criminal tax matters in the requesting country. Switzerland would provide information as long as the facts in the requesting country would constitute tax fraud under Swiss law. Using an incomplete balance sheet would constitute tax fraud and exchange of information would be possible in that case.

18. Argentina and Chile have indicated that they can adhere to the 2003 common understanding of tax fraud. Chile notes that “the organization of insolvency for the purpose of obstructing the collection of tax” is not a tax crime but can give rise to a crime under commercial law.

- Failure to comply with legal information reporting duties (including the failure to file an income tax return or any other official document upon which a tax liability is based).
- The inclusion of false or misleading information (including the omission of information) in an official document that leads to an incorrect reduction in an amount of tax payable.
- The arrangement of transactions or entities for the purpose of dishonestly reducing an amount of tax payable.
- The organisation of insolvency for the purpose of obstructing the collection of tax.
- The deliberate making of incorrect claims to repayments or other entitlements
- The deliberate failure to comply with tax obligations resulting or intended to result in an unlawful reduction of tax revenue.”

## **2. Other developments in OECD countries since 2003 concerning access to bank information for criminal tax purposes**

37. In Austria, bank information can be required from banks to respond to a foreign request for information only if a criminal proceeding concerning wilfully committed tax offences has been initiated in the applicant State. This corresponds to the domestic procedure concerning access to bank information by Austria’s tax authorities in criminal cases. According to a ruling of the Supreme Administrative Court issued on 26 July 2006, information can be required from a bank only if the act of initiation of criminal proceedings in the requesting country was formally notified to the foreign taxpayer and if the taxpayer was given the opportunity to appeal.<sup>19</sup> The Supreme Administrative Court decision to uphold the bank’s decision not to disclose the information was due to the lack of an appeal right by the German taxpayer where the criminal

19. On 26 July 2006, the Austrian Administrative Supreme Court upheld an Austrian bank’s decision to withhold information requested by Germany under the Convention on Mutual Assistance in Criminal Tax Matters between the two countries on the grounds that the German taxpayer was not formally notified of the initiation of criminal tax proceedings and therefore did not have the chance to appeal. Such formal notification is foreseen in the Austrian procedural law. Thus, the Austrian Administrative Supreme Court did not qualify the German proceedings as “comparable” to those in Austria and stated that to allow bank secrecy to be lifted without the chance for an appeal by the taxpayer would amount to a lack of legal protection.

proceedings are initiated by the tax office. If the request had been made by a German court, the Austrian Supreme Court decision would have been different. Consequently, in all cases where a criminal procedure is initiated by a court, the situation is unchanged and Austria can provide bank information. With respect to the case where the criminal proceedings are initiated by the tax office, Austria and Germany will need to find a bilateral solution.

### ***3. The situation in Observer countries with respect to access to bank information for criminal tax purposes***

38. All Observer countries can exchange bank information for criminal tax purposes and the principle of double incrimination is not applied in criminal tax matters. Chile reported that, according to the Public Prosecutor's Office's interpretation of Article 20 bis of the new Criminal Procedure Code, this provision would allow the exchange of bank information for criminal tax purposes even if the conduct does not constitute a crime under domestic legislation consistent with treaties on cooperation in criminal matters and principles of international law. Article 20 bis of the new Criminal Procedure Code refers to international requests of assistance in criminal matters and does not contemplate double incrimination as a requirement for such cooperation. Article 20 bis of the new Criminal Procedure Code has not yet been applied for purposes of exchanging bank information so there is no practical experience on this issue.

39. In the Russian Federation, banks can disclose information with the permission of the prosecutor's office in a criminal investigation (in a criminal tax investigation the information is disclosed to the Federal Tax Police, which is part of the Ministry of the Interior).

## ***E. Access to bank information for civil tax purposes***

### ***1. Improvements since 2003 in access to bank information for civil tax purposes***

40. The 2000 Bank Report indicates that the vast majority of OECD countries can obtain access to banking information for civil tax purposes. Nevertheless, several countries (Austria, Belgium, Greece, Luxembourg, Portugal and Switzerland) reported in 2000 that they had little or no access to such information for civil tax purposes (Appendix 1, answers to Questions 3.2 and 3.4 of the 2000 Bank Report). The 2003 Progress Report summarised the progress made on this issue in Greece, Poland, Portugal, and the United Kingdom since the publication of the 2000 Bank Report. At



that time no developments in the area of access to bank information for civil tax purposes were reported by Austria, Belgium, Luxembourg or Switzerland.

41. Since the 2003 review, further progress in access to bank information for civil tax purposes was achieved in Belgium, Italy and Portugal.

### **Belgium**

42. Article 25 Exchange of Information and Administrative Assistance of the new tax convention between Belgium and the United States, signed on 27 November 2006, includes Paragraph 5 of the new Article 26 and also states that in order to obtain bank information the tax administration of the requested Contracting State shall have the power to ask for the disclosure of information and to conduct investigations and hearings notwithstanding any contrary provisions in its domestic tax laws. The protocol to the convention provides that in reference to Article 25 banking records will be exchanged only upon request. If the request does not identify both a specific taxpayer and a specific bank or financial institution, the competent authority of the requested State may decline to obtain any information that it does not already possess. The law of approval of the Convention between Belgium and the United States provides that, notwithstanding Article 318 of the Belgian Income Tax Code, the Belgian tax administration is authorised to collect from banks, the information requested by the US competent authority on the basis of Article 25 Paragraph 5 of the Convention. Belgium is open to negotiate bilaterally exchange of bank information with other countries.

### **Italy**

43. In Italy, the 2005 Finance Act included some provisions concerning tax assessment to improve access to bank information for tax purposes (by the Revenue Agency and the Guardia di Finanza). Information may be requested not only from banks and post offices (as previously) but also from domestic and foreign financial intermediaries, collective investment undertakings, savings management companies and trusts. The type of information that can be requested has been expanded; it was previously only possible to ask for a copy of the accounts held by the taxpayer under assessment or copies of the related transactions. The tax authorities can now ask for information about any transaction between the taxpayer concerned and the bank or other financial intermediary (this includes also counter transactions, access to safe-deposit boxes and any other

financial services). These provisions have been complemented in 2006 by additional ones set forth in Decree Law No. 223/06.

### **Portugal**

44. Since 1 January 2005, access to bank information for tax purposes is possible without a judicial authorisation when there are reasonable grounds to believe that a tax crime has been committed or when there are concrete identified facts that a person provided false information to the tax authorities. Prior to 2005, access to bank information could be hindered in the context of a judicial appeal which could suspend access by the tax administration to bank information. The Portuguese general regime of tax offences describes the conduct that would constitute a tax crime under Portuguese law. It defines detailed types of tax crimes and customs tax crimes as is required by the rule of law, tax evasion, abuse of position, withholding of amounts for one's own use or otherwise in respect of tax collected, rendering of false statements on the amounts of tax collected.

### **2. The situation in Observer countries with respect to access to bank information for civil tax purposes**

45. Argentina, Chile, China, India, the Russian Federation and South Africa have laws enabling access to bank information for civil tax purposes, although in some of these countries there are limitations. The tax authorities in these countries are entitled to access bank information for civil domestic tax purposes and for the purposes of exchanging such information under tax treaties and under agreements for cooperation and exchange of information in the case of the Russian Federation.

46. In Argentina, the tax authorities have the ability to obtain bank information for exchange of information purposes in all tax matters. The tax administration is entitled to request financial information in all cases, provided that that information is used for the fulfilment of its functions and the confidentiality of the information is respected.

47. In Chile, all the information that is available to the tax authorities can be exchanged with a tax treaty partner for civil tax purposes. This includes the identity of current account holders and the amount of interest earned on bank deposits in previous years, which must be provided annually by banks to the tax authorities. Chile is unable to exchange information in civil tax matters on capital movements on bank accounts, including current account activity and balances.

48. In China, the tax administration may inquire into the deposit accounts that a taxpayer engaged in production or business operations or a withholding agent has opened with a bank or any other financial institutions. Further, in investigating a case involving a violation of tax laws, the tax authorities may investigate the savings deposits of an individual. Bank information can be exchanged for all tax purposes even though China has no interest in the information for its own tax purposes provided a treaty partner requesting the information states in the request that the information is needed for a tax collection or tax examination case or provided the new Article 26 of the OECD Model Tax Convention is included in its bilateral convention with China.

49. In India, the Russian Federation and South Africa, the tax administration, as a general rule, can obtain bank information for exchange of information purposes in all tax matters.

**F. Progress in taking measures to improve the administrative feasibility and the capability of information systems**

50. The OECD Council has recommended the use of the 1997 OECD Standard Magnetic Format for automatic exchange of information and it is widely used for automatic exchange of information, including bank information [C(1997)29/FINAL]. A new format, the Standard Transmission Format (STF) based on more advanced information technology was approved by the Committee on Fiscal Affairs in January 2005 and it is already being used by some countries. The EU Council has adopted standard formats for the implementation of the EU Savings Directive, FISC 39 and FISC 153 which are largely based on the OECD SMF and STF, thus ensuring consistency and better efficiency for the implementation of automatic exchange among EU member states and among OECD member countries.

51. The Chinese State Administration of Taxation (SAT) is in the process of establishing a bank information sharing system between SAT and the State Administration of Foreign Exchange. This system will enhance the ability of tax authorities to get access to bank information concerning the transfer of payments to foreign countries by domestic entities and individuals and provide such information to a treaty partner upon request or automatically provided the broader exchange of information provisions are introduced in the tax convention between China and the concerned tax treaty partner.

52. In order to speed up exchange of information on request or spontaneous exchange in appropriate cases, the Committee on Fiscal

Affairs also approved in January 2005 recommended procedures for secure electronic exchange (i.e. the transmission of communications of competent authorities in encrypted files attached to email messages).

**G. Voluntary compliance strategies introduced since 2003 to encourage taxpayers having unreported funds concealed offshore to come forward wilfully and disclose the unreported income**

53. Paragraph 23 of the 2000 Bank Report and the discussions in the Committee on Fiscal Affairs showed that, to assist OECD member countries in making progress to increase access to bank information, it would be helpful to develop voluntary compliance strategies to encourage taxpayers having unreported funds concealed offshore to come forward wilfully and disclose the unreported income.

54. The 2003 Progress Report presented the results of the Italian tax shield programme adopted in 2001, and the 2003 tax amnesty plan of Germany, which was part of the Law for Promoting Honesty in Tax Matters and aimed at reclaiming funds held abroad.

55. Furthermore, a survey was undertaken in 2003 of countries that had already implemented or planned voluntary compliance strategies. The results of this survey show that most of these voluntary compliance strategies took the form of tax amnesties but that some (in Ireland and the United States) involved no tax reduction but a mitigation of penalties and no prosecution. Concerning the tax amnesties, the survey showed that some only applied to individuals while most applied to all taxpayers, and that they covered a wide range of taxes (direct and indirect). The tax rate applicable to the repatriated funds varied from 2.5% of the repatriated funds in the case of Italy to 25% in the case of Germany (but this rate applied to a reduced tax base: where income or corporate tax has been evaded the tax base is 60% of the non-taxed income).

56. The survey also shows that communication is crucial to the success of voluntary compliance strategies, which have to be perceived as not likely to be repeated. The strategies have been advertised using the media and websites of tax administrations but also by associating closely the financial institutions. The success of these strategies is in part due to the willingness of governments to communicate their determination to follow through and to provide additional resources for the investigation of non-compliers.

## 1. Tax amnesties in OECD countries

### *Belgium*

57. Belgium has undertaken a series of tax amnesties. It officially introduced a one time tax amnesty “Déclaration libératoire unique” (DLU) on funds repatriated in 2004 subject to a final tax of 9%, or 6% of repatriated funds if they are reinvested, collected by banks and remitted to the Treasury. The additional revenue expected was EUR 850 million but the actual amount of revenue collected under the Belgian amnesty amounted to EUR 496 240 915.96. The success of the amnesty was due to the fact that it took place right before the entry into force of the EU Savings Directive and the adoption of a law on 14 December 2005 gradually abolishing bearer shares starting in 2008 may have played a role.

58. The success of the DLU encouraged the government to adopt on 27 December 2005 a new procedure for regularizing undeclared income. The regularization procedure which entered into force on 9 January 2006 is a permanent measure concerning individuals and legal entities which can report previously undeclared income. It covers VAT transactions, professional income and other income. It cannot apply to income from money laundering operations or to income from a number of crimes including serious and organised tax fraud using complex mechanisms or using international schemes such as carousel fraud. The reported income is taxed at the normal tax rate subject to a limited penalty in some cases.

### *Germany*

59. A Tax Amnesty Disclosure Act came into force on 1 January 2004 which enabled taxpayers to return to compliance by filing an indemnity-conferring declaration and making back tax payments at favourable rates regarding funds concealed abroad. The indemnity-conferring declaration covers the period 1993 to 2002. The deadline for filing the declaration expired on 31 March 2005. Under the terms of the amnesty, those who declared assets held abroad without the knowledge of the German authorities were subject to a tax of 25% until 1 January 2006, after which the rate increased to 35% until the end of the scheme on 31 March 2005.

60. The German Ministry of Finance has confirmed that revenues collected from the tax amnesty reached EUR 901.7 million between January and December 2004 which is beyond the government’s revised estimate of EUR 800 million but below the EUR 5 billion original target set by the Minister of Finance at the beginning of the amnesty.

### **Greece**

61. The government of Greece introduced a tax amnesty for capital held abroad and repatriated to Greece by a Law of 4 August 2004 which applies to funds repatriated from 4 August 2004 until 4 February 2005. The amnesty applied to taxable natural and legal persons in Greece who own capital abroad irrespective of the type of foreign bank account in which the capital is held. The repatriation of funds was allowed upon payment of a tax of 3% of the value of the capital at the time of the repatriation. The funds were required to be transferred through a bank established in Greece. The Greek Accounting Office estimated that the tax amnesty would generate about EUR 20 billion, or about 10 per cent of the country's gross domestic product, in repatriated funds.

### **Italy**

62. As indicated in the 2003 Progress Report, the Italian Government enacted in 2001 a number of provisions aimed at the disclosure and consequent regularization in 2002 of assets held abroad by certain taxpayers who were resident in Italy (the so-called "Tax Shield"). The program was extended to allow the regularization during 2003 of assets held abroad. Additional tax revenue of EUR 1 480 million in 2002 and EUR 617 million in 2003 was raised through the "Tax Shield" program. This set of measures, temporary and exceptional in nature, has expired and does no longer apply.

### **Mexico**

63. All individuals and legal entities that repatriate unreported income, dividends, or profits originating from investments kept in tax havens are obliged to file an information return each fiscal year during the month of February. Failure to comply with such an obligation is considered a tax crime. On 26 January 2005, the Mexican government issued a decree granting an amnesty to individuals and legal entities that repatriate unreported income, dividends, or profits originating from investments kept in tax havens. The deadline to file information returns under the amnesty program was 28 February 2006. The amnesty under some conditions recognizes as income only 25 per cent of the amount repatriated only for the fiscal year 2005. No penalty applies.

## **Portugal**

64. The 2005 revised budget bill put in place an extraordinary regime for individuals to regularize their tax liabilities related to assets located abroad as of 31 December 2004, like bank deposits, securities, and other financial instruments. Portuguese resident individuals were subject to a 5 per cent tax on the value of declared assets, or to a 2.5 per cent tax if the assets were reinvested in public bonds. No tax and criminal liabilities related to the assets apply unless an investigation had already been initiated concerning them. The regime does not cover assets located in jurisdictions considered as non cooperative by the Financial Action Task Force. The Revenues collected from this extraordinary amnesty, which only lasted from July to December 2005, amounted to EUR 41 million.

## **2. Tax amnesties in Observer countries**

### **Russian Federation**

65. A law which introduces a tax amnesty for individual resident taxpayers was passed in the final reading by the State Duma (Lower Chamber of Parliament) on 22 December 2006, approved by the Federation Council (Upper Chamber of Parliament) on 27 December 2006, and officially published on 31 December 2006. The law permits resident individuals to declare previously undeclared income, without fear of prosecution for tax evasion. Income declared during the amnesty will be exempt from penalties for personal income tax evasion and evasion of unified social tax payments, a payroll tax transferred to pension, social insurance and health insurance funds.

66. Individuals have from 1 March 2007 to 1 January 2008, to declare undisclosed income to the tax authorities, file a simplified tax return, and pay a 13 per cent tax on their legalized income. Also, individuals who participate in the program do not have to indicate the source of their income or the periods during which the income was realised. The law does not apply to individuals found guilty of tax evasion under Criminal Code Article 198, unless that conviction is overturned.

### **South Africa**

67. In South Africa a tax amnesty program was introduced in 2003 with four objectives: to broaden the tax base and increase future revenue collection through disclosure of both authorised and unauthorised foreign assets; to enable South Africans to regularize their affairs without being

prosecuted in terms of current exchange control regulations and tax laws; to provide the Reserve Bank and the Revenue Service with details of foreign assets; and to facilitate repatriation of foreign assets to South Africa without fear of prosecution. A levy of 5 per cent was imposed on the total value of unauthorised foreign assets declared and repatriated to South Africa and a 10 per cent levy was imposed on the total value of unauthorised foreign assets declared but retained offshore. The amnesty concerned individuals, trusts and private companies.

68. The amnesty was a success, as during the 9 months the amnesty program lasted (1 June 2003 to 29 February 2004) the total foreign assets disclosed amounted to some R 68.6 billion (EUR 7.8 billion equivalent). Of this amount, some R 21 billion (EUR 2.4 billion equivalent) comprised authorised assets, while the balance of around R 47.6 billion (EUR 5.4 billion equivalent) represents foreign held assets not previously authorised for exchange control purposes. Total receipts and accruals amounting to some R 1.4 billion (EUR 159 million equivalent) were disclosed by amnesty applicants, and it is estimated that this amount results in an annual increase of around R 400 million (EUR 45.4 million equivalent) in tax collections. Discussions with the International Monetary Fund and the Bank for International Settlements led to the conclusion that this amnesty might become one of the international benchmarks for judging the success of amnesties internationally as it has achieved the four objectives set for the amnesty process at its announcement.

### **3. Voluntary compliance strategies other than tax amnesties**

#### ***Ireland***

69. The purpose of the programme was to tackle the suspected tax evasion involved in an efficient and speedy manner by promoting the voluntary disclosure of unpaid tax liabilities in respect of offshore accounts held in financial institutions outside the state in the first instance.

70. A wide-ranging investigation into holders of offshore accounts and other financial products began in March 2004. Prior to the beginning of this investigation a series of meetings were held by the tax authorities in December 2003 with the top officials of a number of financial institutions where they were advised of the impending investigation. As a result, the financial institutions, through their offshore affiliates, wrote to their customers advising them of the imminent investigation and informing them of the benefits of a voluntary disclosure.



71. It was made clear that the tax authorities intended to seek, through the courts, information regarding such customers, and that the normal benefits of voluntary disclosure would not be available to taxpayers who did not come forward voluntarily by the deadline of 10 June 2004. There was no reduction of tax involved. All taxes and statutory interest were payable under this programme. The benefits for the taxpayer of making a voluntary disclosure were the mitigation of the penalties for underpaid tax and no investigation for prosecution purposes.

72. The strategy was in two parts. First, to obtain the benefits of the voluntary disclosure programme taxpayers had to make a voluntary disclosure and to submit a payment to cover all taxes, interest and penalties owing before the deadline of 10 June 2004. Second, beginning in October 2004, Revenue would seek court orders to access bank account information with a view to pursuing those who did not avail themselves of the voluntary disclosure opportunity. The aggregate figure collected from the offshore investigation, which includes both the voluntary disclosure phase and the subsequent investigation, is EUR 856 m from approximately 15 000 offshore account holders.

### ***United Kingdom***

73. In the United Kingdom, if a Special Commissioner (an independent tax tribunal) gives consent to the issue of a notice under section 20(8A) of the Taxes Management Act 1970, then HM Revenue and Customs (HMRC) can obtain access to information from financial institutions. There has been considerable success in this area since the 2003 Bank Progress Report and HMRC has won several cases before the Special Commissioner under section 20(8A). In May 2006, a landmark decision by the Special Commissioner was announced, giving HMRC access to detailed information on offshore accounts held by individuals with a UK address from a major UK financial institution.

74. Building on this ruling, on 1 February 2007, the Special Commissioner published decisions requiring a further four financial institutions to pass detailed information on offshore account holders to HMRC. These rulings were preceded by the Special Commissioner's ruling in January 2006, which gave HMRC access to information about customers with UK addresses who hold credit cards associated with offshore bank accounts. The UK has also obtained similar details through the EU Savings Directive. The volume of information received has been very significant.

75. The UK has launched on 17 April 2007 an Offshore Disclosure Facility to encourage those who have an offshore account with unpaid tax and duties to pay what they owe and bring their tax affairs up to date. The facility is open to those who hold or have held an offshore account, either directly or indirectly, that is in any way connected to a loss of UK tax and/or duty. For a limited period, individuals can come forward and make a full disclosure of all undeclared liabilities, not just those connected with an offshore account. There are two periods that taxpayers must respect – the registration period runs from 17 April to 22 June 2007 and the disclosure period runs from 23 June to 26 November 2007. The facility excludes any cases currently under investigation and prosecution cases. Tax will have to be paid in full with interest as well as a fixed penalty of 10% before 26 November 2007. Normal penalties (up to 100%) will not apply. At the end of the notification period, HMRC will target those with offshore bank accounts and undeclared tax liabilities who have chosen not to come forward to make a disclosure.

### **United States**

76. On 14 January 2003, the US Internal Revenue Service launched an initiative aimed at bringing taxpayers who used “offshore” payment cards or other offshore financial arrangements to hide their income back into compliance with tax law. Under the Offshore Voluntary Compliance Initiative (OVCI), eligible taxpayers who came forward did not face civil fraud or failure to file penalties or certain information return civil penalties, but are still responsible for outstanding tax liabilities, interest and certain accuracy or delinquency penalties as appropriate. The initiative ran until 15 April 2003 and the IRS collected over USD 270 million in unpaid tax and penalties. More than 1 300 taxpayers came forward, amended their returns, paid taxes, interest and penalties and furnished the IRS with information regarding the person who promoted the offshore arrangements to them.

### **Canada**

77. The Voluntary Disclosures Program (VDP) promotes compliance by encouraging taxpayers to voluntarily correct previous omissions in their dealings with the Canada Revenue Agency (CRA), without penalty or prosecution. The program applies to income tax, as well as goods and services tax/harmonised sales tax (GST/HST) disclosures. If the disclosure is accepted by the CRA, taxes and interest owing must be paid, but

without penalty or risk of prosecution for the amounts disclosed. The general trend in the number of disclosures received by the Canada Revenue Agency has been substantial increases in each year. During the fiscal year ending on 31 March 2005 there were a total of 6 632 voluntary disclosures in Canada resulting in approximately \$CAN 318 million in additional tax being reported. In 1992-93 fiscal year there were 268 voluntary disclosures involving \$CAN 11.9 million in taxes. Disclosures, however, have not only grown in volume, but they are also increasingly complex and involve a wider range of issues.

## ANNEX 1

*Article 25 of the Tax Convention  
between the United States and Belgium  
and Paragraph 7 of Protocol  
Signed on 27 November 2006*

**Article 25. – Exchange of information and administrative assistance**

1. The competent authorities of the Contracting States shall exchange such information as may be relevant for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning the taxes covered by the Convention insofar as the taxation there under is not contrary to the Convention, including information relating to the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. The exchange of information is not restricted by Paragraph 1 of Article 1 (General Scope).

2. Any information received under this Article by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment, collection, or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes referred to above, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of the preceding paragraphs be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b) to supply information that is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- c) to supply information that 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 (*ordre public*).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own purposes. The obligation contained in the preceding sentence is subject to the limitations of Paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information because it has no domestic interest in such information.

5. In no case shall the provisions of Paragraph 3 be construed to permit a Contracting State to decline to supply information requested by the other Contracting State because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. In order to obtain such information the tax administration of the requested Contracting State shall have the power to ask for the disclosure of information and to conduct investigations and hearings notwithstanding any contrary provisions in its domestic tax laws.

6. Notwithstanding Paragraph 3, in order to obtain information requested within the framework of this Article, the tax administration of the requested Contracting State shall have the power to ask for the disclosure of information and to conduct investigations and hearings outside any time limits required in its domestic tax laws.

7. Penalties provided by the domestic laws of the requested State for a person failing to give information relevant for carrying out its domestic tax laws shall apply as if the obligation to give information provided in Paragraphs 5 or 6 was an obligation provided in the domestic tax laws of the requested State.

8. Where a person refuses to give information requested within the framework of this Article or fails to give such information within the time

required by the tax administration of the requested State, the requested State may bring appropriate enforcement proceedings against such person. Such enforcement proceedings include, but are not limited to, summary summons enforcement proceedings in the case of the United States and summary proceedings (*procédure en référé*/procedure in kortgeding) in the case of Belgium. Such person may be compelled to give such information under pain of such civil or criminal penalties as may be available under the laws of the requested State.

9. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts, and writings).

10. The requested State shall allow representatives of the requesting State to enter the requested State to interview individuals and examine books and records. Such interview or examination shall take place under the conditions and within the limits agreed upon by the competent authorities of both Contracting States.

11. The competent authorities of the Contracting States shall agree upon the mode of application of this Article, including agreement to ensure comparable levels of assistance to each of the Contracting States.

12. If the United States terminates Paragraph 3 of Article 10 (Dividends) in accordance with Paragraph 12 of Article 10, Belgium's obligations pursuant to Paragraph 5 shall cease as of the date that Paragraph 3 of Article 10 is no longer effective.

## Protocol

(...) 7. In reference to Article 25 (Exchange of Information and Administrative Assistance)

Banking records will be exchanged only upon request. If the request does not identify both a specific taxpayer and a specific bank or financial institution, the competent authority of the requested State may decline to obtain any information that it does not already possess.

## ANNEX 2

## 2004 G20 Statement on Transparency and Exchange of Information for Tax Purposes

We, the Finance Ministers and Central Bank Governors of the G20, are committed to enhancing good governance and fighting illicit use of the financial system in all its forms. Consequently, we are committed to transparency and exchange of information for tax purposes. We regard this as vital to enhance fairness and equity in our societies and to promote economic development.

Financial systems must respect commercial confidentiality, but confidentiality should not be allowed to foster illicit activity. Lack of access to information in the tax field has significant adverse effects. It allows some to escape tax that is legally due and is unfair to citizens that comply with the tax laws. It distorts international investment decisions which should be based on legitimate commercial considerations rather than the circumvention of tax laws. The G20 therefore regards it as a mark of good international citizenship for countries to eliminate practices that restrict or frustrate the ability of another country to enforce its chosen system of taxation.

We are therefore committed to the high standards of transparency and exchange of information for tax purposes that have been reflected in the Model Agreement on Exchange of Information on Tax Matters as released by the OECD in April 2002. We call on all countries to adopt these standards.

High standards of transparency require that governmental authorities have access to bank information and other financial information held by financial intermediaries and to beneficial ownership

information regarding the ownership of all types of entities. High standards of exchange of information require that such information be available for exchange with other countries in civil and criminal tax matters. Exchange of information in tax matters should not be limited by dual incrimination principles in criminal tax matters or by the lack of domestic tax interest in civil tax matters. There must be appropriate safeguards on the use and disclosure of any exchanged information. Exchange of information should therefore be implemented through legal mechanisms providing for the use of such information only for authorised tax purposes, thus ensuring the protection of taxpayers' rights and the confidentiality of tax information.

We call on all countries with financial centres to adopt and implement the high standards articulated by the OECD so that we can move towards an international financial system that is free of distortions created through lack of transparency and lack of effective exchange of information in tax matters. It is important that countries which do meet these standards have confidence that they will not be disadvantaged and that financial centres in countries that choose not to meet these standards will not benefit from that choice.

The G20 therefore strongly support the efforts of the OECD Global Forum on Taxation to promote high standards of transparency and exchange of information for tax purposes and to provide a cooperative forum in which all countries can work towards the establishment of a level playing field based on these standards.



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