ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

ORGANISATION DE COOPÉRATION ET DE DÉVELOPPEMENT ÉCONOMIQUES

The Era of Bank Secrecy is Over

THE G20/OECD PROCESS IS DELIVERING RESULTS

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INTRODUCTION

In April 2009, G20 Leaders took action to end the era of bank secrecy. The Global Forum report on exchange of information, which builds upon 59 peer reviews, sets out how this initiative radically improved countries' capacity to tackle tax evasion carried out through the exploitation of offshore financial centres and banking secrecy. Countries have moved rapidly to take advantage of this new environment, using new information tools as they become available. Their shared determination to end offshore abuse is enabling them to deploy strategies, both individually and collectively, to crack down on offshore tax evasion and to integrate better tax compliance into their fiscal consolidation strategies. This report, which has been prepared by the OECD, which hosts the self-standing Secretariat of the Global Forum, provides a brief overview of the impact of this initiative, considers some of the broader effects on attitudes towards tax evasion and aggressive tax planning by both individuals and corporations and sets out what needs to be done to maintain the momentum.

MAIN OUTCOMES AND NEXT STEPS

G20/OECD efforts are paying off

- Almost EUR 14 billion in additional tax revenue have been secured in the past two years in 20 countries where data is available and there is far more to come. This will make a substantial contribution to fiscal consolidation without raising tax rates.
- The fairness of the tax system has improved. Most of the additional revenue has been secured from wealthy citizens attempting to evade taxes. At a time when many governments are having to ask their citizens to accept higher taxes and reduced public services, it is important that everyone pays their fair share.
- Banks are changing their attitudes towards facilitating offshore evasion. They are moving away from relying on bank secrecy to gain a competitive edge.

Further action is needed

- Billions of dollars of undeclared assets remain offshore.
- The Global Forum on Transparency and Exchange of Information for Tax Purposes needs to ensure that all countries rapidly achieve a comprehensive and effective exchange of information.
- We need to remove the practical barriers to a more effective automatic exchange of information in the countries which already use this approach.
- The Forum on Tax Administration, which brings together 43 countries, including all G20 countries, needs to strengthen its efforts to improve tax compliance by the corporate sector and to tackle aggressive corporate tax strategies.
- A whole of government approach to tax crimes and other illicit flows needs to be established. Tax administrations and other law enforcement agencies need to come together to fight tax evasion and other illicit financial activities.

IMPACT ON REVENUE, FAIRNESS AND ATTITUDES TOWARDS NON-COMPLIANCE

The G20 led initiative has dramatically changed the environment within which tax administrations operate. The veil of secrecy, including bank secrecy, has been pierced. Tax administrations are now better equipped to deal with corporate vehicles, trusts, foundations and shell companies and with aggressive tax planning. They are moving beyond just exchanging information to exchanging real intelligence on schemes and trends in evasion and aggressive tax planning. Today tax administrations have far better and more timely access to information than in the past.

The expanded network of information exchange agreements is yielding results. It is now no longer possible to hide assets or income without risking detection. OECD and non-OECD countries are now using these agreements to request information from jurisdictions that previously had bank secrecy or other limitations that prevented them from responding to requests. The number of requests to these jurisdictions has gone from almost zero to many thousands (*e.g.*, since April 2009, G20 countries have sent hundreds of requests to Switzerland). Despite the difficulties of tracking the revenue flowing from using the information received in response to these requests, it is already clear that the amounts involved are significant (see Annex). China and India provide examples of how economies in transition are using these new agreements. Since 2009, the number of information requests to foreign authorities in connection with tax examinations and investigations has almost doubled in China and more than doubled in India. Nevertheless, as can be seen from Part I of this report, countries need to devote more resources to both making requests and to answering requests in a more timely fashion.

New techniques to identify offshore evaders have been put in place. Countries have strengthened their defensive measures against non co-operative jurisdictions (see Box) and stand ready to use these measures against countries that fail to achieve effective exchange of information. Co-operation between tax administrations, both bilateral and multilateral, has deepened. Overall, this new, more transparent and co-operative environment, has led to a significant increase in the risk of detection for offshore evaders, thereby augmenting the deterrent effect on both those who have traditionally held undeclared offshore assets and those who may have been contemplating going offshore to evade taxes. Apart from the one-off effect on revenues described below, tax administrations now have more information on the assets held by their residents offshore which means that in the longer term, there will be a sustainable stream of revenues as these assets are subjected to capital taxes (*e.g.* inheritance taxes; net wealth taxes; transaction taxes) and taxes on the income generated by such capital.

Since the London Summit, the countries surveyed in the annex have, by conservative estimates, brought in almost EUR 14 billion of additional revenue through voluntary compliance initiatives that take advantage of the increased risk of detection for tax evaders as a result of removing bank secrecy for tax purposes. Significantly more revenue is likely to be collected over the next two years. Over 100,000 wealthy taxpayers have come forward to declare their previously hidden wealth held offshore. In France, for example, almost 5,000 taxpayers have voluntarily declared their assets held offshore yielding more than one EUR billion of tax; in Germany almost 30,000 taxpayers have been identified as evading taxes, yielding almost EUR 2 billion; in the United States 30,000 disclosures have been made, yielding almost USD 3 billion thus far. We can expect a multiple of these amounts to be collected over the coming years since the "deterrence" effect will send a strong signal to would be evaders. In many of these cases, the tax evaders – and those who have facilitated the evasion – faced significant penalties, including imprisonment. These figures do not reflect the increased compliance that has occurred outside of voluntary compliance initiatives which probably represents a multiple of these amounts.

In the vast majority of cases, these offshore initiatives require the taxpayer to pay the full amount of tax due, with interest and penalties, although sometimes at a reduced rate where full voluntary disclosure has taken place prior to an investigation being initiated. To succeed, such initiatives need to achieve a balance between encouraging non-compliant taxpayers to improve permanently their compliance, and not

Defensive measures that can be used against non co-operative jurisdictions
This box identifies defensive measures currently used by countries, which are wholly or partially triggered by the lack of effective exchange of information.
– Current taxation of domestic shareholders on income of a controlled foreign company (*e.g.* Argentina, Canada, France, Italy, Spain) – Denying benefits on income/capital gains associated with shares in companies (*e.g.* France, Germany, Italy, Spain) – Disallowing deductions or credits with respect to transactions with residents of a jurisdiction that does not effectively exchange information (*e.g.* Argentina, Brazil, Germany, India, Italy) – Special withholding tax rules (*e.g.* Argentina, Australia) – Application of transfer pricing rules to transactions between unrelated parties/increased transfer pricing documentation requirements (*e.g.* France, Spain) – Increased information reporting requirements (*e.g.* Argentina, Italy, Spain) – New higher penalties (*e.g.* UK and US) – Many countries have also put in place administrative measures which discourage companies from using non-co-operative jurisdictions (*e.g.* reversing the burden of proof; higher audit requirements)

undermining voluntary compliance by the rest of the taxpaying population. This is why the most successful offshore compliance initiatives are generally part of a broader enforcement strategy, which encourages a permanent repatriation of previously undeclared assets. The OECD, working with a number of G20 countries, has set out guidelines on how to design a successful voluntary compliance programme.[1] The FATF has also issued guidelines on how such schemes should be designed to ensure that they are compatible with the FATF recommendations.[2]

Many other countries, especially developing countries, are only just beginning to exploit this more transparent environment and we can expect that we will see significant increases in their revenues as they implement their exchange agreements and step up their compliance efforts.

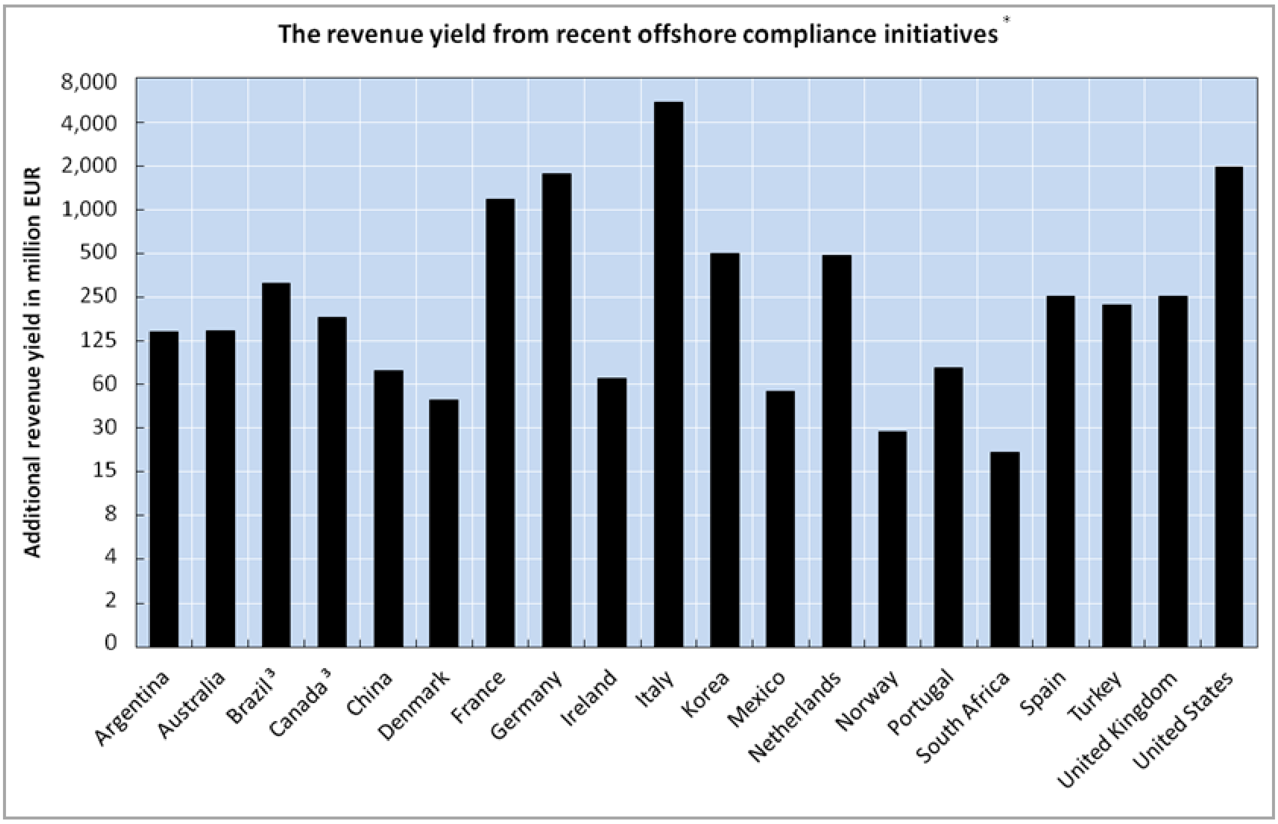
The impact of the G20 initiative is not only contributing to the process of fiscal consolidation, it has also improved the fairness of the tax system since offshore compliance initiatives have targeted the wealthy: those with easiest access to offshore jurisdictions. The positive results are two-fold: this group paid significant back taxes and tax authorities have garnered new knowledge about offshore evasion by high net worth individuals which will strengthen future compliance. Better offshore compliance is one of the most effective responses to those who call for the wealthy to pay more taxes.

The graph below provides an indication of some of the additional revenues already secured as the result of national offshore compliance initiatives, which build upon the G20's leadership in providing a more transparent tax environment. The graph provides a snap shot of an ongoing process; a process where the momentum can be expected to accelerate. It does not reflect the increased compliance that has occurred outside of voluntary compliance initiatives.

In addition to the extra revenue and improved fairness, there is mounting evidence that the G20/OECD led drive to tackle offshore evasion is changing attitudes towards non-compliance. The success of the voluntary disclosure initiatives described in the annex demonstrates that financial institutions and taxpayers now realise that continued non-compliance is highly risky. Financial institutions have been scaling back their operations in offshore jurisdictions (*e.g.*, many European and U.S. banks have curtailed their operations in the Caribbean). Increasingly banks are also looking to improve their tax compliance culture.

[1] See "Offshore Voluntary Disclosure - Comparative Analysis, Guidance and Policy Advice", OECD, 2010.

[2] International Best Practices: Managing the Anti-Money Laundering and Terrorist Financing Policy Implications of Voluntary Tax Compliance Programmes (FATF 22 October 2010).



This is reflected in a wider trend to establish codes of good conduct. As part of its ongoing work to improve tax compliance in the banking industry, the Forum on Tax Administration (FTA) published last year a framework for a Voluntary Code of Conduct for Banks and Revenue Authorities. This drew directly on the experience of operating such a code in South Africa and the United Kingdom. Other countries (*e.g.*, Italy and Spain) are using the framework to develop their own codes. More generally, the OECD is encouraging corporate boards to see tax compliance as an integral part of good corporate governance and the OECD's Guidelines for Multinational Enterprises now make an explicit recommendation that MNE's should comply with <u>both</u> the letter and spirit of the tax law. These initiatives are already yielding results. HSBC, for example, in its annual report states "all group companies are required to observe the letter and spirit of all relevant laws". Many other banks have adopted codes of business conduct and ethics that requires their employees to comply with foreign tax reporting rules. Over two hundred banks have already signed up to the UK code.

Governments' attitudes to banking secrecy and transparency in tax matters are changing and not just in those countries that have used secrecy and a lack of transparency to secure a competitive advantage. High levels of tax evasion are particularly hard to tolerate at a time of strong pressure on public finances. In Greece, levels of evasion are estimated to be around 10% of GDP - EUR 31 billion - and offshore evasion is an important part of that. The Greek government recognises that tackling this is central to their efforts to rebalance their public finances.

NEXT STEPS

The progress made in improving tax compliance by high net worth individuals needs to be deepened

[3] Revenue yield figures are based on an OECD calculation.

* This graph which is based upon a survey of countries carried out by the OECD (see Annex) and which use a logarithm scale, presents revenues which have flows from compliance initiatives launched since the London Summit and which were intended to take advantage of the increased risk of detection arising from the G20 inspired improvement in tax transparency.

and replicated in the corporate sector, since the G20 initiative is not just about getting access to the information on the bank accounts of wealthy individuals. Relationships between multinational enterprises and tax administrations are increasingly constructive and based on greater openness and transparency. But there is no room for complacency. A minority of MNEs continue to misallocate profits to lower tax jurisdictions. Intangibles which are developed in high tax countries are often relocated to lower tax countries or low tax regimes as soon as they begin to yield a steady flow of income. Structured financial products and hybrids are used to exploit mismatches between national tax systems. Some MNEs use offshore financial centres for "round tripping" to minimise their tax burden. For example, a very significant proportion of investment flowing into India, Russia and China is routed through low tax jurisdictions. The OECD's work on aggressive tax planning schemes shows how some large corporations and banks continue to push tax minimization beyond the boundaries of what is acceptable. No firm figures are available on how much these different schemes are costing national treasuries but the experience of some countries suggests it is at least equal to a multiple of the revenue lost from non-compliance by high net worth individuals: revenue which could be used to reduce tax rates, or to fund social programmes or for fiscal consolidation. When global corporations confront national governments all too often it is the government that loses out in the tax area. But this is not just a question of raising more revenue: it is also a question of how we want to use our talented professionals: to engage in creative tax planning or to generate economically viable businesses.

To address unacceptable tax practices by corporations countries will need to move beyond just exchanging information. We need new forms of administrative co-operation and perhaps a move towards greater coordination. We need to see more joint audits whereby a group of countries will come together to audit an MNE which would not only improve compliance but would also reduce the compliance costs for MNEs and minimise disputes between countries. We need to use the more transparent environment to get more information on how MNEs determine their transfer prices and to use the expanded network of information agreements to share such information. And we need to speed up the process of resolving transfer pricing disputes. There must also be a collective reflection among the expanded membership of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters on how to take advantage of the new opportunities that it opens up for enhanced co-operation to address these challenges.

To maintain the momentum towards better tax compliance we must:

a) Move towards Multilateral Agreements

In 1988 the OECD and the Council of Europe drafted a Multilateral Convention on Mutual Administrative Assistance in Tax Matters. Subsequently, in response to a call from G20 leaders, the Convention was updated and opened to all countries. The Convention provides for all types of assistance on exchange of information (*e.g.*, on request, spontaneously and automatic) and for all types of taxes. It now has 21 signatories. Six G20 countries have already signed and it is expected that the remaining G20 countries will join at the Cannes Summit. This Convention offers G20 and other countries a very powerful tool to ensure tax compliance by both individuals and corporations. Now that G20 countries are leading by example, other countries should also consider signing the Convention.

b) Improve the effectiveness of automatic exchange of information

For over two decades, the OECD has been working on automatic exchange of information. Today, the vast majority of OECD and G20 countries already use automatic exchange of information for certain income flows, whether under their bilateral agreements or in the context of multi-country agreements (*e.g.* the EU Savings Directive, the multilateral Convention mentioned above). The OECD and the EU are working to improve the effectiveness of these exchanges by developing standard formats, by improving countries' ability to match information, helping tax administrations to use the information more effectively and by reinforcing provisions that protect the confidentiality of the information exchanged. With an increasing number of countries showing an interest in this form of co-operation, the OECD will intensify its work to remove practical barriers that may impede such exchanges.

c) Create an Offshore Compliance Network

To advance the global fight against tax evasion, the Forum on Tax Administration has established a dedicated network of specialists, led by France and the US, and open to all G20 countries, to tackle offshore evasion. This network held its first meeting in Paris in September 2011. The network will identify the methods used to evade taxes and develop co-ordinated responses to leverage off the G20 initiative, including the risks posed by e-commerce and new internet based payment methods and the ways that non-residents use opaque corporate structures established in offshore jurisdictions. As a basis for sharing knowledge and experience, the network has already compiled a catalogue of some 200 separate initiatives that tax administrations have taken to tackle offshore evasion.

d) Encourage MNEs to improve their compliance with the letter and the spirit of the law

Increasingly governments are trying to change attitudes towards corporate tax compliance by taking tax into the boardroom and having CEOs discuss the financial and reputational risks associated with aggressive tax planning and how they should comply with the letter and the spirit of tax legislation as recommended in the recently updated OECD MNE Guidelines.[4] The objectives must be to ensure that the right amount of tax is paid, in the right country, and at the right time, thereby avoiding both double taxation and double non taxation of enterprises. Governments must improve their co-operation to counter aggressive tax planning. This dialogue must go beyond the corporate income tax to encompass VAT. The Forum on Tax Administration is already providing a platform where business and governments can discuss how to further progress their relationship away from one that is characterized by a lack of a constructive dialogue and of openness to one that is characterized by trust and transparency. The FTA has also established a group that brings together the leaders of large business units in tax administrations to foster the improvements in international collaboration that are described in this note.

e) Put tax compliance in the broader context of countering illicit activities

Earlier this year developed and developing countries came together in Oslo to launch a new OECD initiative aimed at facilitating co-operation between tax authorities and law enforcement agencies to counter financial crimes and illicit flows. This initiative, which had a very active participation from such countries as Australia, France, India, Mexico, Singapore, South Africa, Turkey, the United Kingdom and the United States, recognises that tax administrations have a key role to play in the fight against corruption, money laundering and bribery (two of the biggest European corruption cases in history were uncovered in the course of a tax investigation). The next steps are to ensure that countries have in place the legal and practical framework needed to intensify interagency co-operation. The deliverables will be models for inter-agency co-operation, a catalogue of legal instruments and an action plan for assisting Developing Countries. These outcomes will be discussed at a June 2012 meeting, which will be hosted by Italy back to back with the FATF meeting and which would reinforce the G20 initiative in combating tax fraud, corruption and the FATF's efforts to counter money laundering.

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[4] OECD Guidelines for Multinational Enterprises, updated in 2011.

Annex **Recent country initiatives to improve offshore compliance**		
Country	**Action taken to build on the G20 initiative**	**Impact**
Argentina	Voluntary Disclosure Initiative (2009)	EUR 146 million additional revenue yield.
Australia	Offshore Voluntary Disclosure Initiative (2010/2011)	EUR 150 million (AUD 210 million) additional revenue assessed. More than 8 000 taxpayers involved.
Brazil	Voluntary Compliance Initiative (2009)	Estimated EUR 315 million additional revenue yield.
Canada	On-going Voluntary Disclosures Program (fiscal years ending in 2009-2011)	EUR 620 million (CAD 860 million) total unreported income disclosed. 8,700 disclosures.
China	Broadening the network of tax information exchange agreements and increasing numbers of requests.	EUR 80 million (CNY 690 million) additional revenue yield (in 2010), expected to grow significantly.
Denmark	"Project havens" aimed at uncovering hidden wealth and income abroad.	More than EUR 50 million additional revenue yield so far.
France	Offshore Voluntary Disclosure Initiative (2009)	EUR 1.2 billion additional revenue yield. More than 4 700 taxpayers involved.
Germany	Voluntary Disclosures (2010/2011)	Estimated additional revenue yield of EUR 1.8 billion. Between 25 000 and 30 000 taxpayers involved.
India	Increase of staff number, greater co-operation with G20 partners, increase in exchange of information agreements.	Significant additional revenues expected over next two years.
Ireland	Voluntary Disclosures (since 2009)	EUR 70 million additional revenue yield. Around 400 taxpayers involved. An earlier initiative yielded over EUR 1 billion.
Italy	Offshore Voluntary Disclosure Initiative (2009/2010)	EUR 5.6 billion additional revenue yield. Total undisclosed assets: EUR 104.5 billion. Representing five times the amount from the 2002/2003 initiative.
Korea	Establishment of the Offshore Compliance Enforcement Centre (2009) and offshore tax evasion cases uncovered through tax audits (since 2009)	EUR 510 million (KRW 810 billion) additional revenue assessed.
	Foreign Financial Accounts Reporting Program (2010)	More than 500 taxpayers involved.
Mexico	Offshore Voluntary Disclosure Initiative (2009)	EUR 58 million (MXN 1,057 million) additional revenue yield. Total undisclosed assets: EUR 1,073 million (MXN 19,436 million).

Netherlands	Voluntary disclosure program on offshore accounts	EUR 475 million additional revenue yield so far. More than 9 000 taxpayers involved.
	Tackling the diversion of profits resulting from the transfer of intangibles by individuals and SMEs to no or nominal tax jurisdictions	EUR 20 million additional revenue yield so far and expected to raise EUR 150 million over a 10 year period.
Norway	Voluntary Disclosures	EUR 30 million additional revenue
Portugal	Exceptional Regime of Tax Regularization of Assets (2009)	EUR 83 million additional revenue collected. Around 1 000 taxpayers involved.
South Africa	Voluntary Disclosure Program (2010)	EUR 22 million additional revenue yield (ZAR 229 million)
Spain	Compliance Initiatives focused on Individuals	EUR 260 million additional revenue yield
Turkey	Offshore Voluntary Disclosure Initiative (2009)	EUR 225 million additional revenue yield (TRY 558 million). Total undisclosed assets: EUR 11.25 billion (TRY 27.9 billion).
United Kingdom	Liechtenstein Disclosure Facility	EUR 160 million additional revenue yield (GBP 140 million). More than 1 350 taxpayers involved. Total undisclosed assets: EUR 3 billion (estimate).
	New Disclosure Opportunity	EUR 100 million additional revenue yield (GBP 85 million). Approximately 5 500 disclosures.
United States	Offshore Voluntary Disclosure Initiatives (2009 and 2011)	EUR 2 billion additional revenue yield (USD 2.7 billion) recovered thus far from the 2009 and 2011 initiative. More than 30 000 taxpayers involved.
	Switzerland Disclosure (2009)	Disclosure of 4 450 accounts.