Congressional Research Service

The OECD Initiative on Tax Havens

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July 29, 2010

Congressional Research Service
7-5700
www.crs.gov
R40114

CRS Report for Congress
Prepared for Members and Committees of Congress

Summary

Since the 1990s, the Organization for Economic Cooperation and Development (OECD), under the direction of its member countries, has spearheaded an international agreement to outlaw crimes of bribery, and it continues to coordinate efforts aimed at reducing the occurrence of money laundering, corruption, and tax havens. Also, the OECD is a pivotal player in promoting corporate codes of conduct that attempt to develop a set of standards for multinational firms that can be applied across national borders. The OECD's work on tax havens, which initially focused on improving transparency and exchange of information for tax purposes, has evolved into a global initiative to implement standards in these areas and is carried out through the Global Forum on Transparency and Exchange of Information for Tax Purposes, which has more than 90 member countries/jurisdictions. On May 4, 2009, President Obama outlined his Administration's policy to "crack down on illegal tax evasion" and to close loopholes. In the 111th Congress, companion legislation was introduced in the House (H.R. 1265) and the Senate (S. 506) to restrict the use of tax havens. Some estimates indicate that tax havens cost the United States $100 billion each year in lost tax revenues (*The Christian Science Monitor*, Tax Havens in U.S. Cross Hairs, by David R. Francis, June 9, 2008).

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Background

The Organization for Economic Cooperation and Development (OECD) is an intergovernmental economic organization in which the 32 member countries[1] discuss, develop and analyze economic and social policy.[2] The OECD is organized around three main bodies: the Council, the Committees, and the Secretariat. Committees are comprised of representatives of all the member countries. The Council has ultimate decision-making power and is composed of one representative for each member country, generally at the level of Ambassador. The Council gives guidance to the OECD and directs its work. Since the work agenda is set by unanimous consent by the Council, a veto by a Council member removes an item from the agenda. The OECD is a strong proponent of the view that increasing world economic growth and welfare is best supported by a free and open flow of goods, services, and capital. As a result, it views its own role in this process as that of a leading proponent of the benefits of globalization and as a force for developing institutions and regulatory structures that can make these benefits available to the OECD members and to developing countries.

International flows of capital and goods and services around the world, a phenomenon referred to as globalization, have grown dramatically over the past two decades and are producing significant challenges for the OECD members, including the United States. International flows in dollars, for instance, now total over $3.2 trillion *per day*, or nearly twice as much as the total *annual* amount of U.S. exports and imports of goods and services. One part of these flows is foreign direct investment, or investment in businesses and real estate. The United States is the largest recipient of foreign direct investment and is the largest overseas investor in the world, owning over $3 trillion in direct investment abroad, or almost twice as much abroad as British investors, the next-most active overseas investors. These investments generate profits for U.S. firms, which pay taxes on those profits. In some cases, firms develop elaborate strategies to reduce their taxes, at times using the financial services offered by some foreign jurisdictions, sometimes referred to as tax havens, and some U.S. individuals engage foreign banks to hide their assets from being taxed.

Policymakers in the United States and elsewhere have addressed the issue of “tax havens” and the double taxation of businesses that operate internationally for nearly a century. Recently, however, tax havens have attracted increased attention from policymakers. In part, this attention reflects new efforts to curtail the use of tax havens for tax avoidance, combined with efforts since the terrorist attacks of September 11, 2001, to track financial flows that may be diverted to illegal activities. Also, some policymakers are targeting tax havens as part of their efforts to increase government revenues during the current economic downturn and to improve the integrity of the financial system in the wake of the financial crisis. At the G-20 Summit meeting in London in April 2009, the issue of tax evasion and the OECD’s work was prominent in discussion between the leaders. In their official statement, the G-20 leaders indicated that they were adopting measures to curtail tax havens and to target “non-cooperative jurisdictions.” In particular, the Summit communiqué stated that the G-20 members “stand ready to take agreed action against non-cooperative jurisdictions, including tax havens. We stand ready to deploy sanctions to protect

[1] The member countries include Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, The Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom, and the United States. Chile is scheduled to become the 31st member in 2010.

[2] For additional information, see CRS Report RS21128, *The Organization for Economic Cooperation and Development*, by James K. Jackson.

our public finances and financial systems. The era of banking secrecy is over."[3] The G-20 leaders also indicated that they had agreed to support a group of measures, including:

- increased disclosure requirements on the part of taxpayers and financial institutions to report transactions involving non-cooperative jurisdictions;
- withholding taxes in respect of a wide variety of payments;
- denying deductions in respect of expense payments to payees resident in a non-cooperative jurisdiction;
- reviewing tax treaty policy;
- asking international institutions and regional development banks to review their investment policies; and
- giving extra weight to the principles of tax transparency and information exchange when designing bilateral aid programs.[4]

In addition, on May 4, 2009, President Obama announced a set of proposals to "crack down on illegal overseas tax evasion, close loopholes, and make it more profitable for companies to create jobs here in the United States."[5] The Administration's proposal reportedly is intended to ensure that the U.S. tax code does not "stack the deck against job creation" in the United States and that it reduces "the amount of taxes lost to tax havens." Within these two broad areas, the Administration proposed the following:

(1) Replacing Tax Advantages for Creating Jobs Overseas with Incentives to Create Them at Home.

- Reforming deferral rules to curb a tax advantage for investing and reinvesting overseas.
- Closing foreign tax credit loopholes.
- Using savings to make permanent the tax credit for investing in research and experimentation at home.

(2) Getting Tough on Overseas Tax Havens.

- Eliminating loopholes for "disappearing" offshore subsidiaries.
- Cracking down on the abuse of tax havens by individuals.
- Devoting new resources for IRS enforcement to help close the international tax gap.

Two high-profile cases focused attention on the use of tax havens and tax evasion more generally. The first case involved an investigation in 2008 in Germany involving 600-700 German citizens reportedly funneling funds into banks in Liechtenstein, taking advantage of Liechtenstein-based trusts to evade paying taxes in Germany. At that time, Andorra, the Principality of Liechtenstein, and the Principality of Monaco were the last remaining jurisdictions listed by the OECD as

[3] *Global Plan for Recovery and Reform; the Communiqué From the London Summit*, G-20, April 2, 2009.

[4] *Declaration on Strengthening the Financial System*, G-20, April 2, 2009.

[5] *Remarks by the President on International Tax Policy Reform*, May 4, 2009.

uncooperative tax havens. In May 2009, however, the OECD's Committee on Fiscal Affairs removed all three jurisdictions from the list as a result of commitments they each made to implement the OECD standards of transparency and effective exchange of information and the timetable they each set for implementation.

The second case involves the Union Bank of Switzerland (UBS). For more than a year, the IRS had pressured the Swiss banking firm to release the names of 52,000 Americans the agency believed had offshore accounts in Switzerland and were using Switzerland's banking secrecy laws to avoid paying taxes. So far, UBS has agreed to pay $780 million in fines and has admitted that it set up shell companies and accounts in Switzerland on behalf of U.S. citizens, that it advised U.S. citizens on the best way to hide their assets from the IRS, and that UBS employees gave U.S. clients tips on placing pricey art and jewelry in safety deposit boxes without declaring them to the IRS.[6]

UBS officials expressed some interest in accommodating the IRS request, but Swiss regulators instructed UBS to hand over the names of only 285 clients suspected of tax fraud. The Swiss government indicated that it was instructing UBS not to comply with the IRS summons, regardless of any outcome by a Florida court.[7] Negotiations between the Treasury Department and the Swiss Government eventually reached a compromise that gives the IRS the names of a substantial number of U.S. clients. The IRS asked a court in Florida to enforce a summons that it served on UBS in February 2009, but on July 14, 2009, a federal judge granted a joint request by the U.S. and Swiss governments and UBS to delay a court hearing in a civil case to give the parties more time to reach an agreement.[8] On August 20, 2009, UBS agreed to turn over the names of 4,400 American clients who are suspected by the IRS of using Swiss bank accounts for tax evasion.[9] On June 19, 2009, Switzerland and the United States agreed to amend their long-standing income tax treaty to provide for an increased exchange of information for income tax purposes.[10] Eventually, the matter was referred to the Swiss Parliament, which approved on June 17, 2010, a treaty that will provide the U.S. government with the names of clients UBS helped evade U.S. taxes.[11]

Although not a new issue, a recurring issue for the United States and for other OECD countries is an effort to negotiate income tax treaties with Brazil. The growing prosperity of the Brazilian economy is attracting U.S. and other foreign firms to trade with and to invest in Brazil, and it is helping Brazilian firms raise their profiles as foreign investors. In May 2007, the United States and Brazil signed an information exchange agreement on taxes. The Obama Administration has expressed its support for closer trade and investment ties with Brazil, and the U.S.-Brazil CEO Forum indicated on July 22, 2009, that a bilateral tax treaty with Brazil remains a high priority for U.S. and Brazilian business leaders.[12] U.S. business leaders and policymakers have indicated that

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[6] Foley, Stephen, Swiss Banks' Veil of Secrecy Slips, *The Independent*, July 14, 2009. p. 40.

[7] Mijuk, Goran, Swiss Will Block UBS From Revealing Client Data, *The Wall Street Journal Europe*, July 9, 2009, p. 11.

[8] Mollenkamp, Carrick, In UBS Case, a Dogged IRS , *The Wall Street Journal Europe*, July 14, 2009, p. 1; Mollenkamp, Carrick, UBS, U.S. Ask For a Delay – Settlement Sought in Dispute Over Swiss Privacy Laws and Tax-Evasion Case, *The Wall Street Journal Europe*, July 13, 2009, p. 1.

[9] Browning, Lynnley, Names Deal Cracks Swiss Bank Secrecy, *New York Times*, August 21, 2009.

[10] *United States, Switzerland Agree to Increased Tax Information Exchange*, press release TG-177, the U.S. Department of the Treasury, June 19, 2009.

[11] Willie, Klaus, Swiss Parliament Approves UBS Treaty, Ends Standoff, *Bloomberg Businessweek*, June 17, 2010.

[12] *Preliminary Statement of Brazilian and U.S. CED Priorities*, U.S.-Brazil CEO Forum, June 22, 2009.

the lack of comprehensive bilateral investment treaties or income tax treaties with Brazil is inhibiting foreign firms from fully engaging with the Brazilian economy. Such a treaty, some argue, would provide a more consistent and permanent set of rules for foreign firms operating in Brazil. Even those countries that have investment treaties with Brazil are frustrated, because Brazil's complicated tax system and its business and economic practices often are difficult for foreign firms to navigate. Also, some business practices and some government policies are often viewed by foreign firms as being protectionist, which inhibits trade and commercial relations. In 2005, for instance, Germany notified Brazil that it was allowing its tax treaty with Brazil to lapse due to definitions the Brazilians used to tax entities (which differed from those used by the OECD and undermined the value of the treaty), disagreements over the way Brazil taxes imports by German firms, and changes in Brazil's economic status that rendered parts of the agreement out of date.

OECD Efforts to Address International Tax Evasion

The OECD has a long history of promoting cooperation between governments to address the issue of international tax evasion. Over the last ten years, the main focus of its work in this area has been to develop and ensure implementation of international standards of transparency and exchange of information for tax purposes.

The international standards of transparency and exchange of information are primarily contained in Article 26 of the OECD Model Tax Convention and the 2002 Model Agreement on Exchange of Information on Tax Matters. The standards were adopted by the G20 Ministers of Finance at a meeting in Berlin (Germany) in 2004, Xianghe (China) in 2005 and by the UN Committee of experts on International Cooperation in Tax Matters in October 2008, making it an international standard. The standards serve as a model for the vast majority of the 3,600 bilateral tax conventions and agreements which are the international norm for administrative tax co-operation between countries.

The standards require:

- exchange of information on request where it is "foreseeably relevant" to the administration and enforcement of the domestic law of the treaty partner;
- no restrictions on exchange caused by bank secrecy or domestic tax interest requirements;
- availability of reliable information and powers to obtain it;
- respect for taxpayers' rights; and
- strict confidentiality of information exchanged.

A jurisdiction requesting information must establish that the information is "forseeably relevant" to the administration and enforcement of its tax laws, which rules out so-called "fishing expeditions." As long as that standard is established, the scope of the information that may be requested is broad. Such requests could cover any and all information that relates to the enforcement and administration of the requesting jurisdictions' tax laws, including, information relating to interest, dividends or capital gains, bank information, fiduciary information relating to trust, or ownership information of a company.

The United States, as an OECD member country, recognizes and abides by the provisions of the OECD model tax convention. Nevertheless, the United States has its own model income tax convention, last updated in 2006, that is uses as the basis for U.S. negotiations. These two models are compatible, but the United States does reserve the right to have substantive differences. According to the U.S. Department of the Treasury, the United States has reservations with the first 12 articles in the OECD model tax convention that deal with taxes on income. In general terms, the U.S. reservations focus on differences between the U.S. and OECD tax conventions with the way certain terms are identified and the way certain taxes are applied to various forms of income, such as royalties, certain types of deferred payments, taxes on branch profits, and state and local taxes among other items.

Currently, the United States has signed bilateral tax treaties with nearly 70 other countries. Tax treaties, protocols (amendments to existing treaties) and information exchange agreements that have been signed but not yet ratified by the Senate include those with France, Luxembourg, Liechtenstein, and Switzerland. On July 16, 2010, the Senate approved a tax treaty with Malta and amended the existing U.S.-New Zealand Tax Treaty.

In general terms, the OECD's model tax convention attempts to provide a common set of rules that national tax jurisdictions can follow to avoid the double taxation of income and capital. The convention establishes the respective rights to tax of the State of source and of the State of residence for both income and capital. As a rule, the exclusive right to tax in a number of cases of items of income and capital is conferred on the State of residence. The other contracting State is thereby prevented from taxing those items.[13] The current version of the OECD's model tax convention contains 31 articles, most of which apply to taxes on income. Currently, the OECD is coordinating an update to the Model Tax Convention, which it expects to complete by the fall of 2010. The OECD is also coordinating a revision of its guidelines on transfer pricing, which was last updated in 1995.

One critique of the Article is that it obligates countries to make available information that is obtained using the jurisdiction's "information gathering measures," which assumes that all jurisdictions collect the same types of data. In concept, jurisdictions could evade providing information simply by not erecting the procedures necessary to collect such data.

Progress Made Towards Implementing the Standards

In the run up to the G20 Summit held in London on April 2, 2009, the standards on transparency and exchange of information developed by the OECD were endorsed by all key players, including jurisdictions which previously had opposed exchanging bank information. In conjunction with the London G20 Summit, the OECD Secretary-General issued a progress report identifying jurisdictions that had committed to the internationally agreed standard and those which had substantially implemented that standard. For purposes of the progress report, jurisdictions were considered to have substantially implemented the standard when they had signed at least 12 agreements for the exchange of information in tax matters that meet the standard. The progress report is updated continuously as new agreements are signed (the latest progress report can be found at http://wwww.oecd/tax/transparency).

[13] For additional information, see CRS Report R40623, *Tax Havens: International Tax Avoidance and Evasion*, by Jane G. Gravelle.

On July 2, 2010, the OECD released its latest progress report on jurisdictions that have agreed to comply with the internationally agreed tax standard.[14] As indicated in **Table 1**, there are no jurisdictions that are listed as non-cooperative jurisdictions.

Table 1. Progress Report on the Jurisdictions Surveyed by the OECD Global Forum That Have Implemented the Internationally Agreed Tax Standard

Progress Made as of July 2, 2010

Jurisdictions that have substantially implemented the internationally agreed tax standard

Andorra	Czech Republic	Japan	St. Vincent and the Grenadines
Anguilla	Denmark	Jersey	Samoa
Antigua and Barbuda	Dominica	Korea	San Marino
Argentina	Estonia	Liechtenstein	Seychelles
Aruba	Finland	Luxembourg	Singapore
Australia	France	Malaysia	Slovak Republic
Austria	Germany	Malta	Slovenia
The Bahamas	Gibraltar	Mauritius	South Africa
Bahrain	Greece	Mexico	Spain
Barbados	Grenada	Monaco	Sweden
Bermuda	Guernsey	Netherlands	Switzerland
Brazil	Hungary	Netherlands Antilles	Turkey
British Virgin Islands	Iceland	New Zealand	Turks and Caicos Is.
Canada	India	Norway	United Arab Emirates
Cayman Islands	Indonesia	Poland	United Kingdom
Chile	Ireland	Portugal	United States
China[a]	Isle of Man	Russian Federation	US Virgin Islands
Cyprus	Israel	St. Kitts and Nevis	
	Italy	St. Lucia	

Jurisdictions that have committed to the internationally agreed tax standard, but have not yet substantially implemented

Jurisdiction	Year of Commit-ment	Number of Agreements	Jurisdiction	Year of Commit ment	Number of Agreements
Tax Havens[b]					
Belize	2002	4	Nauru	2003	0
Cook Islands	2002	11	Niue	2002	0
Liberia	2007	1	Panama	2002	2

[14] The complete assessment is contained in*: Tax Cooperation: Towards a Level Playing "Field – 2009 Assessment by the Global Forum on Taxation*, the Organization for Economic Cooperation and Development, 2009.

Marshall Islands	2007	3	Vanuatu	2003	2
Montserrat	2002	3			
		Other Financial Centers			
Brunei	2009	9	Philippines	2009	0
Costa Rica	2009	1	Uruguay	2009	5
Guatemala	2009	0			

Jurisdictions that have not committed to the internationally agreed tax standard

Jurisdiction	Number of Agreements	Jurisdiction	Number of Agreements
All jurisdictions surveyed by the Global Forum have now committed to the internationally agreed tax standard			

Source: Organization for Economic Cooperation and Development.

Notes: The internationally agreed tax standard, which was developed by the OECD in co-operation with non-OECD countries and which was endorsed by G20 Finance Ministers at their Berlin Meeting in 2004 and by the UN Committee of Experts on International Cooperation in Tax Matters at its October 2008 Meeting, requires exchange of information on request in all tax matters for the administration and enforcement of domestic tax law without regard to a domestic tax interest requirement or bank secrecy for tax purposes. It also provides for extensive safeguards to protect the confidentiality of the information exchanged.

a. Excluding the Special Administrative Regions, which have committed to implement the internationally agreed tax standard.

b. These jurisdictions were identified in 2000 as meeting the tax haven criteria as described in the 1998 OECD report.

Since 2009, around 500 agreements have been signed by jurisdictions that were identified by the OECD in the progress report published on April 2, 2009 as not having substantially implemented the standard. Since that date, 25 more jurisdictions have substantially implemented the standard by signing new agreements, renegotiating existing treaties or amending domestic laws to allow for full exchange of information.

The Global Forum on Transparency and Exchange of Information for Tax Purposes

Since 2000, the Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) has been the multilateral framework within which work in the area of tax transparency has been carried out by both OECD and non-OECD economies. From 2006, the Global Forum has published annual assessments of the legal and administrative framework for transparency and exchange of information in over 80 countries. The last assessment was published in September 2009 as, *Tax Co-operation 2009: Towards a Level Playing Field – 2009 Assessment by the Global Forum on Transparency and Exchange of Information.*[15]

[15] The next Global Forum Assessment is scheduled to be published in September 2010.

The Global Forum met in Mexico on September 1-2, 2009 to discuss progress made in implementing the international standards, and how to respond to international calls to strengthen the work of the Global Forum. Participants agreed that the Global Forum should:

- be restructured to include all OECD, G20, and some other jurisdictions, as an organization funded by its members who each have an equal footing;
- establish a self-standing dedicated secretariat based at the OECD Centre for Tax Policy and Administration;
- carry out in-depth monitoring and peer review of the implementation of the standards of transparency and exchange of information for tax purposes;
- develop multilateral instruments to speed up negotiations; and
- ensure that developing countries benefit from the new environment of transparency.

To fulfill this mandate, the Global Forum set up a 15 member Steering Group, chaired by Australia with Vice-Chairs from China, Germany and Bermuda, to guide the work of the Global Forum. In addition, a 30 member Peer Review Group chaired by France and assisted by four Vice-Chairs – India, Japan, Singapore and Jersey. The United States is a member of both the Steering Group and the Peer Review Group. The first meetings of the Peer Review Group took place in October and December 2009 and the reviews began in March 2010.

The Peer Review Process

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, will undergo reviews of the implementation of their systems for the exchange of information in tax matters.[16] These reviews will take place in two phases. Phase 1 reviews assess the quality of a jurisdiction's legal and regulatory framework for tax transparency and the exchange of information for tax purposes, while Phase 2 reviews examine the practical operation of that framework.

These reviews are conducted on the basis of the Terms of Reference agreed by the Global Forum. The Terms of Reference organize the standards of transparency and exchange of information into 10 essential elements. These elements are:

1. Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities.
2. Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.
3. Banking information should be available for all account-holders.
4. Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in position or control of such information (irrespective of any legal obligation on such obligation on such person to maintain the secrecy of the information).

[16] The schedule of peer reviews is available on the OECD website: http://wwww.oecd/tax/transparency.

5. The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.
6. Exchange of information mechanisms should allow for effective exchange of information.
7. The jurisdictions' network of information exchange mechanisms should cover all relevant partners.
8. The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received.
9. The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties.
10. The jurisdiction should provide information under its network of agreements in a timely manner.

In addition to the peer reviews, a system of on-going monitoring is being implemented to ensure that developments which occur after a review is complete are acknowledged and to make sure that the most complete and up-to-date information about all the jurisdictions covered by the Global Forum's work is available to the public. This information will include a database of information concerning transparency and exchange of information on the Global Forum website (www.oecd.org/tax/transparency).

The peer review of the United States is scheduled to commence in the second half of 2010. The review will be a "combined review", simultaneously assessing both the legal and regulatory framework for transparency and exchange of information and the practical effectiveness of its framework. Once approved by the Peer Review Group, the resulting report will be proposed to the Global Forum for adoption and subsequent publication.

The OECD's Harmful Tax Practices Project

The Global Forum's work is derived from the OECD's harmful tax practices project, which was launched in 1996 at the direction of the G7.[17] As part of this initiative, the OECD has attempted to curtail the use of what it termed "harmful tax competition,"[18] which it defined as attempts by some countries to attract capital by offering tax-benefit inducements with the sole purpose of attracting foreign investment. These concerns arose from a judgment that certain kinds of competition for internationally mobile capital can threaten the tax bases of other OECD countries and can distort the worldwide allocation of capital. This initiative has been carried out through the Forum on Harmful Tax Practices, a subsidiary body of the OECD's Committee on Fiscal Affairs (CFA). The first major output of the Forum on Harmful Tax Practices was the 1998 report, *Harmful Tax Competition: An Emerging Global Issue*.[14] In this report, the OECD indicated that it was not focusing on any particular nation's tax structure. It stated:

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[17] Group of seven advanced economies, including: Canada, France Germany, Italy, Japan, The United Kingdom, and the United States.

[18] *Harmful Tax Competition: an Emerging Global Issue*. Organization for Economic Cooperation and Development, Paris, 1998.

> Historically, tax policies have been developed primarily to address domestic economic and social concerns. The forms and levels of taxation were established on the basis of the desired level of publicly provided goods and transfers, with regard also taken to the allocative, stabilizing, and redistributive aims thought appropriate for a country.[19]

The publication of this report initiated a period of intense dialogue aimed at eliminating preferential tax regimes within OECD members states,[15] identifying "tax havens," and seeking their commitments to the principles of transparency and effective exchange of information and encouraging other non-OECD economies to associate themselves with the harmful tax practices work. Between 2000 and 2002 the OECD worked with these jurisdictions to secure their commitment to implement the OECD's standards of transparency and exchange of information.[16] This dialogue with non-OECD members ultimately transformed into the Global Forum on Transparency and Exchange of Information for Tax Purposes, and many of these jurisdictions now play active roles on its Steering Group and Peer Review Group.

As part of its motivation, the OECD has indicated that it is attempting to curtail tax practices by countries that have, "No or only nominal taxation combined with the fact that a country offers itself as a place, or is perceived to be a place, to be used by non-residents to escape tax in their country or residence."[20] Such countries often are termed tax havens. Although there is no agreed-upon definition of a tax haven, or an agreed-upon list of countries that are tax havens, the OECD has established four basic principles it uses to determine whether a country is a tax haven. These four criteria are (1) the jurisdiction imposes no or only nominal taxes; (2) there is a lack of transparency; (3) there are laws or administrative practices that prevent the effective exchange of information for tax purposes with other governments on taxpayers who are benefiting from the no or nominal taxation; and (4) there are no requirements that the activity be substantial. In establishing these criteria, the OECD indicated that "every jurisdiction has a right to determine whether to impose direct taxes and, if so, to determine the appropriate tax rate." The OECD indicated that it was not targeting differences in tax structures between countries that may be exploited by individuals or firms, but that it was focusing on a practice that is meant specifically to reallocate investment:

> Unlike the situation of mismatching.... Here the effect is for one country to redirect capital and financial flows and the corresponding revenue from the other jurisdictions by bidding aggressively for the tax base of other countries. Some have described this effect as "poaching" as the tax base "rightly" belongs to the other country. Practices of this sort can appropriately be labeled harmful tax competition as they do not reflect different judgments about the appropriate level of taxes and public outlays or the appropriate mix of taxes in a particular country, but are, in effect, tailored to attract investment or savings originating elsewhere or to facilitate the avoidance of other countries' taxes.[21]

The Clinton Administration played a leadership role in shaping the OECD's tax competition initiative. When the initiative was publicly announced, for instance, the Clinton Administration, through Treasury Secretary Lawrence Summers, released a statement that read:

> The identification of tax havens and potentially harmful tax regimes is a crucial step in preventing distortions that could undermine the benefits of enhanced capital mobility in

[19] Ibid, p. 13.

[20] Ibid, p. 21.

[21] *Ibid.*, p. 16.

> today's global economy.... We encourage all countries to follow the example set by the OECD member countries ... that have committed to eliminate harmful tax practices.[22]

The Bush Administration, however, led by Treasury Secretary Paul O'Neill, decided to pursue a different approach. In a statement before the Senate Committee on Governmental Affairs July 18, 2001, Secretary O'Neill voiced the Bush Administration's opposition to portions of the OECD's efforts to target tax havens. The Secretary said:

> The 1998 OECD Report, and a follow-up report issued in June 2000, contained rhetoric that implicated fundamental internal tax policy decisions of countries within and outside the OECD, including decisions regarding tax rates. The Reports enumerated the harms potentially caused by 'tax havens or harmful preferential regimes that drive the effective tax rate levied on income from the mobile activities significantly below rates in other countries.' Tax systems that "redirect capital and financial flows and the corresponding revenue from" other countries were condemned as 'poaching' the rightful tax base of the other countries, even though such systems provide a more attractive investment climate without facilitating noncompliance with the tax laws of any other country.[23]

As a result of the Bush Administration's efforts, the OECD backed away from its efforts to target "harmful tax practices" and shifted the scope of its efforts to improving exchanges of tax information between member countries. In his statement, Secretary O'Neill stated that he was "troubled by the notion that any country, or group of countries, should interfere in any other country's decisions about how to structure its own tax system.[24]

Tax Information Exchange Agreements (TIEAS)

Tax Information Exchange Agreements (TIEAS) are agreements between members of the OECD and parties that are not members of the OECD as a way to promote international cooperation on tax matters through the exchange of information. According to the OECD, the lack of effective exchange of basic tax information is one of the key criteria it uses to determine harmful tax practices. The TIEAS were first released in 2002 and represent a non-binding agreement that contains a multilateral instrument and a model for bilateral agreements. The agreement is multilateral in the sense that it provides the basis for an integrated bundle of bilateral agreements. A party to the multilateral Agreement is bound only by the Agreement to the specific parties it wishes to be bound.

On October 30, 2008, the OECD announced that 16 new exchange of information agreements had been signed, bringing to 44 the number of such arrangements that have been put in place since 2000. In addition, OECD Secretary General Angel Gurria called for a new drive to raise standards and performance in the area of corporate governance. At the heart of this campaign were moves to strengthen implementation of the OECD Principles of Corporate Governance,[25] first launched

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[22] *Treasury Secretary Welcomes OECD Report on Harmful Tax Competition Havens*, U.S. Department of the Treasury, June 26, 2000.

[23] Statement of Paul H. O'Neill Before the Senate Committee on Governmental Affairs Permanent Subcommittee on Investigations: OECD Harmful Tax Practices Initiative, July 18, 2001.

[24] Ibid., p. 4.

[25] The OECD Principles of Corporate Governance are a voluntary set of standards that were endorsed by OECD Ministers in 1999. They are a non-binding set of standards that are not intended to substitute for government, semi-government or private sector initiatives to develop more detailed "best practice" in corporate governance. The (continued...)

in 1999 and adopted by the Financial Stability Forum (now the Financial Stability Board)[26] as one of its 12 core standards for sound financial systems on March 26, 2000. According to Gurria, the global financial crisis and tax evasion scandals have strengthened governments' determination to fight tax evasion and to bring increased transparency to cross-border transactions. The attention being directed at tax havens spurred a surge in TIAS being signed in 2009. In the first half of 2009, 40 more agreements had been signed, as indicated in **Table 2**, mostly by jurisdictions that are attempting to reach the important threshold of 12 signed agreements in order to be considered in compliance.

Table 2. Bilateral Tax Information Exchange Agreements Signed in 2009

Country	Partner	Date
Netherlands	Cayman Islands	July 8, 2009
Germany	Bermuda	July 3, 2009
Ireland	Gibraltar	June 24, 2009
Ireland	Cayman Islands	June 23, 2009
France	British Virgin Islands	June 17, 2009
Australia	Jersey	June 10, 2009
Netherlands	Bermuda	June 8, 2009
Denmark	British Virgin Islands	May 19, 2009
Faroe Islands	British Virgin Islands	May 19, 2009
Finland	British Virgin Islands	May 19, 2009
Greenland	British Virgin Islands	May 19, 2009
Iceland	British Virgin Islands	May 19, 2009
Norway	British Virgin Islands	May 19, 2009
Sweden	British Virgin Islands	May 19, 2009
New Zealand	Bermuda	April 17, 2009
Denmark	Bermuda	April 16, 2009
Faroe Islands	Bermuda	April 16, 2009
Finland	Bermuda	April 16, 2009
Greenland	Bermuda	April 16, 2009

(...continued)

Principles are intended to assist OECD and non-OECD governments in their efforts to evaluate and improve the legal, institutional and regulatory framework for corporate governance in their countries, and to provide guidance and suggestions for stock exchanges, investors, corporations, and other parties that have a role in the process of developing good corporate governance. Available at http://www.oecd.org/DATAOECD/32/18/31557724.pdf

[26] The Financial Stability Forum is a group of about a dozen nations who participate through their central banks and financial ministries and departments, including Japan, Canada, Germany, France, Italy, the United States, the United Kingdom, and many other industrialized economies. It also includes several international economic organizations. consisting of major national financial authorities such as finance ministries, central bankers, and international financial bodies. The Forum was founded in 1999 to promote international financial stability. It facilitates discussion and cooperation in supervision and surveillance of financial institutions, transactions and events. The Financial Stability Forum was renamed the Financial Stability Board at the G-20 summit in April 2009, when its membership and its mandate were enlarged.

Country	Partner	Date
Iceland	Bermuda	April 16, 2009
Norway	Bermuda	April 16, 2009
Sweden	Bermuda	April 16, 2009
Denmark	Cayman Islands	April 1, 2009
Faroe Islands	Cayman Islands	April 1, 2009
Finland	Cayman Islands	April 1, 2009
Greenland	Cayman Islands	April 1, 2009
Iceland	Cayman Islands	April 1, 2009
Norway	Cayman Islands	April 1, 2009
Sweden	Cayman Islands	April 1, 2009
USA	Gibraltar	March 31, 2009
France	Isle of Man	March 26, 2009
Ireland	Jersey	March 26, 2009
Ireland	Guernsey	March 26, 2009
Germany	Guernsey	March 26, 2009
France	Guernsey	March 24, 2009
France	Jersey	March 23, 2009
United Kingdom	Jersey	March 10, 2009
Germany	Isle of Man	March 2, 2009
Australia	Isle of Man	January 29, 2009
United Kingdom	Guernsey	January 20, 2009

Source: Organization for Economic Cooperation and Development.

Some observers have questioned the effect of many of the recently signed agreements, since they include jurisdictions that collect minimal amounts of data on bank accounts and, therefore, may contribute little to the overall effort to improve transparency and to the exchange of information. In order to address these concerns, the G-8 heads of government agreed on July 8, 2009, to support a set of measures adopted by the G-20 that would serve as a framework to follow up on the exchange of information agreements in order to ensure that the intended benefits would be realized. The measures include the following:

- The OECD Forum on Transparency and Exchange of Information must implement a peer-review process that assesses the implementation of international standards by all jurisdictions and provides an objective and credible basis for further action.
- Since all of the countries monitored by the Global Forum on Taxation have committed to implementing the international standards on the exchange of tax information, efforts should now concentrate on implementing actual information exchange and increasing the number, quality, and relevance of the agreements that adhere to these standards.
- Participation in the Global Forum on Taxation should be expanded.

- Concrete progress needs to be made towards enabling developing countries to benefit from the new cooperative tax agreement, including through enhanced participation in the Global Forum on Taxation and the consideration of a multilateral approach for the exchange the information.
- Criteria that were used to define jurisdictions that had not yet substantially implemented the internationally agreed standards on tax information exchange and transparency should be revised as part of the peer review assessment process to ensure that there is an effective implementation of international standards.
- Participants should discuss and agree upon a toolbox of effective countermeasures they can use against countries that do not meet the international standards on tax transparency.[27]

Legislation

Congress has expressed a continuing interest in the issue of tax havens. In the 111th Congress, companion bills were introduced in the House (H.R. 1265) by Representative Doggett and the Senate (S. 506) by Senator Levin. Titled the "Stop Tax Haven Abuse Act," the measures aim to restrict the use of offshore tax havens and abusive tax shelters to "inappropriately avoid Federal taxation, and for other purposes." Among other provisions, the measures would amend Internal Revenue Code provisions relating to tax shelter activities to (1) establish legal presumptions against the validity of transactions involving offshore secrecy jurisdictions (i.e., foreign tax havens identified in the act and by the Commissioner of the Internal Revenue Service); (2) impose restrictions on foreign jurisdictions, financial institutions, or international transactions that are of primary money laundering concern or that impede U.S. tax enforcement; (3) increase the period for Internal Revenue Service review of tax returns involving offshore secrecy jurisdictions; (4) require tax withholding agents and financial institutions to report certain information about beneficial owners of foreign-owned financial accounts and accounts established in offshore secrecy jurisdictions; and (5) disallow tax advisor opinions validating transactions in offshore secrecy jurisdictions.

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27 *Countering Offshore Tax Evasion*, Organization for Economic Cooperation and Development, July 16, 2009, p. 17.