

Countering Offshore Tax Evasion

The Role of the OECD

Why are governments concerned about offshore non-compliance?	Non-compliance deprives governments of the revenues needed to invest in the future of their citizens and to enhance the long-term performance of their economies. It shifts the tax burden from dishonest to honest taxpayers and distorts competition. Where taxpayers maintain assets offshore it makes it harder for countries to verify the correct tax due.
What is the size of the problem?	There is no firm data on the revenues lost from offshore non-compliance but the available evidence suggests it is large and growing. Ireland, for example, recently collected over €1 billion from offshore compliance initiatives; the UK £500 million. Some estimates in the US suggest the revenue loss exceeds \$100 billion annually.
Under what conditions will offshore non-compliance flourish?	The increased liberalisation of financial markets and modern communication technology has made it considerably easier for individuals and corporations to go “offshore” to evade taxes legally due. This, combined with a lack of transparency and effective cooperation between tax administrations, has facilitated offshore non-compliance.
Is offshore non-compliance just a problem with tax havens?	No. Any country that lacks transparency or is unable to engage in effective exchange of information (e.g. because of strict bank secrecy rules) may be used by the residents of other countries to evade taxes back home.
What has been the response of governments?	Governments around the world have responded by making their tax systems more competitive (within the OECD, top rates of personal and corporate income have been slashed since the mid-1980's); <u>strengthening mutual cooperation</u> by improving their enforcement activities; enhancing their relationships with taxpayers so as to make it easier for honest taxpayers to pay the right amount of tax, at the right time and in the right place; and by linking certain aspects of their tax law to the presence (or absence) of effective measures to obtain information from a foreign jurisdiction (e.g. tax information exchange agreement, tax treaty).
What has been the international response?	In a borderless world governments need to cooperate if they are to counter effectively offshore non-compliance. Annex I sets out the political statements made by the G7/8 and G20 in support of OECD work. Regional and other groupings of countries (e.g. Joint International Tax Shelter Information Centre) are looking at how to reinforce cooperation.

And the OECD response?

OECD Member countries launched work in 1998 to counter harmful tax practices¹ and reinforced this work in 2000 with an initiative to improve access to bank information for tax purposes.² Both of these initiatives emphasized the importance of establishing high standards of transparency and effective exchange of information between tax authorities.

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

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

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

How does exchange of information on request work?

Exchange of information on request occurs where one country’s competent authority asks for particular information from another competent authority. Typically, the information requested relates to an examination, inquiry or investigation of a taxpayer’s tax liability for specified tax years. The standard prohibits fishing expeditions. Before sending a request, the requesting country should use all means available in its own territory to obtain the information except where those would give rise to disproportionate difficulties. The request should be made in writing but in urgent cases an oral request may be accepted, where permitted under the applicable laws and procedures. Requests should be as detailed as possible and contain all the relevant facts, so that the competent authority that receives the request is well aware of the needs of the applicant contracting party and can deal with the request in an efficient manner. The OECD has developed guidance³ on what could be included in a request.

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

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

¹ *Harmful Tax Competition: An Emerging Global Issue* (<http://www.oecd.org/dataoecd/33/0/1904176.pdf>)

² *Improving Access to Bank Information for Tax Purposes* (<http://www.oecd.org/dataoecd/3/7/2497487.pdf>)

³ *Manual on the Implementation of Exchange of Information for Tax Purposes*
<http://www.oecd.org/dataoecd/15/45/36647905.pdf>

Who established the standards?	The principles of transparency and effective information exchange have been articulated and refined through the work of the OECD's Global Forum on Taxation consisting of OECD and non-OECD countries and jurisdictions. Currently the standards for exchange of information are set out in Article 26 of the OECD Model Convention ⁴ and the 2002 Model Agreement on Exchange of Information. ⁵ The Global Forum has also developed an availability and reliability standard for accounting records. These standards have been endorsed by the G20 and the UN Committee of Experts on International Cooperation in Tax Matters and now serve as a basis for most bilateral tax treaties as the internationally agreed standard for exchange of information.
How are they implemented?	The standard can be implemented through bilateral Tax Treaties or Tax Information Exchange Agreements (TIEAs); by multilateral agreements (e.g. the OECD's-Council of Europe Multilateral Convention on Administrative Assistance in Tax Matters); or by domestic legislation allowing for the provision of information on a unilateral basis.
What are the safeguards to protect confidentiality?	Information exchanged for tax purposes must be treated as confidential. Bilateral tax treaties and TIEAs contain rules to ensure that information is used only for authorised purposes and thereby protect taxpayer privacy rights. Confidentiality rules also apply to information exchanged pursuant to other instruments. Typically unauthorised disclosure of tax related information received from another country is a criminal offence.
What if countries want to use tax information for other purposes?	First, tax information received from another country can only be used for the purposes stated in the agreements. Second, a country is free to decline a request for information in a number of situations. One reason for declining to provide information relates to the concept of public policy/ordre public. "Public policy" generally refers to the vital interests of a country, for instance where information requested relates to a state secret. A case of "public policy" may also arise, for example, where a tax investigation in another country was motivated by racial or political persecution.
Is bank secrecy incompatible with this standard?	No. All countries have some form of bank secrecy. What is important is that it can be lifted in well defined circumstances to enable countries to enforce their own tax laws and to respond to requests for information pursuant to TIEAs or tax treaties so that treaty partners can administer their laws.
How is a tax haven identified?	In 1998 the OECD set out a number of factors for identifying tax havens. The four key factors were: <ul style="list-style-type: none"> 1) No or nominal tax on the relevant income; 2) Lack of effective exchange of information;

⁴ See http://www.oecd.org/document/53/0,3343,en_2649_33767_33614197_1_1_1_1,00.html

⁵ See <http://www.oecd.org/dataoecd/15/43/2082215.pdf>

- 3) Lack of transparency;
- 4) No substantial activities.

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

Does the OECD have a list of tax havens?

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

Three jurisdictions remain on the list of unco-operative tax havens published by the OECD in 2002. All three (Andorra, Monaco and Liechtenstein) have made clear statements that they intend now to rapidly implement the standards.

Are tax havens used for legitimate business purposes?

By definition tax havens offer a no or nominal tax environment. Where corporations or individuals invest internationally it is often advantageous to do so through such an environment. For example, collective investment funds may bring together investors from many countries that would have difficulty pooling their investment without the benefit of a tax neutral environment.

What progress has been made in getting countries to enforce these standards?

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

And has progress been made in implementing them?

Great progress has been made in improving access to bank information for tax purposes and ensuring the availability of ownership and accounting information. Progress in achieving exchange of information has been slower. Now all OECD countries accept the Article 26 standard. Hong Kong and Singapore have also stated that they will change their legislation this year so as to implement the standard. As regards the jurisdictions identified in 2000, there is now a network of more than 50 Tax Information Exchange Agreements (TIEAs), although currently less than a dozen of these jurisdictions are active in this area. Annex II provides a summary of the situation as at 28th March.

How do you monitor progress?

The OECD Global Forum provides an annual assessment of the progress made in implementing the transparency and information exchange standard. The latest assessment appeared in September 2008 and the next will be published in

Autumn 2009.

What is a good indication of progress?

Discussions within the Committee on Fiscal Affairs (CFA) and the Global Forum suggest that once a country has 12 agreements with OECD countries which meet the standard, then it should be regarded as having substantially implemented the standard. Clearly 12 is a somewhat arbitrary number and there is recognition that this is only a step in acknowledging progress thus far. As this is a staged process there is an expectation that a jurisdiction would continue to negotiate agreements with other interested parties.

What are the next steps in the process?

The key now is for all jurisdictions to rapidly implement the standards. The level of implementation will be considered in the context of the following meetings:

- On 2nd April the G20 Summit will have to decide in the light of progress made since the Washington Summit, what action it should now take.
- The second Franco-German meeting will be held in Berlin in June.
- The Committee on Fiscal Affairs will meet on 30 June-1 July to review the next steps.
- The OECD annual Ministerial meeting on 24-26 June will no doubt want to review progress.
- The G8 Magdalena Summit in Italy on 8-10 July will need to take forward these initiatives and put them in the broader context of developing the rules of transparency and governance.

How will OECD input into these different fora?

The OECD's role is to ensure the integrity of the standards and that the debates in these fora are based upon up-to-date facts, not perceptions.

For further information see "Overview of OECD's Work on International Tax Evasion"

www.oecd.org/tax/evasion

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**ANNEX I:
STATEMENTS ON THE OECD'S WORK ON INTERNATIONAL TAX EVASION
BY THE G7/G8/G20**

*G20 Declaration of the Summit on Financial Markets and the World Economy
Washington, D.C. 15 November 2008*

Actions Taken and to Be Taken

Promoting Integrity in Financial Markets: We commit to protect the integrity of the world's financial markets by bolstering investor and consumer protection, avoiding conflicts of interest, preventing illegal market manipulation, fraudulent activities and abuse, and protecting against illicit finance risks arising from non-cooperative jurisdictions. We will also promote information sharing, including with respect to jurisdictions that have yet to commit to international standards with respect to bank secrecy and transparency.

Action Plan to Implement Principles for Reform

Promoting Integrity in Financial Markets

Tax authorities, drawing upon the work of relevant bodies such as the Organization for Economic Cooperation and Development (OECD), should continue efforts to promote tax information exchange. Lack of transparency and a failure to exchange tax information should be vigorously addressed.

*G-8 Communiqué: Meeting of Heads of Government
Hokkaido Japan 9 July 2008*

Abuses of the Financial System

20. We urge all countries that have not yet fully implemented the OECD standards of transparency and effective exchange of information in tax matters to do so without further delay, and encourage the OECD to strengthen its work on tax evasion and report back in 2010.

*G-8 Communiqué: Meeting of Finance Ministers
Osaka Japan 14 June 2008*

Abuses of the Financial System

In view of the recent developments, we urge all countries that have not yet fully implemented the OECD standards of transparency and effective exchange of information in tax matters to do so without further delay. We welcome the efforts of the OECD in this regard, and ask the OECD to strengthen its work on tax evasion.

*G20 Communiqué: Meeting of Ministers and Governors in Melbourne
18-19 November 2006*

Further to our 2004 commitment to achieving high standards of transparency and exchange of information for tax purposes, we welcome the release of the Global Forum on Taxation 2006 assessment which shows that progress has been made in the implementation of those standards. Further progress is needed and we encourage continuing implementation efforts and call on those countries and territories that have not yet implemented high standards of transparency and exchange of information to do so.

*G20 Communiqué: Meeting of Finance Ministers and Central Bank Governors
Xianghe, Hebei, China, 15-16 October 2005*

9. We reaffirmed our commitments to the purposes of the “G-20 Statement on Transparency and Exchange of Information for Tax Purposes” that was endorsed last year. In this context, we welcome the efforts of the OECD Global Forum on Taxation to promote high standards of transparency and effective exchange of information for tax purposes.

*G8 Communiqué on Africa
Gleneagles, UK 14 July 2005*

Para. 14(i) In response to this African commitment, we will: ... (i) Take concrete steps to protect financial markets from criminal abuse, including bribery and corruption, by pressing all financial centres to obtain and implement the highest international standards of transparency and exchange of information. We will continue to support Financial Stability Forums ongoing work to promote and review progress on the implementation of international standards, particularly the new process concerning offshore financial centres that was agreed in March 2005, and the OECD’s high standards in favour of transparency and exchange of information in all tax matters.

*G20 Statement on Transparency and Exchange of Information for Tax Purposes
Meeting of Finance Ministers and Central Bank Governors
Berlin, Germany 20–21 November 2004*

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 authorized 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.

*G7 Economic Communiqué: Making a success of globalization for the benefit of all
Lyon, France 28 June 1996*

16. Finally, globalization is creating new challenges in the field of tax policy. Tax schemes aimed at attracting financial and other geographically mobile activities can create harmful tax competition between States, carrying risks of distorting trade and investment and could lead to the erosion of national tax bases. We strongly urge the OECD to vigorously pursue its work in this field, aimed at establishing a multilateral approach under which countries could operate individually and collectively to limit the extent of these practices. We will follow closely the progress on work by the OECD, which is due to produce a report by 1998.

**ANNEX II:
TIEAS SIGNED BETWEEN OECD MEMBER STATES AND COMMITTED JURISDICTIONS**

SIGNATORIES	DATE SIGNED	DATE OF ENTRY INTO FORCE
USA/Antigua and Barbuda	6 December 2001	10 February 2003
USA/Cayman Islands	27 November 2001	10 March 2006
USA/Bahamas	25 January 2002	31 December 2003
USA/British Virgin Islands	3 April 2002	10 March 2006
USA/Netherlands Antilles	17 April 2002	22 March 2007
USA/Guernsey	19 September 2002	30 March 2006
USA/Isle of Man	3 October 2002	26 June 2006
USA/Jersey	4 November 2002	26 June 2006
USA/Aruba	21 November 2003	13 September 2004
The Netherlands/Isle of Man	12 October 2005	21 July 2006
Australia/Bermuda	10 November 2005	20 September 2007
Australia/Antigua and Barbuda	30 January 2007	Not yet in force
Australia/Netherlands Antilles	1 March 2007	4 April 2008
New Zealand/Netherlands Antilles	1 March 2007	2 October 2008
The Netherlands/Jersey	20 June 2007	1 March 2008
Sweden/Isle of Man	30 October 2007	Not yet in force
Finland/Isle of Man	30 October 2007	19 June 2008
Norway/Isle of Man	30 October 2007	23 August 2008
Denmark/Isle of Man	30 October 2007	26 September 2008
Faroe Islands/Isle of Man	30 October 2007	Not yet in force
Greenland/Isle of Man	30 October 2007	11 April 2008
Iceland/Isle of Man	30 October 2007	Not yet in force
United Kingdom/Bermuda	4 December 2007	Not yet in force
Ireland/Isle of Man	24 April 2008	Not yet in force
The Netherlands/Guernsey	25 April 2008	Not yet in force
Spain/Netherlands Antilles	10 June 2008	Not yet in force
Germany/Jersey	4 July 2008	Not yet in force
United Kingdom/Isle of Man	29 September 2008	Not yet in force
Australia/British Virgin Islands	27 October 2008	Not yet in force

Denmark/Guernsey	28 October 2008	Not yet in force
Denmark/Jersey	28 October 2008	Not yet in force
The Faroe Islands/Guernsey	28 October 2008	Not yet in force
The Faroe Islands/Jersey	28 October 2008	Not yet in force
Finland/Guernsey	28 October 2008	Not yet in force
Finland/Jersey	28 October 2008	Not yet in force
Greenland/Guernsey	28 October 2008	Not yet in force
Greenland/Jersey	28 October 2008	Not yet in force
Iceland/Guernsey	28 October 2008	Not yet in force
Iceland/Jersey	28 October 2008	Not yet in force
Norway/Guernsey	28 October 2008	Not yet in force
Norway/Jersey	28 October 2008	Not yet in force
Sweden/Guernsey	28 October 2008	Not yet in force
Sweden/Jersey	28 October 2008	Not yet in force
United Kingdom/British Virgin Islands	29 October 2008	Not yet in force
Spain/Aruba	24 November 2008	Not yet in force
The United Kingdom/Guernsey	20 January 2009	Not yet in force
Australia/the Isle of Man	29 January 2009	Not yet in force
Germany/the Isle of Man	2 March 2009	Not yet in force
The United Kingdom/Jersey	10 March 2009	Not yet in force
France/Jersey	23 March 2009	Not yet in force
France / Guernsey	24 March 2009	Not yet in force
Germany/Guernsey	26 March 2009	Not yet in force
France / Isle of Man	26 March 2009	Not yet in force
Ireland/ Jersey	26 March 2009	Not yet in force
Ireland/Guernsey	26 March 2009	Not yet in force