

OECD SECRETARY-GENERAL REPORT TO G20 FINANCE MINISTERS

Washington D.C.
United States
April 2016



G20



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UPDATE ON TAX TRANSPARENCY

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Introduction

The use of secrecy to evade taxes as well as to undertake other financial crimes, continues to hurt our communities. The international standards on tax transparency which have been established in recent years are robust, but now we must ensure implementation is global and effective. Moreover, we cannot allow any jurisdiction to continue to benefit from failing to meet their commitments and implement global standards.

This report provides you with a short update highlighting the progress we have made to date to improve global tax transparency, identifying the weaknesses which remain, and outlining possible next steps where the OECD can work to support a collective response that will enhance effective implementation of the tax transparency requirements across the world. These efforts should focus on supporting effective implementation, and promoting enhanced cross-border and inter-agency co-operation on tax and financial crimes.

1. Major progress towards transparency has been achieved with robust standards available

Since 2009, the G20 has firmly led the fight against bank secrecy and other forms of financial opacity. Thanks to the G20 leadership, bank secrecy is now disappearing with the international community having adopted high standards of transparency. The OECD developed standards for exchange of information on request and, more recently the Common Reporting Standard (CRS) which provides for automatic exchange of financial account information between tax authorities (AEOI).

The 132 members of the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) have committed to the tax transparency standard for exchange of information on request (EOIR) and 94 jurisdictions have so far been reviewed for compliance with this standard through a vigorous peer review process. The first round of reviews will be completed by the end of 2016 and a second round of reviews will begin in a few months. The second round will evaluate jurisdictions in line with the updated terms of reference, including the requirements on availability of beneficial ownership information. For AEOI, already 98 jurisdictions have committed to implement the CRS in 2017 or 2018. More generally, almost 100 countries and jurisdictions are now covered by the multilateral Convention on Mutual Administrative Assistance in Tax Matters which provides the most comprehensive legal instrument to streamline the implementation of commitments to tax transparency.

Through the peer review process on EOIR, the Global Forum has identified deficiencies in the legislation and practices of its members. Already more than 800 of the Global Forum's recommendations have been addressed, resulting in improved transparency relating to the availability of information, including beneficial ownership information, but also better access to this information by tax authorities and the substantial broadening of the treaty network to exchange this information.

The standards developed by the OECD and endorsed by the G20 and the rest of the international community are robust. They draw on the work developed by the FATF on beneficial ownership, which is now incorporated into the tax transparency standards (EOIR and AEOI), and on the stringent US FATCA legislation which addresses the risks of non-compliance by financial intermediaries and other service providers. Finally, the standards also cover the issue of transparency for trusts and other legal arrangements.

Progress has been massive and has already translated in to more than half a million taxpayers disclosing their assets held offshore to the tax administrations of their countries of residence, with at least 50 billion euros in additional revenues identified in countries that have put in place voluntary disclosure programmes and similar initiatives to allow taxpayers to come forward to correct their past tax transgressions. Financial institutions are now working closely with governments to prepare the implementation of the CRS.

We are collectively building a better, more transparent world and the jurisdictions that seek to profit from a lack of transparency can no longer be tolerated. Tax crime is a serious offence, and a predicate offense to money laundering. It deprives governments of the resources they need to fund public services and is a source of unacceptable inequality among citizens. With progress towards transparency, governments will be better equipped to collect the taxes but also pass structural reforms that will enable them to better tax capital income.

Practical co-operation among governments is also growing, with initiatives such as the OECD's JITSIC network (Joint International Tax Shelter Information and Collaboration) meeting regularly to support tax administrations in addressing cross-border tax issues at the operational level.

2. Efforts must be continued and intensified, and attention now focused on implementation challenges

It is clear that progress still needs to be made to ensure effective and global implementation. The use of the veil of secrecy continues to threaten the integrity of our societies, and, the G20 can continue to play a leadership role. Action should be inspired by a thoughtful consideration of these issues.

The Global Forum has over the past 7 years done a comprehensive review of the implementation of the EOIR standard, the outcome of which has been reported to the G20 on a regular basis. The report to the G20 Leaders in Antalya provides an overview of where countries and jurisdictions stand.

2.1. Standards must now be endorsed by all relevant jurisdictions

Panama is one of only a few financial centres that have so far refused to commit to the CRS. Panama has not signed nor expressed any interest in signing the multilateral Convention on Mutual Administrative Assistance in Tax Matters and Panama was blocked in its Phase 1 review by the Global Forum for almost 5 years, moving to Phase 2 only recently.

I reported to the G20 Leaders that Panama had committed to the CRS to Global Forum members before they met at their plenary in Barbados in October and confirmed its commitment at the plenary. However, Panama further “clarified” that they would not implement the standard unlike almost all other jurisdictions that were asked to do so, and this was notified to you in my report for the Shanghai meeting (see Annex). To date, only Bahrain and Panama have refused to do so. Lebanon, as a country of relevance for exchange of information on request, should also be asked to commit to the CRS.

Status of AEOI Commitments ⁽¹⁾

JURISDICTIONS UNDERTAKING FIRST EXCHANGES IN 2017
Anguilla, Argentina, Barbados, Belgium, Bermuda, British Virgin Islands, Bulgaria, Cayman Islands, Colombia, Croatia, Curaçao, Cyprus, Czech Republic, Denmark, Dominica, Estonia, Faroe Islands, Finland, France, Germany, Gibraltar, Greece, Greenland, Guernsey, Hungary, Iceland, India, Ireland, Isle of Man, Italy, Jersey, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Montserrat, Netherlands, Niue, Norway, Poland, Portugal, Romania, San Marino, Seychelles, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Trinidad and Tobago, Turks and Caicos Islands, United Kingdom
JURISDICTIONS UNDERTAKING FIRST EXCHANGES IN 2018
Albania, Andorra, Antigua and Barbuda, Aruba, Australia, Austria, The Bahamas, Belize, Brazil, Brunei Darussalam, Canada, Chile, China (People’s Republic of), Cook Islands, Costa Rica, Ghana, Grenada, Hong Kong (China), Indonesia, Israel, Japan, Kuwait, Marshall Islands, Macao (China), Malaysia, Mauritius, Monaco, Nauru, New Zealand, Qatar, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Saudi Arabia, Singapore, Sint Maarten, Switzerland, Turkey, United Arab Emirates, Uruguay, Vanuatu
JURISDICTIONS THAT WERE ASKED TO COMMIT TO A TIMETABLE BUT THAT HAVE NOT YET DONE SO
Bahrain, Panama

(1) The United States has indicated that it is undertaking automatic information exchanges pursuant to FATCA from 2015 and has entered into intergovernmental agreements (IGAs) with other jurisdictions to do so. The Model 1A IGAs entered into by the United States acknowledge the need for the United States to achieve equivalent levels of reciprocal automatic information exchange with partner jurisdictions. They also include a political commitment to pursue the adoption of regulations and to advocate and support relevant legislation to achieve such equivalent levels of reciprocal automatic exchange.

As regards the multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC), almost 100 countries and jurisdictions have already signed or are participating in this instrument, with only a few countries of relevance having not yet signed, including Panama. It seems it is time for all countries to sign the Convention. This is especially the case for those which have committed or should commit to automatic exchange of information (out of the countries committed to AEOI, or that have been asked to commit, only 15 have not signed nor expressed interest in signing the MAC).¹

¹ Antigua and Barbuda, Bahamas, Bahrain, Brunei Darussalam, Dominica, Grenada, Kuwait, Malaysia, Panama, Qatar, Samoa, Saint Vincent and the Grenadines, Trinidad and Tobago, United Arab Emirates and Vanuatu.

In addition, the OECD has developed a multilateral Competent Authorities Agreement for the CRS, which is a tool to facilitate the practical arrangements between tax authorities so that the automatic exchange of information can take place. To date, 80 countries and jurisdictions have signed the multilateral Competent Authorities Agreement, and the next signing ceremony will take place in May at the FTA meeting in Beijing.

PROPOSED ACTION: The G20 should reaffirm the need for the identified countries and jurisdictions to commit to the CRS without further delay. Countries should now sign the multilateral Convention on Mutual Administrative Assistance in Tax Matters noting that only sovereign States can legally sign this instrument, as well as the Competent Authorities Agreements for the CRS without further delay.

2.2. Standards must now be implemented

The Global Forum has conducted a number of reviews to examine the legal and regulatory framework of a large number of countries and jurisdictions with respect to exchange of information on request (EOIR). Most of the recommendations issued by the Global Forum have been implemented, putting an end to a number of opaque legal arrangements. It is to be noted that in many instances bearer share regimes have been amended for the information on the beneficial owner to be available. The Global Forum has also conducted many reviews of the practical implementation of the EOIR standard and has attributed overall ratings. Progress has been significant and must be recognised. However, a number of jurisdictions still do not have their legal and regulatory frameworks in place and, as a result, are blocked in Phase 1. Eight jurisdictions are currently unable to move to Phase 2, and a further 6, including Panama, are only now being examined in Phase 2 after having been blocked in Phase 1 for years. Finally, too many jurisdictions are still considered as “partially compliant”, with 12 jurisdictions currently in this group after having completed their Phase 2 reviews.

The proper implementation of the standard is key to the integrity of the systems. In spite of the challenges that many countries and jurisdictions face, it is time for all to gear up. Domestic obstacles to move forward and align domestic legislation, regulations and practices with the internationally agreed standard should now be removed.

PROPOSED ACTION: The G20 should call on all countries and jurisdictions to take all necessary actions to have their legal and regulatory frameworks in place and to properly implement the EOIR standard in practice so that they are all at least “largely compliant” by the G20 Summit in 2017.

2.3. The implementation of the Common Reporting Standard (CRS) needs to be implemented on time

The CRS is the new internationally agreed standard for automatic exchange of information (AEOI) and is to be implemented by 2017 or 2018. The Global Forum and the OECD working with G20 countries are assisting all committed jurisdictions in the implementation of the standard. Work is underway on all fronts and the OECD has already well advanced the establishment of the IT system which will support the CRS implementation, which is expected to be adopted by tax administrations by mid-2016.

It is of the utmost importance that all countries and jurisdictions implement the CRS in accordance with the timelines to which they have already committed and dedicate the necessary resources so that the political commitment turns, on time, into a practical reality. Some delays, whether in legislation, guidance or other forms of readiness may risk undermining taxpayers' confidence in its imminent and global implementation. The Global Forum has already started its review process with respect to implementation of the standard for AEOI.

PROPOSED ACTION: Countries and jurisdictions should speed up their implementation efforts of the CRS to ensure they deliver in accordance with the timelines to which they committed and the Global Forum should report to the G20 in July 2016 on the state of the implementation, with a plan to address possible deficiencies.

3. Enhancing the effectiveness of transparency and tax co-operation

In spite of progress made in the development, endorsement and implementation of the standards and beyond the above proposed actions to ensure a swift and reliable implementation of the standards and a level playing field, it would be naive not to recognise the challenges related to the difficulties of identifying beneficial owners of legal arrangements available and other efforts to promote opacity. Action should be taken to ensure the requirements are in place and tools available to identify all beneficial owners and enhance tax co-operation.

3.1. Ensure the integrity of the CRS

In order to maintain the integrity of the CRS and to avoid a situation where tax evasion behaviour is displaced instead of resolved we will redouble our efforts to maintain the integrity of the CRS. This would include addressing potential loopholes, both actual and perceived and taking action whenever necessary. Moreover we stand ready to provide further guidance on the application of the CRS to trusts and foundations and to develop best practice "anti-abuse" provisions which jurisdictions could draw on in implementing that part of the CRS which requires that "a jurisdiction must have rules in place to prevent any Financial Institutions, persons or intermediaries from adopting practices intended to circumvent the reporting and due diligence procedures".

PROPOSED ACTION: The OECD working with G20 countries will develop measures to ensure the integrity of the CRS, and report on progress to the G20.

3.2. Use the OECD's Oslo Dialogue to improve access to beneficial ownership information, and take action against those seeking to conceal it

The veil of secrecy can too easily be used to hide the beneficial owners of legal arrangements from tax administrations and other law enforcement agencies. The latest standard for identifying beneficial owners was developed by the FATF in 2012 and is embedded in other standards, such as the global standard on EOIR and the CRS.

The standard for beneficial ownership information is quite stringent and does not need to be strengthened at this stage. Its implementation has, however, been quite insufficient. It is likely that the focus on CRS implementation by financial institutions will give more weight to the beneficial ownership standard and will be an occasion to further strengthen the 2012 FATF recommendations and its implementation. The effectiveness of the implementation of the standard also depends on professional enablers and facilitators who play a key role in making it possible to put in place structures to conceal beneficial ownership information.

Tackling the challenge posed by opacity of beneficial owners of legal entities and arrangements requires effective inter-agency and cross-border co-operation. The OECD's Oslo Dialogue framework, established in 2011 to promote a whole of government approach to tackling tax crime as well as other financial crimes, is uniquely positioned for this work, in particular as relates to improving the monitoring of professional enablers and facilitators. It brings together senior policy makers and experts from different disciplines and authorities, including tax and customs administrations, anti-corruption and anti-money laundering authorities, police and law enforcement agencies, public prosecutors, development agencies and international organisations, who together share responsibility for combating financial crime in all its forms. Since its creation, the work of the Oslo Dialogue has significantly improved the co-operation between government agencies in tackling tax and other financial crime, including through the establishment of a dedicated training academy.

PROPOSED ACTION: Progress should be made towards more effectiveness in the implementation of the beneficial ownership identification rules and alternative solutions should be explored to make sure the information is more readily available.

In addition, the OECD's Oslo Dialogue should be mandated to come up with recommendations to strengthen effectiveness of inter-agency and cross-border co-operation that could tackle tax crimes and other financial crimes.

3.3. Exploring defensive measures

Recognising that it was imperative for global tax transparency that a level playing field is maintained, in September 2014, G20 Finance Ministers called on the OECD to work with G20 countries:

To propose possible tougher incentives and implementation processes, to deal with those countries which fail to respect Global Forum standards on exchange of tax information on request. The OECD should report back to us on progress at the first meeting of Finance Ministers and Central Bank Governors in 2015.

In response to this call, I submitted to you in September 2015 a report on tougher incentives² which members of the G20 and other organisations, individually or collectively, may want to take.

That report highlighted a number of proposals to support a more consistent global approach can be developed for those jurisdictions which benefit from their failure to meet their commitment to the EOIR Standard, at the expense of those that do, including:

- i. Further publicising the Global Forum ratings to amplify their reputational impact
- ii. Reviewing existing measures to include the Global Forum ratings as at least a factor in their application and publicising where they are linked to the ratings
- iii. Considering introducing new measures with the Global Forum ratings as at least a factor in their application
- iv. Calibrating the application of the measures to best incentivise jurisdictions to comply with the international standard of EOIR
- v. International organisations and national development agencies, where they do not already do so, reviewing their investment policies to consider incorporating restrictions in relation to the routing of investments through jurisdictions failing to respect the EOIR standard

PROPOSED ACTION: The G20 could consider how to further proceed with the recommendations on defensive measures.

² www.oecd.org/g20/topics/taxation/oecd-secretary-general-tax-report-to-g20-FMCBG-september-2015.pdf

Annex

Update on Panama's progress to commit and implement the tax transparency standards

Panama's initial Phase 1 peer review by the Global Forum on the EOIR standard was published in September 2010 and identified significant shortcomings with its legal and regulatory framework. As a result, it was blocked from moving to Phase 2 of the review process until the recommendations had been addressed. A supplementary review published in April 2014 also found that, despite some legislative amendments, Panama still did not have in place a sufficiently robust legal framework to move to Phase 2.

After Panama made further legislative amendments, a second supplementary review was published in October 2015. That review noted that "Panama has taken some steps to comply with the international standards for exchange of information, including improvements to the custodian regime introduced in 2013 to immobilise bearer shares. However, Panama is yet to act on some of the recommendations made in the 2010 Phase 1 report and a number of elements which are crucial to achieving effective exchange of information are still not in place, particular with regard to element A.2 (availability of accounting records)". The report also made important recommendations regarding the lack of availability of ownership information for private foundations, as well as Panama's limited responsiveness to requests from other jurisdictions to enter into tax exchange agreements. To date, Panama remains one of the rare financial centres which has not yet signed the multilateral Convention on Mutual Administrative Assistance in Tax Matters.

Notwithstanding, the 2015 further supplementary Phase 1 review concluded that "in light of the actions undertaken by Panama to address some of the recommendations made in the 2014 Supplementary Report, Panama is in a position to move to its Phase 2 Peer Review". That Phase 2 review was launched in December, and the report, focused on Panama's practical implementation of the EOIR standard as well as its efforts to meet the outstanding Phase 1 recommendations, is expected to be published by late October 2016.

With respect to AEOI, Panama, as a significant financial centre, is expected to commit to implement the AEOI standard (the Common Reporting Standard) and begin exchanges by 2017 or 2018. After the Global Forum sought confirmation of the commitment to the CRS given by Panama in October 2015 before and at the Global Forum plenary meeting, in February 2016 Panama advised that it was not in fact committed to the AEOI standard. I advised this to you in my report for your Shanghai meeting. So far, 98 jurisdictions have committed to implement the AEOI standard by 2017 and 2018.

