Automatic Exchange of Financial Account Information

BACKGROUND INFORMATION BRIEF

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AUTOMATIC EXCHANGE OF INFORMATION

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

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

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

Now, there has been another step change in international tax transparency. **On 9 April 2013**, the Finance Ministers of France, Germany, Italy, Spain and the UK (the countries that developed the FATCA intergovernmental agreements with the United States) announced their intention to exchange FATCA-type information amongst themselves in addition to exchanging information with the United States. By September 2014, nearly 50 jurisdictions had joined this group and committed to the early adoption of the standard developed by OECD, including a specific and ambitious timetable for doing so. For more information, please see: http://www.oecd.org/tax/transparency/AEOI-early-adopters-statement.pdf

Following the commitment to establish automatic exchange as the new global standard made by G8 Leaders in **June 2013**, the G20 Leaders at their Summit in September 2013 fully endorsed the OECD proposal for a truly global model of automatic exchange and invited the OECD working with G20 countries to present such a new single standard for automatic exchange of information in time for the G20 February 2014 meeting. In **February 2014**, the G20 Finance Ministers and Central Bank Governors endorsed the global standard for automatic exchange of tax information.

Further political support for the new global standard on automatic exchange was evidenced at the OECD Ministerial Council Meeting held in Paris **6-7 May 2014** with the adoption of the Declaration on Automatic Exchange of Information in Tax Matters. The adherents declared their determination to implement the new global standard swiftly and on a reciprocal basis, called on all financial centres to do so without delay, and highlighted the need to provide technical assistance to developing countries to help them benefit from the new standard.

Following approval of the *Standard for Automatic Exchange of Financial Information in Tax Matters* by the OECD Council on **15 July 2014**, the full Standard was endorsed by the G20 Finance Ministers at their meeting in Cairns in **September 2014**. See the Annex for G8 and G20 statements providing support for the work.

Furthermore, on **14 October 2014** the 28 Member States of the European Union reached a political agreement on an amended Directive that will implement the new Standard in the EU.

On **29 October 2014**, 51 jurisdictions, 38 of which were represented at ministerial level, signed the first ever multilateral competent authority agreement to automatically exchange information under the Standard, based on Article 6 of the Multilateral Convention. The significance of this event was demonstrated by the participation of 38 ministers* in the signing ceremony, the largest gathering of ministers to take joint action to address tax evasion.

The competent authority agreement specifies the details of what information will be exchanged and when. It is a multilateral framework agreement, with the subsequent bilateral exchanges coming into effect between those signatories that file the subsequent notifications under Section 7 of the agreement.

The signatories were: Albania, Anguilla, Argentina, Aruba, Austria, Belgium, Bermuda, British Virgin Islands, Cayman Islands, Colombia, Croatia, Curaçao, Cyprus, Czech Republic, Denmark, Estonia, Faroe Islands, Finland, France, Germany, Gibraltar, Greece, Guernsey, Hungary, Iceland, Ireland, Isle of Man, Italy, Jersey, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mauritius, Mexico, Montserrat, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Turks and Caicos Islands, and the United Kingdom (see www.oecd.org/ctp/exchange-of-tax-information/mcaa-signatories.pdf).

The Global Forum on Transparency and Exchange of Information for Tax Purposes, which brings together more than 120 countries and jurisdictions, has also collected commitments from its members to implement the new Standard. Through this process over 80 jurisdictions have expressed their commitment to implementing the Standard to specific timetables.

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

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

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

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

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

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

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

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

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

Following approval by the Council of the OECD on 15 July 2014, the **full version of the *Standard for Automatic Exchange of Financial Account Information in Tax Matters*** was released. It is divided in three parts and seven annexes. The three parts of the Standard are: (I) the Introduction; (II) the text of the Model Competent Authority Agreement (Model CAA) and the CRS; and (III) the Commentaries on the Model CAA and the CRS. The seven annexes to the Standard are: (1) the Multilateral Model CAA; (2) the Nonreciprocal Model CAA; the technical modalities, which include (3) the CRS schema and user guide, and (4) a questionnaire with respect to confidentiality and data safeguards; (5) the Wider Approach to the CRS; (6) the Declaration on Automatic Exchange of Information in Tax Matters; and (7) the Recommendation on the Standard.

The Standard was presented to G20 Finance Ministers at their September 2014 meeting where it was strongly endorsed along with commitments to implement in time to begin exchanges in 2017 or end-2018.

Implementing the Standard can be summarized at a high level as involving the following four steps, which can be done in any order including being pursued in parallel:

1. Translating the reporting and due diligence requirements into domestic law.
2. Select a legal basis for the exchange of information.
3. Put in place the administrative and IT infrastructure to collect and exchange information under the Standard.
4. Protect confidentiality and data safeguards.

3. The legal basis

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

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

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

The **Multilateral Convention** is now a **truly global instrument**. Following the recent signatures by the Philippines and Monaco, there are now **84 jurisdictions participating** in the Convention, including all G20 countries (Chart of participating jurisdictions).

Additional countries have expressed interest in signing, including Azerbaijan, Kenya and Mauritius, and we expect further signatures in the near future.

4. Role of the Global Forum on Transparency and Exchange of Information for Tax Purposes

In recognition of the emergence of AEOI as a new global standard that supports and enhances exchange on request, in 2013 the Global Forum established a new voluntary AEOI Group. The AEOI Group comprises Global Forum members and observers who wish to come together to work towards a common goal of engaging in AEOI. The AEOI Group will take forward the work that the G20 has mandated the Global Forum to do: to monitor and review the implementation of the AEOI Standard; and to help developing countries identify their need for technical assistance and capacity building in order to participate in and benefit from AEOI. The AEOI Group will continue to liaise with, and draw on the experience of, the OECD, the World Bank Group, the G20 and others.

In 2014–2015, the AEOI Group will propose the terms of reference and a methodology for monitoring the implementation of AEOI on a going-forward basis. The AEOI Group will also work to identify the foundations needed for jurisdictions to implement AEOI, having regard to capacity constraints, resource limitations and the need to ensure confidentiality and the proper use of information exchanged.

The AEOI Group will report back to the Global Forum plenary on its activities on a regular basis and decisions will continue to be made by the Global Forum.

5. Background: FATCA Intergovernmental Agreements

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

The Model FATCA IGA is not only becoming a preferred route for the implementation of FATCA, it has also served as the template for the common model for automatic exchange of information. The Model

FATCA IGA itself contains a commitment to work with interested countries, the OECD and where appropriate the EU on adapting the terms of the Model FATCA IGA “in the medium term to a common model for automatic exchange of information, including the development of reporting and due diligence standards.” In a press release on 26 July 2012, the OECD welcomed the Model FATCA IGA. The OECD Secretary-General Angel Gurría said:

“I warmly welcome the co-operative and multilateral approach on which the model agreement is based. We at the OECD have always stressed the need to combat offshore tax evasion while keeping compliance costs as low as possible. A proliferation of different systems is in nobody’s interest. We are happy to redouble our efforts in this area, working closely with interested countries and stakeholders to design global solutions to global problems to the benefit of governments and business around the world.”

Questions and Answers

Question: What does the Standard consists of?

Answer: The Standard sets out the financial account information to be exchanged, the financial institutions that need to report, the different types of accounts and taxpayers covered, as well as common due diligence procedures to be followed by financial institutions. It consists of two components: (I) the **CRS**, which contains the reporting and due diligence rules to be imposed on financial institutions; and (II) the **Model CAA**, which contains the detailed rules on the exchange of information. The full version of the Standard, as approved by the Council of the OECD on 15 July 2014, also includes (III) the Commentaries on the Model CAA and the CRS, and seven annexes to the Standard. Those annexes are: (1) the Multilateral Model CAA; (2) the Nonreciprocal Model CAA; the technical modalities, which include (3) the CRS schema and user guide, and (4) a questionnaire with respect to confidentiality and data safeguards; (5) the Wider Approach to the CRS; (6) the Declaration on Automatic Exchange of Information in Tax Matters; and (7) the Recommendation on the Standard.

Question: What are the main differences between the Standard and FATCA?

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

Question: When will the Standard be introduced at domestic level?

Answer: The Standard itself does not contain any particular timelines. However, implementation at co-ordinated timelines would bring benefits for both business and governments. Either through the signing of the multilateral competent authority agreement, the G20 or the Global Forum commitment process, over 80 jurisdictions have already publicly committed to implement the Standard.

Question: Will there be a review process?

Answer: Yes. The G20 has mandated the Global Forum on Transparency and Exchange of Information for Tax Purposes to establish a mechanism to monitor and review the implementation of the new global standard on automatic exchange of information.

Question: What does this mean for developing countries?

Answer: The G20 has given a mandate to the Global Forum on Transparency and Exchange of Information for Tax Purposes to help developing countries identify needs for technical assistance and capacity building, working together with the OECD Task Force on Tax and Development, the World Bank Group and others. Related to this mandate the G20's Development Working Group, along with the Global Forum, developed a roadmap showing how developing countries can overcome obstacles to participation in the automatic exchange standard and to assist them in meeting the standard. This was presented to the G20 at their September 2014 meeting.

Question: How is the confidentiality of the information exchanged ensured?

Answer: The Standard contains specific rules on the confidentiality of the information exchanged and the underlying international legal exchange instruments already contain safeguards in this regard. More detail is contained in the Commentaries on the Model CAA. Where these standards are not met (whether in law or in practice), countries will not exchange information automatically.

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

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

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

Question: What is automatic exchange of information for tax purposes?

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

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

Question: What are the main benefits of automatic exchange?

Answer:

- Automatic exchange of information can provide timely information on non-compliance where tax has been evaded either on an investment return or the underlying capital sum.
- It can help detect cases of non-compliance even where tax administrations have had no previous indications of non-compliance.
- It has deterrent effects, increasing voluntary compliance and encouraging taxpayers to report all relevant information.
- Automatic exchange may help educate taxpayers in their reporting obligations, increase tax revenues and thus lead to fairness – ensuring that all taxpayers pay their fair share of tax in the right place at the right time.
- In a small number of cases countries have been able to integrate the information received automatically with their own systems such that income tax returns can be prefilled.

ANNEX

G20 and G8 support for automatic exchange of information

I. Support from the G20

G20 Finance Ministers and Central Bank Governors Communiqué
Cairns, Australia, 21 September 2014

> *We endorse the finalised global Common Reporting Standard for automatic exchange of tax information on a reciprocal basis which will provide a step-change in our ability to tackle and deter cross-border tax evasion. We will begin exchanging information automatically between each other and with other countries by 2017 or end-2018, subject to the completion of necessary legislative procedures. We call on all financial centres to make this commitment by the time of the Global Forum meeting in Berlin, to be reported at the Brisbane Summit, and support efforts to monitor global implementation of the new global standard.*

G20 Finance Ministers and Central Bank Governors Communiqué
Sydney, Australia, 23 February 2014

> *"We endorse the Common Reporting Standard for automatic exchange of tax information on a reciprocal basis and will work with all relevant parties, including our financial institutions, to detail our implementation plan at our September meeting. In parallel, we expect to begin to exchange information automatically on tax matters among G20 members by the end of 2015. We call for the early adoption of the standard by those jurisdictions that are able to do so. We call on all financial centres to match our commitments. We urge all jurisdictions that have not yet complied with the existing standard for exchange of information on request to do so and sign the Multilateral Convention on Mutual Administrative Assistance in Tax Matters without further delay. We stand ready to give tougher incentives to those 14 jurisdictions that have not qualified for Phase 2 of the evaluations. We will engage with, and support low-income and developing countries so that they benefit from our work on tax."*

G20 Finance Ministers and Central Bank Governors Communiqué
Washington D.C., United States, 11 October 2013

> *"We will closely monitor the implementation of the ambitious tax agenda agreed by our Leaders in St Petersburg and look forward to regular reporting from the Global Forum and the OECD, in particular as regards creating a new standard of automatic exchange of information and implementing the BEPS Action Plan. In addition, we reiterate the need for the Global Forum to complete the allocation of comprehensive country ratings regarding the effective implementation of information exchange upon request and ensure that the implementation of the standards are monitored on a continuous basis. We also reiterate our commitment to FATF's work."*

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

> *"We commend the progress recently achieved in the area of tax transparency and we fully endorse the OECD proposal for a truly global model for multilateral and bilateral automatic exchange of information. Calling on all other jurisdictions to join us by the earliest possible date, we are committed to automatic exchange of information as the new global standard, which*

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

G20 Finance Ministers and Central Bank Governors' Communiqué
Moscow, Russia, 20 July 2013

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

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

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

G20 Finance Ministers and Central Bank Governors' Communiqué
Moscow, Russia, 16 February 2013

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

G20 Finance Ministers and Central Bank Governors' Communiqué
Mexico City, Mexico, 5 November 2012

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

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

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

G20 Finance Ministers and Central Bank Governors' Communiqué
Mexico City, Mexico, 26 February 2012

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

II. Support from the G8

G8 Final Communiqué
Lough Erne, 18 June 2013

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

"A critical tool in the fight against tax evasion is the exchange of information between jurisdictions. We see recent developments in tax transparency as setting a new standard and commit to developing a single truly global model for multilateral and bilateral automatic tax information exchange building on existing systems. We support the OECD report on the practicalities of implementation of multilateral automatic exchange and will work together with the OECD and in the G20 to implement its recommendations urgently. We call on all jurisdictions to adopt and effectively implement this new single global standard at the earliest opportunity. It is important that all jurisdictions, including developing countries, benefit from this new standard in information exchange. We therefore call on the OECD to work to ensure that the relevant systems and processes are as accessible as possible to help enable all countries to implement this new standard."