

**5th Meeting
of the Global Forum
on Transparency
and Exchange
of Information**

Los Cabos, Mexico
September, 2009



SHCP

**GOBIERNO
FEDERAL**



Moving Forward on the Global Standards of Transparency and Exchange of Information for Tax Purposes

A report to G20 Finance Ministers and Central Bank
Governors on the Outcomes of the Los Cabos (Mexico)
Meeting of the Global Forum on Transparency and Exchange
of Information for Tax Purposes

This report was endorsed by all the jurisdictions that participated in
the Global Forum meeting hosted by Mexico on 1-2 September 2009

MOVING FORWARD ON THE GLOBAL STANDARDS OF TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

I. Introduction

1. The need to tackle cross-border tax evasion is not new, but it has been lent a new urgency in light of recent events which have shown how vulnerable tax systems are to non-compliance with the global standards of transparency and exchange of information for tax purposes.

2. Unprecedented progress has been made since the November 2008 G20 Summit. All of the 87 jurisdictions covered by the Global Forum have now committed to the Global Forum's standards of tax information exchange and transparency, with more than half having substantially implemented them; major financial centres both within and outside of the OECD area which had strict bank secrecy rules or other impediments to achieving an effective exchange of information are in the process of removing these impediments; and more than 70 Tax Information Exchange Agreements have been signed – a larger number than the total for the previous 10 years.

3. The G20 at the Washington, D.C. (November 2008) and London (April 2009) Summits and the G8 at its L'Aquila Summit in July 2009, were able to draw extensively upon the work carried out by the OECD and its Global Forum. To build on this work, leaders requested the Global Forum to re-examine its composition and governance, implement a robust and comprehensive in-depth peer review mechanism and explore how developing countries can benefit from this new, more transparent tax environment.

4. Against this background, 178 participants from over 70 jurisdictions and international organisations came together at the Global Forum (see Annex 1) held in Mexico on the 1st and 2^d September 2009. In the context of the need of governments to protect their tax bases from non-compliance with their tax laws, the main objectives set for the meeting were to:

- Restructure the Global Forum to expand its membership and ensure its members participate on an equal footing;
- Agree on how to structure an in-depth peer review and quickly implement it; and
- Identify mechanisms to speed-up the negotiation and conclusion of agreements to exchange information and to enable developing countries to benefit from the new more cooperative tax environment.

II. Progress since the November 2008 G20 Summit in Washington, D.C., USA

5. At their Washington summit last November G20, leaders urged “tax authorities, drawing upon the work of relevant bodies such as the Organization for Economic Cooperation and Development (OECD), [to] continue efforts to promote tax information exchange. Lack of transparency and a failure to exchange tax information should be vigorously addressed”. At the

2nd April 2009 London Summit, G20 leaders called on countries¹ to adopt and implement the international tax standards for transparency and information exchange (see box below). This message was reinforced at the G8 Leaders' meeting in L'Aquila, held on the 8th - 9th July 2009.

6. On 31st August 2009 the Global Forum issued its fourth annual assessment of the progress being made in the implementation of the Global Forum's standards on transparency and exchange of information for tax purposes. This assessment and the Progress Report initially issued by the OECD Secretary-General on 2nd April 2009 in the context of the G20 London Summit and which is now regularly updated (available at: <http://www.oecd.org/dataoecd/50/0/42704399.pdf>) show that more progress has been made in the last 10 months than in the previous 10 years. Today all of the 87 jurisdictions covered by the Global Forum assessment have committed to the standards and more than half have already substantially implemented them:

- All OECD countries now accept Article 26 (Exchange of Information) of the OECD Model Tax Convention, as updated in 2005, following the withdrawal in March 2009 by Austria, Belgium, Luxembourg and Switzerland of their reservations to Article 26. Belgium and Luxembourg have now substantially implemented the standards, Switzerland has signed five and initialled ten other agreements to the standards, and Austria has modified its law to permit access to bank information for tax purposes and has signed two and initialled eleven agreements.
- Singapore endorsed the standards in February 2009 and introduced legislation in June 2009 intended to comply with the standards. Singapore has signed 5 and initialled 9 other agreements to the standards.
- Andorra, Liechtenstein and Monaco endorsed the OECD standards in March and were removed from the OECD list of un-cooperative tax havens in May 2009. Liechtenstein has signed four agreements to the standard and Monaco has signed one.
- Brunei, Costa Rica, Guatemala, Malaysia, the Philippines and Uruguay have now all endorsed the OECD standards of transparency and exchange of information and are in the process of implementing them.
- Macao, China which endorsed the standards at the 2005 Global Forum meeting in Melbourne, has passed legislation which will enable it to implement the standards. Hong Kong, China which also endorsed the standard in 2005, introduced in July 2009 the legislative amendments which will enable it to implement the standards.
- More than 70 tax information exchange agreements (TIEAs) based on the Global Forum's Model Agreement have been signed since November 2008. In addition, over 50 new tax treaties or protocols to existing treaties incorporating the standard have been negotiated.

7. The global acceptance of the OECD standards and the progress described above, are important and represent a substantial move towards achieving a level playing field. The true test of the effectiveness of these standards, however, lies in their effective implementation. Here further progress is required. All jurisdictions, including financial centres and significant

¹ References in this document to « countries » should be taken to apply equally to « territories », « dependencies » or « jurisdictions ».

economies that have not been covered by the Global Forum assessments, should be encouraged to engage in effective exchange of information and to conclude agreements rapidly. This is particularly the case for jurisdictions which made commitments almost 10 years ago but which have still not entered into any agreements. Tax treaties and TIEAs initialled or signed must now come into force and be implemented. Financial centres and significant economies should quickly complete the process of making any necessary changes to their legislation so that they can bring their exchange of information networks up to the standard. The network of TIEAs needs to be expanded and more jurisdictions need to enter into agreements in line with the Global Forum's Model Agreement and Article 26 of the OECD and UN Models. Furthermore, all jurisdictions should implement the transparency standards (see Box below).

III. The Global Forum

8. The Global Forum has played a very influential role in the development and acceptance of what are now the internationally accepted standards of transparency and exchange of information in tax matters. The Global Forum was created by the OECD in 2000 to provide a forum for achieving and implementing high standards of transparency and exchange of information in a way that is equitable and permits fair competition between all jurisdictions, large and small, OECD and non-OECD. The principle that has guided the Global Forum's work is that all jurisdictions, regardless of their tax systems, should meet such standards so that competition takes place on the basis of legitimate commercial considerations rather than on the basis of lack of transparency or lack of effective exchange of information for tax purposes. In the decade since the Global Forum's establishment, the implementation of the internationally accepted standards of cooperation in tax matters is more relevant than ever.

9. The Global Forum issued in 2002 the Model Agreement on Exchange of Information on Tax Matters and in 2005 agreed standards on the availability and reliability of accounting records developed by the Joint Ad Hoc Group on Accounts. The key principles of transparency and exchange of information are set out in the box below.

Key Principles of Transparency and Information Exchange for Tax Purposes
<ul style="list-style-type: none"> • Existence of mechanisms for exchange of information upon request. • Exchange of information in both criminal and civil matters. • No restrictions of information exchange caused by application of dual criminality principle or domestic tax interest requirement. • Respect for safeguards and limitations. • Strict confidentiality rules for information exchanged. • Availability of reliable information (in particular bank, ownership, identity and accounting information) and powers to obtain and provide such information in response to a specific request.

10. The implementation of these standards is reflected in the Global Forum's annual assessment of progress in over 80 jurisdictions, the most recent assessment having been published on 31st August 2009. The OECD standards have been endorsed by the G20 Finance Ministers and Central Bank Governors at their 2004 Berlin meeting and again at their 2005 meeting hosted by China in Xianghe, and by the United Nations in October 2008.

11. The Global Forum participants are committed to cooperate effectively to ensure that taxpayers comply with their tax obligations. The Global Forum recognises that a failure by any

one jurisdiction to implement the standards exposes the entire international community to risks of cross-border tax evasion. A universal approach is necessary to avoid any jurisdiction gaining a competitive advantage by failing to implement effectively the standards.

IV. Responding to the G20 Call to Strengthen the Work of the Global Forum

12. The discussions in Mexico showed that there was broad agreement on how to respond to the new international environment. Participants agreed on the need to restructure the Global Forum, confirmed that the main focus of its work should be on achieving a swift and effective implementation of the standards on a global level through effective monitoring and a robust peer review mechanism, and agreed on a new three year mandate. They also agreed on the need to coordinate efforts towards better transparency in the areas of tax, financial regulation and anti-money laundering.

(a) Restructuring the Global Forum

13. Participants welcomed the strengthening and restructuring of the OECD Global Forum as a Part II programme entirely financed by all of its members with a dedicated self standing secretariat based in the OECD's Centre for Tax Policy and Administration so as to benefit from the Organisation's experience in this area. All members – OECD and non-OECD – will participate on an equal footing. The Global Forum agreed to expand its current membership by inviting all jurisdictions covered by the 2009 assessment and all G20 countries i.e. all jurisdictions which have thus far endorsed the standard. Other jurisdictions are also invited to participate and engage in implementing the standard. All relevant international organisations will be invited as Observers. An open and transparent governance structure was also agreed upon with a Steering Group and Peer Review Group having been established. The Global Forum elected Australia (Mike Rawstron) as the Chair of the Global Forum and Steering Group and China, Germany and Bermuda as the Vice Chairs. The Steering Group will also include Brazil, Cayman Islands, South Africa, Switzerland, United Kingdom and the United States of America. As for the Peer Review Group, France (Francois D'Aubert) was elected as Chair and India, Japan, Singapore and Jersey as Vice Chairs.

(b) Putting in place a robust, comprehensive and global monitoring and peer review process

14. Reviews will apply to all Global Forum members. They will be impartial, transparent, comprehensive and multilateral, and will be managed by a Peer Review Group. Jurisdictions which are not members of the Global Forum will, where appropriate, be subject to the same review and will be invited to engage with the Forum in the context of any review. The review process will draw on the experiences of the FATF and the Working Group on Bribery, which monitors implementation of the OECD Anti-Bribery Convention. There will be two phases to the review process:

1. Monitoring and reviewing the legal and regulatory framework: This phase will examine the legal impediments which could prevent a jurisdiction from providing reliable information in a timely fashion to its treaty/ TIEA partners. It will cover all members and non participants where appropriate. It will begin early in 2010 and will be completed for all Global Forum members during the initial three-year mandate.
2. Monitoring and reviewing the actual implementation of the standards: This will examine the practical implementation of the transparency and exchange of information standards. It is the most ambitious part of the peer review process

since it will examine the practical experiences of jurisdictions in exchanging information. This phase will also begin early in 2010 and will be ongoing.

15. At the same time the Global Forum will continue to monitor and review international instruments for exchange of information (e.g. tax treaties and TIEAS) and may refine the way it assesses progress made in concluding agreements; this work will begin immediately and will cover all members and non participants where appropriate, focussing on whether their agreements meet the standard and on their current status, i.e. signed or in force. The first report is expected by December 2009.

16. All Global Forum members and other relevant financial centres will be subject to each phase of the monitoring and review process. However, as all jurisdictions cannot be reviewed at the same time criteria will be developed to determine the scheduling of reviews and a schedule of reviews for each year will be placed on the Global Forum's website.

17. The whole monitoring and peer review process will be an ongoing exercise and the outcomes from the reviews will be published on a continuous basis. Jurisdictions will be expected to act on any recommendations in the review and to report back to the Global Forum on actions taken. The Global Forum also noted the strong linkages between efforts to improve exchange of information for tax purposes and related issues such as asset recovery, anti-money laundering and the fight against corruption.

(c) Speeding up the process of negotiating agreements

18. Three projects are now underway which should speed up the process of negotiations:

- Implementing multilateral negotiations on a regional basis which can lead to a series of bilateral agreements being signed simultaneously;
- Preparing the launch of a multilateral TIEA on the basis of the 2002 Model Tax Agreement;
- Updating and extending the country coverage of the OECD–Council of Europe Multilateral Convention on Administrative Assistance in Tax Matters.
- The Global Forum would also continue to examine how the unilateral approach can be developed.

The Global Forum intends to follow carefully developments in each of these areas.

(d) Opening up the Process to Developing Countries

19. Already in Mexico, developed, developing and emerging economies from all continents were present and contributed to the discussions. This meeting brought together the largest number of participants to date. Participants noted that beyond the work of the Global Forum, greater efforts would be needed to improve the capacity of developing countries' tax administrations. In that respect, they welcome initiatives being taken by the European Commission, IMF, the OECD, the World Bank and regional tax organisations to strengthen tax administrations in developing and emerging economies and welcomed the fact that the OECD's Development Cooperation Directorate and Centre for Tax Policy and Administration have agreed to develop a scoping paper before the end of 2009. The Global Forum will monitor progress on how developing countries are benefitting from the more transparent environment. It will receive a report early next year from the Global Forum Secretariat on how such countries

can be integrated in and benefit from the Global Forum's work including concrete suggestions on the more effective use of information exchange.

20. The Global Forum recognised that to achieve a more effective implementation of the standards, some smaller financial centres may require technical assistance. It encourages the OECD, working with other relevant international organisations, to consider how this would be provided.

V. Next Steps

21. The Mexico meeting has served to define the architecture and objectives of the Global Forum for the future, but work in all of the areas referred to above is already moving forward. Participants recognise that maintaining this progress will require a resource commitment from them. It was agreed that the Peer Review Group will meet in October to discuss the methodology for the peer reviews. The Secretariat will accelerate its work on multilateral instruments and will prepare a report on how developing countries can benefit from this process. The date for the next meeting of the Global Forum will depend largely on the progress made in the peer review process but is expected to take place before June 2010. At that meeting the Global Forum would be presented with reports on:

- (i) The progress made in the signing and entry into force of agreements by members and non-members of the Global Forum;
- (ii) Preliminary outcomes from Phase 1 and Phase 2 of the review process;
- (iii) Developments with respect to efforts to implement multilateral initiatives for exchange of information; and
- (iv) How developing countries can be further integrated in and benefit from Global Forum work.



22. In advance of the G20 Finance Ministers meeting in November, the Global Forum will submit a report to inform Ministers on how multilateral tax information exchange agreements (TIEAs) work and what steps are necessary to accelerate full implementation of the standards.

23. The Global Forum would like to express its appreciation to the Mexican Government for hosting this meeting at such short notice and to the OECD Secretariat for providing the documentation on which the discussions were based and for facilitating a successful outcome from the Los Cabos meeting.

ANNEX I

LIST OF JURISDICTIONS AND INSTITUTIONS PARTICIPATING IN THE MEETING

Jurisdictions

Andorra
Antigua and Barbuda
Argentina
Australia
Austria
Belgium
Bermuda
Brazil
British Virgin Islands
Canada
Cayman Islands
Chile
Cook Islands
Costa Rica
Czech Republic
Denmark
Finland
France
Germany
Gibraltar
Guatemala
Guernsey
Hong Kong, China
India
Ireland
Isle of Man
Italy
Japan
Jersey
Korea
Liberia
Liechtenstein
Luxembourg
Macau, China
Malaysia
Marshall Islands
Mexico
Monaco

Netherlands
Netherlands Antilles
New Zealand
Panama
People's Republic of China
Philippines
Poland
Russian Federation
Saint Kitts and Nevis
Saint Vincent and the Grenadines
Samoa
San Marino
Seychelles
Singapore
Slovenia
South Africa
Spain
Sweden
Switzerland
The Bahamas
Turks and Caicos Islands
United Kingdom
United States
Uruguay

International Organisations

European Bank for Reconstruction and Development
European Commission
Financial Action Task Force
Inter-American Development Bank
International Finance Corporation
International Monetary Fund
Organisation for Economic Co-operation and Development
World Bank