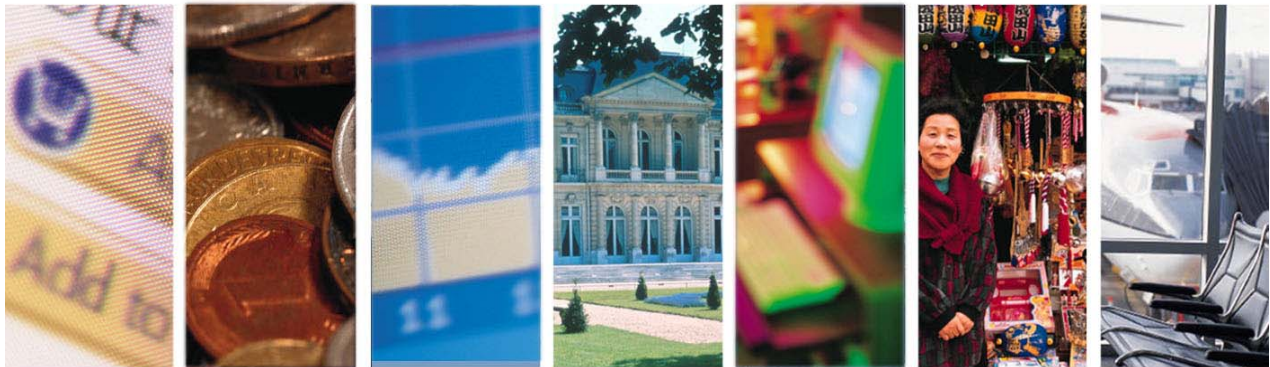




**ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT**



**A Framework for Successful Offshore Voluntary Compliance Programmes**

**Approved by the Committee on Fiscal Affairs on 15 January 2010**



**CENTRE FOR TAX POLICY AND ADMINISTRATION**

## INTRODUCTION

Over the last year the international tax environment has changed dramatically. The OECD standard on information exchange, developed in large part by Working Party No. 8, has gained worldwide acceptance. More than 80 countries including all major financial centres have committed to the standard and are now in the process of implementing it. More than 150 tax information exchange agreements have been signed and progress is being made in updating tax treaties to reflect the OECD standard. The current financial and economic crisis, the growing public deficits and the political support from G20 have accelerated these developments, as the need to improve tax compliance has become paramount.

In this changing environment, previously non-compliant taxpayers are realising that there are no longer any safe havens to hide assets and income from tax authorities. A growing number of taxpayers who have failed to report income and assets to their country of residence now recognize that the risk of detection has increased which in turn is leading to a greater willingness to disclose and correct their situation so as to become fully compliant. Governments have and continue to recognise the need to deal firmly with taxpayers who have committed tax evasion and who have failed to come forward before being detected. But governments should also consider taking advantage of this more transparent environment to encourage non-compliant taxpayers to come forward voluntarily. This may not only lead to a short-term boost to revenues but could also strengthen the tax base in the long run.

Several countries are currently operating voluntary compliance programmes. Such rules or programmes provide an opportunity to facilitate compliance in a timely and cost effective manner, saving costly and contentious audits, litigation and criminal proceedings. Voluntary compliance initiatives must walk a fine line between providing sufficient incentives for those engaged in non-compliance to come forward and not rewarding or encouraging such conduct. For countries that have not yet done so, it would seem timely to consider whether to introduce any such programmes and, if so, how to design them.

It is against this backdrop that the OECD has developed a number of principles for successful offshore voluntary compliance programmes.

## **A FRAMEWORK FOR SUCCESSFUL OFFSHORE VOLUNTARY COMPLIANCE PROGRAMMES**

Offshore voluntary compliance programmes offer the opportunity to maximize the benefits of improvements in transparency and exchange of information for tax purposes, to increase short-term tax revenues and improve medium-term tax compliance. To succeed, they need to tread a fine line between encouraging non-compliant taxpayers to permanently improve their compliance (a balancing act in itself) and retaining the support and compliance of the vast majority of taxpayers who are already compliant. To do this, they need to form part of wider voluntary compliance and enforcement strategies. They also need to be consistent with relevant rules in the non-tax area such as anti-money laundering rules.

This section draws upon the experience of countries and identifies principles for reconciling those tensions in designing a successful offshore voluntary compliance programme as part of a wider tax compliance strategy. How these principles are implemented will be a matter for each country individually, taking into account its particular circumstances including its tax law and practice.

### **A. A successful programme will be clear about its aims and its terms**

The aims of an offshore voluntary compliance programme are usually to deliver cost-efficient improvements in short-term tax revenues as well as to improve longer-term tax compliance. Sometimes a programme also aims to encourage repatriation of capital invested abroad<sup>1</sup>, or uses a requirement for repatriation of capital as a means of achieving exchange of information to the OECD standard by requiring repatriation only where the assets concealed are held in a jurisdiction which does not exchange information<sup>2</sup>. Both to encourage take-up and to maintain existing levels of compliance, the aims of the programme should be clearly set out, both for those invited to participate and for the taxpaying population as a whole.

The terms of the programme usually involve a limited-time offer by the government to a specified group of taxpayers to settle undisclosed or unpaid tax liabilities for a previous period in return for defined concessions over civil or criminal penalties. In some cases there are also concessions over the amount of tax and/or interest payable, or over the period of back years for which unpaid tax will be demanded. The terms of the programme should be clearly set out in guidance accessible both to the eligible population and to others, to avoid both ambiguity and any charge of a lack of even-handedness on the part of the tax authority. It should also be clear how disclosures under the programme will be treated for anti-money laundering purposes<sup>3</sup>.

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<sup>1</sup> For EU countries, conditions requiring repatriation of capital are subject to applicable rules on free movement of capital

<sup>2</sup> Countries are careful not to weaken the OECD information exchange standard by providing additional concessions simply for meeting the standard.

<sup>3</sup> More generally, the terms of a voluntary tax compliance programme should not imply exemption from anti-money laundering obligations either on the part of persons subject to anti-money laundering disciplines (banks, financial institutions, certain intermediaries, etc.) or on the part of the tax authority.

## **B. A successful programme will have a demonstrable and cost-effective increase in short-term revenues**

A short-term boost to revenues is often a primary goal of a voluntary compliance programme. That should be demonstrable in its own terms. This requires credible accounting for both the revenue gains and the related costs, which should include programme costs, plus the opportunity costs of revenues likely to have been secured (in the current and future years) without the programme.

Credible accounting for the net benefits of a programme does not necessarily involve detailed publication of all costs and benefits – the level of operational detail disclosed may vary from country to country, depending on the level of informed debate and transparency thought to be optimal for the country's tax compliance strategy generally. In some countries used to high levels of transparency, detailed publication of the net benefits of a programme may help to reassure compliant taxpayers that the government is acting in their interests to spread the tax burden fairly. This recognises that 100% compliance is unlikely to be cost-effective or acceptable to the general population, in terms of the level of enforcement it would imply, even if it were at all feasible. In other countries, detailed disclosure of amounts raised from a particular programme may lead taxpayers to question their own compliance – learning that the government has allowed this level of non-compliance in the past may make them feel cheated rather than appreciated.

## **C. A successful programme will be consistent with the generally applicable compliance and enforcement regime**

All compliance strategies aim to strike a balance between encouraging and supporting voluntary compliance and countering non-compliance, and taxpayers' perception of and response to that balance is crucial to their success. Unless carefully planned to fit with the prevailing strategy, a new offshore compliance programme could upset that balance with damaging consequence for compliance overall. This means there is a fine line to be struck between presenting the programme as both "business as usual" and as a "special opportunity". Ideally, there should be enough of a *perceived* incentive for the target population to take part, without so much of a *real* incentive as to alienate the majority who are already compliant.

Some programmes have addressed this by collecting the full amount of tax due on previously undisclosed income, and offering incentives to disclose only through either a clarification of, or a temporary reduction in, generally applicable levels of penalties, or interest and penalties. Similarly, arrangements for potential referral for criminal prosecution, or the number of years over which the revenue authority will look back, may be clarified, or temporarily alleviated, for the purpose of the programme. Other programmes have offered commitments to reduced audit (for past or future years) in return for defined increased in reported income.

Although evidence of long-term effects on compliance is not yet available, it is likely that the most successful programmes will be those which are able to link their terms with ongoing compliance and enforcement arrangements, while still appearing attractive in the short-term. A clarification of how existing discretion will be applied both in relation to penalties and in relation to a risk-based selection of cases for audit is more likely to support medium-term improvements in compliance than an approach which is out of kilter with normal procedures. It is also less likely to be manipulated by taxpayers seeking to play the system by taking the benefits of the programme but remaining fundamentally non-compliant. This could happen for instance if a taxpayer is able to make only a partial disclosure of evaded income but still qualifies for a promise of reduced future audit.

#### **D. A successful programme needs specifically to improve levels of compliance among the population eligible for the programme**

A growing number of taxpayers who failed to report income and assets to their country of residence now recognize that the risk of detection has increased which in turn is leading to a greater willingness to disclose and correct their situation so as to become fully compliant. A successful voluntary compliance programme should complement and reinforce this trend. If those who have deliberately evaded tax in the past find they are able to ignore or manipulate a voluntary compliance programme with no increased risk of being detected, this will only serve to reinforce their decision to evade (quite apart from the impact on the remainder of the population who were compliant already).

A successful programme therefore needs to be designed and resourced so as:

- a) to create a substantially increased risk that those eligible for the programme but who choose not to participate are detected, and that - whether or not they participate - any tax previously evaded is substantially brought to light; and
- b) to provide a tangible, credible and time-limited incentive for the eligible population to participate.

This in turn presupposes that there are adequate and credible enforcement measures in place to detect and deter evaders, including those who might otherwise choose not to participate in the programme, and those who might otherwise be tempted to slip back into non-compliance in the future. Depending on the applicable legal framework and country circumstances, that might include exemplary prosecution of those who defraud the programme.

At the same time, it should be made as easy as possible for those eligible for the programme to take the first step to come forward and participate, without allowing them to assume that they can put off participation by waiting for a similar programme in future.

#### **E. A successful programme will place the short-term boost to revenues in the context of improving compliance across the taxpayer population as a whole by complementing it with measures that improve compliance in the medium-term**

A short-term boost to revenues from settlement of previously undisclosed revenues (assuming it exceeds the costs of the programme) should not be at the expense of long-term compliance. Tax evaders need to be brought into compliance for good – not reinforced in the belief that they need only comply when special terms are on offer. If the programme is presented as a one-off opportunity, that presentation must be credible.

The majority of the compliant population also needs to be reassured that the revenue authority expects compliance, and will effectively pursue those who are not compliant. If they see the revenue authority as tolerating non-compliance, overall levels of compliance could fall. Demonstrating short-term revenue gains is important in securing medium-term compliance – signalling to the compliant majority that the revenue authority is acting in their best interest in securing wider compliance on a cost-effective basis rather than selling them short.

The risk of a temporary relaxation in the terms of tax enforcement doing damage to medium-term compliance can be avoided if the programme is used to reinforce other measures to ensure sustainable compliance (including measures to ensure a sustainable improvement in the

effectiveness of a revenue authority's enforcement measures). This has been a feature of a number of successful programmes in recent years.

- Recently, programmes have been introduced to accompany significant changes in the international tax environment in the area of information exchange including the dramatic increase in the number of TIEAs, changes to double tax conventions and rules on bank secrecy. A number of country programmes were also introduced in the 2000s in anticipation of the EU Savings Directive.
- Some country programmes have been triggered by new powers taken in legislation or confirmed by the courts for tax authorities to obtain information from banks on offshore accounts.
- Many programmes make clear that penalty (or in some cases interest) waivers as part of the programme will be matched by tougher penalties to be applied once the programme has ended, particularly for those who could have but chose not to take advantage of the programme. Or the programme could accompany an increase in tax penalties for evasion more generally.

There are benefits in this combined approach both for improving the compliance of the minority for whom the programme is designed and for maintaining compliance on the part of the majority. For the deliberately non-compliant, it establishes a credible expectation of compliance, rather than reinforcing the benefit of evasion. For those who may have inadvertently failed to disclose taxable income, it helps to build levels of awareness for the future in a supportive way. For the majority who already comply, it will stand a much better chance of reinforcing their compliant behaviour than programmes unaccompanied by other measures to improve medium-term compliance.